



REPUBLIC OF KENYA

High Court at Nakuru

Succession Cause 81 of 2011

IN THE MATTER OF THE ESTATE OF JOHN MBURU KIBE (DECEASED)

RUTH WAIRIMU JOHN.....CITOR

VERSUS

FLORENCE ACHIENG' MBURU.....CITEE

RULING

The deceased in this cause died intestate on 13th June, 2009 and was survived by two widows, five (5) sons and three (3) daughters. He was also survived by a niece, who is a minor.

The deceased was well endowed with several properties in several parts of the country. For instance he left several parcels of land in Kisumu, Nairobi, Makutano, Gilgil and bank accounts.

The first widow brought a citation alleging that the second widow was unwilling to take out a grant of representation. On 1st December, 2011, the two widows recorded a consent to the effect that both of them may apply for a grant. To date that has not been done. Instead, the 1st widow has filed the instant application claiming that the 2nd widow and her son James Murigi Kibe are intermeddling with the estate.

For that reason, the 1st widow seeks that the two be restrained from selling, transferring, intermeddling or interfering with various properties listed in the application until the finalization of this cause. She also seeks that the Land Registrars, Kisumu and Nairobi be restrained from accepting any dealings with any of the properties listed in the application; that the court orders the preservation of the properties already sold by the 2nd widow and James Murigi Kibe and finally that the 2nd widow and James Murigi Kibe be ordered to render an inventory and full account of all the assets with which they have intermeddled.

The application was duly served on the 2nd widow and James Murigi Kibe who have not replied.

It is the applicant's contention that the 2nd widow and her son have sold one property in Manyatta, Kisumu, and both Kisumu/KOGONY/3772 and KISUMU/KOGONY/3230 as well as motor vehicle registration No.KXK 939 – Toyota Hilux; that they have also been withdrawing money from the bank without the grant having been issued. These allegations are unchallenged.

In terms of **Section 45** of the **Law of succession Act**, it is criminal for any person to take possession or dispose of or otherwise intermeddle with a property of a deceased person.

The applicant has specified the manner of intermeddling of the estate by the 2nd widow and her son. The grant has not been issued to the respondents to enable them deal with the estate as alleged.

It is ordered that:

- i) a restraining order be and is hereby issued in terms of paragraph 3 of the summons;
- ii) within thirty (30) days from the date of this ruling the 2nd widow and her son, James Murigi Kibe, shall file a true account and inventory of all the properties they have disposed of and of cash withdrawals since the death of the deceased;
- iii) both widows or any one of them to petition for the grant of representation within 30 days from the date hereof.

Dated, Signed and Delivered at Nakuru this 2nd day of November, 2012.

**W. OUKO
JUDGE**