



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 299 OF 1997

IN THE MATTER OF THE ESTATE OF MWITHIRWA THIURU ALIAS M'MWITHERWA THIORO (DECEASED)

CAROLINE NCHABIRA M'MWITHERWA2ND PETITIONER /APPLICANT

VERSUS

GEORGE MWENDA KIMATHI.....1ST PETITIONER/RESPONDENT

STEPHEN KIRIMI RUTERE.....2ND RESPONDENT

RULING

1. By an application dated 20/09/2021 the 2nd Petitioner, Caroline Nchabira M'Mwithirwa seeks the following orders:-

“2. THAT this Honourable Court be pleased to authorize and empower the Executive Officer of this Court to sign all the necessary documents on behalf of the 1st petitioner/respondent George Mwenda Kimathi to cause subdivision and transfer of parcel of land No. ABOGETA/LOWER CHURE/795 measuring 2.48 HA in terms of the confirmed grant herein.

3. THAT this Honourable Court be pleased to issue an order directing the OCS Nkubu Police Station to provide security to the 2nd Petitioner/Applicant Caroline Nchabira M'Mwithirwa and the Surveyor during the exercise to undertake subdivision, mark the boundaries and plant the bacons on parcel of land No. ABOGETA/LOWER/CHURE/795.

2. The application is urged as an effort to give effect to the confirmed Grant herein and based on the ground that *“the 1st Petitioner/Respondent has refused to cooperate and cause subdivision and transfer to the respective beneficiaries their share of land under ABOGETA/LOWER CHURE/795 and has vowed not to sign and document or permit the sub-division of the said parcel of land in respect of the grant herein,”* which was confirmed on 24/10/2019 in the Cause which was filed in 1997.

3. By Replying Affidavit sworn on 25/10/2021 the 1st Petitioner/respondent explained the delay as follows:-

“5. What has delayed the implementation of the grant is the surveying of the estate property on the ground so that as far as possible the beneficiaries do not lose their personal developments.”

4. The Respondent considers that the *“application dated 20/9/2021 is premature as the surveying process is yet to be done and is premised on interior motives”*, which he alleges at paragraph 11 and 12 of the Replying Affidavit as follows:

“14 That it is clear to me that the applicant’s intention is to have the Land Surveyed and transferred without any involvement so that she can take the prime part of the estate which can fetch good money and get a buyer easily.

15. That the applicant intention is to deprive and take away some permanent developments put up by other beneficiaries for her selfish gain.”

5. I have confirmed from the record of the court that a Grant of Letters of Administration was confirmed on 24/10/2019 and with respect to the Estate asset ABOGETA/LOWER/CHURE/795 distributed in 3 equal shares of 0.83 ha each for the 2nd Petitioner, Caroline Nchabira M'Mwithirwa; Florence Gaiti Samwel; and the 1st Petitioner, George Mwenda Kimathi together with others named in the Grant.

6. I accepted that there is merit in the proposition that distribution of the estate asset should accord to the settlement or developments already undertaken by the beneficiaries so far as possible having regard to the respective size of the land distributed to each beneficiary. A survey of

the assets for that purpose is important.

7. It is equally true that an administrator or beneficiary cannot hold other beneficiaries ransom by stalling the distribution of the estate assets while he continues to enjoy the assets exclusively. It is over two years since the court was confirmed on 24/10/2019 and the court must ensure expeditious administration and distribution of the estate. Indeed, Section 83 (g) of the Law of Succession Act stipulates completion of distribution of the estate within 6 months on expiring of which the administrators are required to file an account of the due distribution of the estate.

ORDERS

8. Accordingly, for the reasons set at above, the court directs as follows:-

- 1. The Administrator shall within 90 days file an accurate and full accord of the distribution of the estate herein to completed distribution thereof to the beneficiary.**
- 2. Prayer No. 3 of the Summons dated 20/9/2021 is granted as prayed with liberty to the Respondents to avail, at own cost, their own surveyors in the exercise.**
- 3. The survey exercise set out in (ii) above shall be held on a date to be agreed between the parties, and their counsel are at liberty to attend.**
- 4. The matter shall be mentioned before the court on a date to be fixed for purpose of compliance with Section 83 (g) of the Law of Succession Act.**
- 5. Each party to bear its own costs.**

Order accordingly.

DATED AND DELIVERED THIS 31ST DAY OF JANUARY 2022.

EDWARD M. MURIITHI

JUDGE