



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**MISC SUCC CAUSE NO. 148 OF 2015**

**IN THE MATTER OF THE ESTATE OF NJAGI MUNGE (DECEASED)**

**NAZARIA KAARI NJAGI.....APPLICANT**

**VERSUS**

**JOHN NJERU NJAGI.....ADMINISTRATOR/RESPONDENT**

**RULING**

The applicant brought this application under certificate of urgency dated 4th August 2015 under Rules 49 and 73 of the Probate and Administration Rules. There is pending in court an application for the revocation of the grant.

The applicant has stated that she is the beneficiary of the estate of the deceased. It is also her contention that she was left out by the administrator of the estate which she alleges the respondent has fully administered in respect of land parcel Nos. Gaturi/Githimu/4232, 4231 and 4228. She fears that if the grant is fully implemented, the beneficiaries may evict the applicant and her family from land parcel No. Gaturi/Githimu/4232, which the applicant and her family are now occupying. It is for this reason that she seeks a prohibitory order to preserve the estate of the deceased pending the hearing and determination of the application for the revocation of the grant.

In support of that application, the applicant has filed a supporting affidavit dated 4th August, 2015. In that affidavit, she has stated that the respondent who is the administrator of the estate is her brother. She has also stated that she is a daughter of the late Njagi Munge. According to her, in paragraph 4 of the affidavit, the respondent secretly filed succession cause No. 64 of 2014 in the magisterial subordinate court at Runyenjes. Thereafter, he was granted letters of administration intestate. Upon being granted those letters, he proceeded to distribute the estate of their late father without making any provision for the applicant. She has also stated in paragraph 7 that the grant was fraudulently obtained by the respondent. Finally, she has stated that unless a prohibitory order is issued, the beneficiaries may evict her from the land that she now occupies with her family. It is for these reasons that she seeks a prohibitory order in respect of the land parcels stated above, which comprise the estate of the deceased.

The hearing of this application proceeded in the absence of the respondent. The respondent despite being given time to file a replying affidavit did not do so. The respondent also did not attend the hearing of this application. The respondent was properly served and had adequate notice. It is for this reason that these proceedings were conducted in his absence

I have considered the affidavit evidence of the applicant and I find it credible. Furthermore, I find that the issuance of a prohibitory order in respect of land parcel No. Gaturi/Githimu/4231, 4232 and 4228 is necessary to prevent the eviction of the applicant from the parcel of land, which is under her occupation namely land parcel No. Gaturi/Githimu/4232. Furthermore, I also find that unless a prohibitory order is issued, the estate of the deceased may be distributed to the detriment of the applicant.

In the circumstance, a prohibitory order will issue in terms of prayers No. 3, 4, 5 and 6 of the chamber summons dated 4th August, 2015.

I make no order as to costs as the matter involves members of the same family

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this.. 11th . day of **NOVEMBER, .2015**

In the presence of Ms Muthoni for the applicant and in the absence of the Respondent.

Court clerk Mr Nyaga

**J.M. BWONWONGA**

**JUDGE**

**11.11.15**