



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MACHAKOS

Succession Cause 126 of 2008

IN THE MATTER OF THE ESTATE OF SAMUEL MUMINA KATUMO - DECEASED

ROBERT MUMINA SAMUEL

ELIZABETH MBATHA SAMUEL PETITIONERS/RESPONDENTS

VERSUS

GIDEON MBITHI WATHI RESPONDENT/INTERMEDDLER

R U L I N G

Before me is a Chamber Summons dated 28th March 2011 filed by the Petitioner Robert Mumina Samuel and Elizabeth Mbatha Samuel. It was filed under sections 45(1) and 47 of the Law of Succession Act (Cap 160) and Rule 73 of the Probate and Administration Rules. It has four prayers, two of which have been spent as follows:-

1. (Spent).
2. **That the respondent, GIDEON MBITHI WATHI be restrained from in any way interddling and/or interfering with the deceased's estate, which includes land parcel number MACHAKOS/KIANDANI/1248.**
3. (Spent).
4. **That the costs of this application be paid by the respondent.**

The application was filed with a supporting affidavit sworn on 28th May 2011 by Robert Mumina Samuel. It was deponed that the subject asset was one of the properties in the estate of SAMUEL MUMINA KATUMO. That on 22/2/2011, the respondent trespassed into the land and started shifting the boundary thereof and had refused to leave, and also become aggressive.

The application is opposed. The respondent filed a replying affidavit sworn by himself on 2nd November

2011. It was deponed that the respondent had never trespassed or interfered with the boundaries of the land and had in fact sought to protect the status quo. That the applicants had failed to disclose the existence of **Machakos Criminal Case No. 905 of 2011 Republic –vs- Robert Mumina** and that the applicants had been using court proceedings to deny the beneficiaries the use and peaceful control of the land.

On the hearing date, Mr Ngolya, for the applicants attended court and made submissions. Mr Mutua, for the respondent did not attend court.

Having considered the application and submissions tendered before me, I am of the view that the orders sought are justified. Firstly, the respondent has not stated in the replying affidavit what interests he has in the subject land. He has not stated that he is a beneficiary or an interested party and whether or not he is on the land. He does not give the names of the beneficiaries for whom he claims to act. The letter from the chief dated 12th April does not in fact list him as a survivor of the deceased. His contention in this application has therefore to fail.

Consequently, I allow the application and grant prayer 2. The respondent will also pay the applicants' costs of the application.

Dated and delivered at Machakos this **2nd** day of **July** 2012.

George Dulu

Judge

In presence of:

N/A for parties

Nyalo – court clerk