

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 497 OF 2014

IN THE MATTER OF THE ESTATE OF IRERI GAKIAVU (DECEASED)

JIMKASSIM MUGO GAKIAVU.....APPLICANT

VERSUS

PETER MURITHIRESPONDENT

RULING

By their chamber summons dated 14th August, 2015 brought under Rules 49, 59 (3) of the Probate and Administration Rules, counsel for the applicant have applied for an order to direct the lifting of a restriction and/or caution lodged in respect of land reference No. Kyeni/Kigumo/1485. The applicant has annexed a supporting affidavit.

The Respondent did not appear nor did he file a replying affidavit, notwithstanding that he was served with a notice of hearing. I have perused the affidavit of service and I am satisfied that he was properly served and had adequate notice of the hearing of this application.

According to the Applicant's affidavit, the said land parcel was granted to Ceaser Murithi Gakiavi through a confirmed grant dated 15th June, 2015. The Respondent never lodged any objection to the petition for letters of administration intestate nor did he file a protest to the confirmation of the grant.

Furthermore, the applicant was shocked to learn that the land had been cautioned by the respondent and for this reason, he was unable to pay stamp duty.

I have considered the affidavit evidence of the applicant who is the administrator of the estate of the deceased. I find that the said evidence is credible and is unopposed.

In the circumstances, I find no legal justification for the lodging of the caution or restriction. I hereby order for its removal.

The application is therefore allowed in terms of prayer (a) of the chamber summons.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **1st** day of **SEPTEMBER, 2015**

In the presence of the applicant and in the absence of the Respondent

Court clerk. R Njue

J.M. BWONWONGA

JUDGE

01.09.15