



REPUBLIC OF KENYA



**In re Estate of M'ikiugu M'rintaugu (Deceased) (Succession Cause  
10 of 2017) [2024] KEHC 6418 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6418 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 10 OF 2017  
TW CHERERE, J  
MAY 30, 2024**

**BETWEEN**

**MWORIA C. KIRERA ..... APPLICANT**

**AND**

**SUSAN NKATHA KIUGU ..... 1<sup>ST</sup> ADMINISTRATOR**

**EZABELLA KATHURE MWIRIGI ..... 2<sup>ND</sup> ADMINISTRATOR**

**DANIEL GATOBU IKIUGU ..... 3<sup>RD</sup> ADMINISTRATOR**

**AND**

**MWORIA C. KIRERA ..... INTERESTED PARTY**

**RULING**

**Background**

1. Mworia C. Kirera (Applicant/Interested Party) claims that he bought 1 acre of Kibirichia/Kibirichia/2761 from the deceased during his lifetime and has been in occupation of the same with full knowledge of the deceased and his beneficiaries.
2. It is Applicant/Interested Party's case that he fenced off the one-acre land with the consent of Daniel Gatobu Ikiugu (Petitioner/3<sup>rd</sup> Administrator) and his brothers. He accuses the Petitioner/3<sup>rd</sup> Administrator and two grandsons of the deceased of trespassing on the said land.
3. Consequently, by summons dated 05<sup>th</sup> April, 2024, Applicant/Interested Party seeks that the Petitioner/3<sup>rd</sup> Administrator, his representatives, servants, employees, agents and anyone claiming for and on behalf of or through him from selling, leasing, charging and or whatsoever interfering with his occupation, cultivation, use and enjoyment of land parcel Kibirichia/Kibirichia/2761 pending the hearing and determination of this cause.



4. Ezabella Kathure Mwirigi (2<sup>nd</sup> Administrator) disputes that the Applicant/Interested Party bought land parcel Kibirichia/Kibirichia/2761 from deceased and avers that it was sold by two of the beneficiaries. She opposed the orders on the grounds that it would amount to permitting intermeddling with deceased's estate.

### **Analysis and Determination**

5. Any discussion on temporary injunctions is not complete without reiteration of the requirements for grant of injunctions as set-out in the *Giella vs Cassman Brown* (supra) as follows:

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not be adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

6. The principles on which courts will grant an injunction were restated by the Court of Appeal in *Nguruman Limited V. Jan Bonde Nielsen & 2 Others* (supra) together with the mode of their application as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

7. The Court of Appeal in the case of *Mrao Ltd Vs First American Bank of Kenya & 2 others* [2003] eKLR interpreted the condition as to prima facie case as follows:

“A prima facie case in a civil application includes but is not confined to a "genuine and arguable case". It is a case which on the material presented to court; a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the other party as to call for an explanation or rebuttal from the latter.”

8. From affidavit evidence on record, none of the documents exhibited by the Applicant/Interested Party demonstrate any sale agreement between him and the deceased or any consent by the deceased for him to take occupation of land parcel Kibirichia/Kibirichia/2761. In fact, what the Applicant/Interested Party has exhibited is a note by which two sons of the deceased namely David Mbaya and Gatobu M'Ikiugu are acknowledging receipt of KES. 250,000/- from Applicant/Interested Party as part payment for one (1) acre of Kibirichia/Kibirichia/2761.
9. The note is dated 01<sup>st</sup> April, 2016 long after the death of the deceased. David Mbaya and Gatobu M'Ikiugu had no capacity to offer for sale any of the deceased's assets. The two are intermeddlers and the Applicant/Interested Party is himself also an intermeddler.
10. Consequently, I find that the Applicant/Interested Party has not demonstrated a prima facie case with a probability of success and this Court as a court of equity declines the invitation to aid him to continue intermeddling with deceased's estate.



11. In the end, the summons dated summons dated 05<sup>th</sup> April, 2024 is unmerited and it is dismissed.
12. This court has noted that the administrators have since their appointment by an order dated 20<sup>th</sup> April, 2023 not applied for distribution of deceased's estate.
13. Notice is issued to the Administrators that this court will not hesitate to revoke their appointment if they do not diligently discharge their duties as provided under Section 83 of the *Law of Succession Act* Cap 63 Laws of Kenya.
14. Mention on 13<sup>th</sup> June, 2024 to confirm filing of application for confirmation and for further orders

**DATED AT MERU THIS 30<sup>TH</sup> DAY OF MAY 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

For Applicant - Ms. Gumato for Otieno C. & Co. Advocates

For Respondent - N/A

For 2<sup>nd</sup> & 3<sup>rd</sup> Respondents- Ms Oteko for Mboos Mutunga & Co. Advocates

