



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 629 OF 1993**

**IN THE MATTER OF THE ESTATE OF KIGATHI NG'ANG'A – (DECEASED)**

**RULING**

1. The applicant moved the court by an application dated 17 April 2014 seeking several orders. In the main he would like a fence erected across his driveway removed.
2. The current disputes pits a son and a mother. The applicant is the son while the mother is the 2<sup>nd</sup> respondent. Both are said to reside on Muguga/Gitaru/726.
3. His case is that on 11<sup>th</sup> April 2004, the respondents, working with the officials of the local provincial administration and the police, moved to his gate, broke the padlocks, entered his compound and erected a permanent fence across the portion of Muguga/Gitaru/726 that he occupies. This had the effect and his family and denying him access to the outside world. He has annexed photographs to his affidavit sworn on 17<sup>th</sup> April 2014 to support his allegations. He says that he has been immobilized and frustrated from running his usual businesses. He also accused the respondents of causing damage to his property and is asking for compensation.
4. Both respondents have filed replying affidavits both sworn on 24<sup>th</sup> April 2014. The respondents deny the allegations made to the affidavit of the applicant. They allege that the photographs annexed to the affidavit of the applicant do not reflect what is on the ground.
5. Counsel for both parties addressed me orally on the said application on 25<sup>th</sup> April 2014. They gave vent to the allegations made their respective clients in their affidavits.
6. I have perused the court file. I have noted that certificate of confirmation of grant herein was issued on 3<sup>rd</sup> April 2014. This should pave way for the distribution of the estate. The principal property is Muguga/Gitaru/726. It is to be distributed amongst the (10) members of the family, practically all survivors of the deceased are to get a share. The administrator of the estate should in the near future move to distribute the estate in the terms of the certificate dated 3<sup>rd</sup> April 2014.
7. Since the process of distribution has started in the earnest, it is imperative that all concerned maintain *status quo* to facilitate it. No new structures should be erected on the ground, neither should any structure that has been on the ground be knocked or pulled down.
8. I am satisfied that there are structures that have been put up blocking the applicants drive way. This was not done in an effort to carry out into effect the terms of the certificate of confirmation dated 4<sup>th</sup> April 2014 as the parties had not yet collected the said certificate from the court registry. The respondents deny responsibility for the putting up of the said structure, and even depone that it is not erected on the part of the property adjoining the applicant's homestead.
9. I here by order the removal of the said fence. As the respondent's deny responsibility, I adjudge that the duty of removing the said fence shall fall on the shoulders of the administrator given that the entire estate vests in her by virtue of *Section 79* of the Law of Succession. The said fence shall be removed within 24 hours of the date of this ruling. The matter shall be mentioned on 9<sup>th</sup> May 2014 for compliance. There shall be no order as to costs. It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 6th DAY OF May, 2014.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Mr. Angwenyi advocate for the applicant.**