



## **SUCCESSION**

· Resident magistrate's court jurisdiction in succession case limited to property valued at Kshs. 100,000/=.

### **REPUBLIC OF KENYA**

### **IN THE HIGH COURT OF KENYA**

### **AT MERU**

### **SUCCESSION CAUSE NO. 653 OF 2009**

### **IN THE MATTER OF THE ESTATE OF LAWRENCE M'MUNGANIA**

### **ALIAS LAWRENCE MATEREU (DECEASED)**

**MARGARET MUKOKINYA ..... APPLICANT**

**VERSUS**

**SUSAN MUTHIRU ..... RESPONDENT**

### **RULING**

When this matter came up before me for the hearing of the summons dated 19<sup>th</sup> April 2010, it was submitted to me that by a further replying affidavit the respondent, Susan Muthiru had conceded that they were properties that belonged to the deceased which had not been made part of the Succession Cause Principal Magistrate Maua Court No. 42 of 2001. I informed the counsels before me that I would consider the matter and would give my directions today. Having considered the matter, I am of the view that it is necessary to deliver a ruling in order to give directions on how this matter should proceed. The deceased Lawrence Matereo M'Mungania died on 1<sup>st</sup> October 2001 leaving surviving him two wives and 9 children. The wives Margaret Mukokinya (Margaret) and Susan Muthiru (Susan) petitioned for grant of letters of administration intestate at Principal Magistrate Court Maua in Succession Cause No. 42 of 2001. In that petition, they indicated that the deceased estate had one parcel of land namely *Njia/Liburu/26* and a bank account at Barclays Bank of Kenya Ltd Meru Branch. The grant that was issued to both Margaret and Susan on 21<sup>st</sup> February 2001 was confirmed on 29<sup>th</sup> August 2002 whereby the court distributed the parcel of land and the bank account to both Margaret and Susan jointly. After confirmation and by a letter dated 23<sup>rd</sup> January 2008, the District Land Adjudication and Settlement Officer Igembe District confirmed that the deceased was also the owner of parcels number 4349, 6907 and 5683 Kangeta Adjudication Section. The Principal Magistrate court Maua in the Succession Cause filed by Margaret and Susan refused to grant an order sought by Margaret by an application dated 3<sup>rd</sup> March 2009 where she sought the rectification of the confirmed grant to reflect the additional properties. I

believe the refusal by that court was the reason why Margaret moved to this court by summons dated 21<sup>st</sup> December 2009. Margaret by that summons sought for orders to transfer Principal Magistrate Maua Succession Cause No. 42 of 2001 to this court for an order that this court do proceed to determine the succession cause. This court by the order of 8<sup>th</sup> March 2010 granted the prayers sought by Margaret. The reason given for the transfer of that succession cause to this court was because the Maua court had no jurisdiction to entertain that succession cause whose value of the properties of the estate exceeded according to Margaret Kshs. 500,000/= . Section 49 of the Law of Succession Act provides that the jurisdiction of the resident magistrate in succession causes is limited to estates where the gross value of the deceased estate does not exceed Kshs. 100,000/= . It is clear that both Margaret and Susan are in agreement that the deceased properties were not fully stated in the Maua succession cause. They are both essentially agreed that the confirmed grant issued on 29<sup>th</sup> August 2002 by Principal Magistrate Court Maua in Succession Cause No. 42 of 2001 should be revoked. In this matter before court, Margaret obtained an injunction on 21<sup>st</sup> April 2010 restraining Susan, her servants or agents from interfering with Margaret's peaceful, quiet and uninterrupted possession, user and cultivation of the half portion of parcel number *Njia/Liburu/26* tea scheme. I have considered the replying affidavits of Susan and I have also considered the affidavits of Margaret. I find that I am in agreement with the depositions of Susan that the order of injunction issued against her is unclear since it does not state which half of the parcel of land Susan is restrained from entering. It is for that reason that I am of the view that the interests of justice demand that the injunction order of 21<sup>st</sup> April 2010 be vacated. I make the following orders:-

1. ***The grant issued in Principal Magistrate Court Maua Succession Cause No. 42 of 2001 be and is hereby revoked.***
2. ***I order a grant be issued in the joint names of Margaret Mukokinya and Susan Muthiru.***
3. ***Each or both of those two administrators are granted leave to file the summons for confirmation of the grant before the expiry of 6 months.***
4. ***The injunction issued in this case on 21<sup>st</sup> April 2010 restraining Susan Muthiru from interfering with the half portion of parcel number Njia/Liburu/26 tea scheme is hereby vacated and discharged.***
5. ***At the reading of this ruling, a date will be given for the hearing of the summons for confirmation of grant which is yet to be filed by either one or both of the administrators.***
6. ***There shall be no orders as to costs in respect of the summons dated 19<sup>th</sup> April 2010.***

***Dated, signed and delivered at Meru this 3<sup>rd</sup> day of March 2011.***

**MARY KASANGO**  
**JUDGE**