



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

CIVIL CASE NO 81 OF 2015 (O.S)

**IN THE MATTER OF THE ESTATE OF M'IKIUGU M'MWIRICHIA alias IKUGU
MWIRICHIA (DECEASED)**

JUSTIN THIORA KIUGU.....1ST APPLICANT

DAVID KUBANIA KIUGU.....2ND APPLICANT

JULIUS KATHURIMA KIUGU.....3RD APPLICANT

AYUB MWITI KIUGU.....4TH APPLICANT

EDWARD MAITETHIA KIUGU.....5TH APPLICANT

INTERIM RULING

This is a Ruling concerning 2 Applications. The first one by the Plaintiffs in the Originating Summons is dated 15/09/2015 and seeks orders:-

1. ***THAT this Application be certified urgent and the same be heard ex-parte in the first instance.***
2. ***THAT pending the hearing of this Application this Honourable Court do issue an Order of Temporary Injunction restraining the Respondent/Defendant by herself, her agents, employees and/or anybody else whomsoever acting on her behalf from evicting or laying distress for rent against the Applicants or their tenants in respect of Plot Nos. MERU MUNICIPALITY BLOCK 11/210 and NTIMA/IGOKI/2871.***
3. ***THAT pending the hearing of this Originating Summons this Honourable Court do issue an Order of Temporary Injunction restraining the Respondent/Defendant by herself, her agents, employees and/or anybody else whosoever acting on her behalf from evicting or laying distress for rent against the Applicants or their tenants in respect of plot Nos. MERU MUNICIPALITY BLOCK 11/210 and NTIMA/ IGOKI/2871.***
4. ***THAT the costs of this application be provided for:***

This application has the following grounds:

- a. ***THAT the Respondent is a trustee of the beneficiaries of the Estate of the deceased M'IKIUGU M'MWIRICHIA but is acting in breach of the trust.***
- b. ***THAT it has become necessary for this Court to intervene before the beneficiaries are***

thrown into the streets.

- c. **THAT the Applicants have families who wholly depend on the Estate.**
- d. **THAT it is in the interest of justice that the application is allowed to abstain (sic) the trustee from causing havoc.**
- e. **THAT the Trustee/Respondent is in cause of doing damage to the applicants unless stopped.**

The 2nd application is filed by the Defendant. This Application is dated 9/10/2015 and seeks orders THAT:-

1. ***This application be certified urgent and be heard ex-parte in the first instance.***
2. ***This Honourable Court be pleased to stay/set aside/ vacate its ex-parte order of 16th September,2015.***
3. ***Alternatively this Honourable Court do order that the Applicants and the Tenants in Plot No. MERU MUNICIPALITY BLOCK 11/210 do deposit all rents/earnings in a joint account in the names of the Advocates for the parties herein.***
4. ***This Honourable Court do issue such further or better orders as will meet the ends of justice.***
5. ***Costs of this application be borne by the Respondents/Plaintiffs.***

This application is supported by the Affidavit of Joyce Nkatha Kiungu and has the following grounds:-

1. ***The Applicant is the Administratrix of the estate of her Husband, M'IKIUGU M'MWIRICHIA.***
2. ***The Respondents are the children of the Applicant.***
3. ***After a protracted battle over the distribution of the deceased M'IKIUGU M'MWIRICHIA'S estate, the Court of Appeal on 12th March, 2015 in Nyeri C.A. Succ. Cause No. 30/2014 confirmed the Applicant as the Administratrix of the Estate of her Husband, the late M'IKIUGU M'MWIRICHIA and ordered, in consonance with section 35 of the Law of Succession Act Chapter 160 Laws of Kenya, that all the properties of the deceased be registered in her names for herself and in trust for the deceased's children.***
4. ***THAT her attempt to receive the proceeds of the deceased's estate and specifically the rented proceeds from MERU MUNICIPALITY BLOCK 11/210 and NTIMA/IGOKI/2871 to inter-alia (sic) have been forcefully thwarted by the Applicants who continues (sic) receiving/utilizing the rents therefrom for their own selfish ends and without as much as accounting for it.***
5. ***The Respondents are now misusing the ex-parte orders of this Honourable Court of 16th September,2015 to fulfill their desires.***
6. ***It is only fair and just that this Honourable Court upholds the letter and spirit of the Court of Appeal judgement and the express provisions of section 35 of the Law of Succession Act Chapter 160 Laws of Kenya.***

This suit involves close family members. All the Plaintiffs are the Sons of the Defendants who is an elderly and sickly lady who uses a wheel Chair and is 85 years old. This is a matter where those involved should explore an out of Court Settlement.

Having heard the Advocates for both parties and before the 2 applications can be heard and

determined and in the interest of Justice, I rule as follows:-

1. **The Interim Orders granted in the application dated 15/09/2015 are extended pending hearing and determination of the 2 applications.**
2. **Prayer 3 in the application dated 9/10/2015 is granted to the effect that the Applicants and the Tenants in Plot No. MERU MUNICIPALITY BLOCK 11/210 do deposit all the rents/earnings in a joint account in the names of the Advocates for the parties herein forthwith.**
3. **The Plaintiffs /Applicants to put in a reply to the application dated 9/10/2015 within 5 days and all parties are granted leave to further respond, if and as they so wish, within 7 days from today.**
4. **Mention for Directions on 26/10/2015 at the request of the parties.**
5. **Costs shall be in the cause.**

Delivered in Open Court at Meru this 12th day of October, 2015 in the presence of :-

CC: Lilian/Daniel

Rimita for Plaintiffs

Kiautha Arithi for Defendants .

P. M. NJORGE

JUDGE