



**In re Estate of Kiumbia M'mukira alias Kiumba M'riria (Deceased) (Succession Cause 512 of 2013) [2024] KEHC 15101 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15101 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 512 OF 2013  
HM NYAGA, J  
NOVEMBER 28, 2024  
IN THE MATTER OF THE ESTATE OF KIUMBIA  
M'MUKIRA ALIAS KIUMBA M'RIRIA (DECEASED)**

**BETWEEN**

**JOSEPH KINOTI M'MUKIRA ..... APPLICANT**

**AND**

**ROSALIA NKATHA MUKIIRA ..... RESPONDENT**

**RULING**

1. The Application for consideration in the Chamber Summons dated 26<sup>th</sup> October, 2024 and it seeks the following prayers:-
  - a. That the Honourable Court be pleased to certify this application as very urgent and the same be heard as a matter of priority.
  - b. That the Honourable Court be pleased to issue an order that the subdivision of the deceased estate per the certificate of confirmation of grant herein be conducted paying regard to each beneficiary properties and or developments on the material parcel of land.
  - c. That the Honourable Court be pleased to issue an order of temporary injunction restraining the Respondent is agents, servants or anyone else claiming at her behest from evicting and or demolishing the Applicant's and the other beneficiaries properties on and or from the deceased estate.
2. The Application is supported by the grounds on its face and the Affidavit of Joseph Kinoti M'Mukiira.
3. In a nutshell, the Applicant states that court confirmed the grant herein, distributing land parcel No. LR No. Nthimbiri/Kiutha/46 among all beneficiaries equally. That the Respondent then proceeded in secrecy to sub-divide the land without involving other beneficiaries. That the subdivision ignored



the manner in which the parties have settled on the ground, and some have already built permanent houses. That if the intended subdivision proceeds, some of the properties will be demolished. He thus seeks that the subdivision be done in regard to the settlement on the ground.

4. The application was served but there was no response filed. The Respondent did not appear as the date set in court for directions of the application. The application is thus unopposed.
5. Even though there is no opposition to the application, it is the duty of the court to examine it and establish if it is merited.
6. The deceased died on 16/03/2003. From the affidavit filed in support of the petition for letters of administration the deceased had only one property, Nthimbiri/kiutha/46. She left 7 surviving relatives who included her husband and her 6 children.
7. When the grant came up for confirmation, the court ordered that the said property be divided equally with each beneficiary getting  $\frac{1}{7}$  of a share.
8. More importantly, the court, keenly aware of the possibility of an unpleasant situation arising, ordered that the surveyor ensured that there was little or no disruptions of the development on the ground.
9. It is that very situation that the Applicant now claims is imminent.
10. There is nothing from the respondent to show that the directions of the court were followed.
11. Thus, I am satisfied that the application has merits and I allow it on the following terms:-
  - a. There shall be an injunction restraining the Respondent and her agents from evicting any party or demolishing the Applicant's and other beneficiaries property or the land farming the estate, until further orders of this court.
  - b. The Administrator/Respondent is to submit any surveyor's report of the proposed subdivision of the land to this court for approval or otherwise, within the next 30 days.
  - c. If there is no proposed surveyor's report, the Respondent is to ensure that all the beneficiaries are on the ground when the intended survey is done and once done, and not later than 60 days from now, to be submitted to this court for approval.
  - d. There shall be no orders as to costs.
  - e. A mention date for compliance to be given after delivery of the Ruling.

**H.M. NYAGA**

**JUDGE**

**SIGNED, DATED AND DELIVERED AT MERU THIS 28<sup>TH</sup> DAY OF NOVEMBER 2024.**

**H. M. NYAGA**

**JUDGE**

In the presence of :-

