



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO 522 OF 2015

(CORAM: CHERERE-J)

IN THE MATTER OF THE ESTATE OF THE STANLEY M'TIRIMANIA (DECEASED)

BETWEEN

CHARLES MANYARA STANLEY.....APPLICANT/INTERESTED PARTY

AND

REBECCA KANAITORE MÍTIRIMANIA...1ST PETITIONER/RESPONDENT

FLORENCE KIRUGI MÍTIRIMANIA.....2ND PETITIONER/RESPONDENT

MARY KARIMI.....3RD PETITIONER/RESPONDENT

GEORGE MWENDA TIRIMANIA..... RESPONDENT

EDWARD NDUMDA TIRIMANIA.....RESPONDENT

RULING

1. By a Certificate of Confirmation of Grant dated 30th June, 2017, the deceased's estate was distributed as follows:

a) LR. NO. KIIRUA/NAARI/186	
Mary Karimi	1.68 acres
Stephen Muriiki Tirimania	1.68 acres
Julius Kathurima Tirimania	1.68 acres
David Kathuria Tirimania	1.68 acres
Grace Mwiriki, Julia Kaare and Mary Karimi	1 acre jointly
Alex Bundi M'Tirimania	3.15 acres
Rajab Kijuki Tirimania	3.15 acres
Florence Kirugu Mítirimania	1.25 acres

b) LR. NO. NTIMA/IGOKI/307	
George Mwenda Tirimania	To share equally
Edward Ndumba Tirimania	
Charles Manyara Stanley	
Rebecca Kinaitore Mítirimania	

c) Meru Eastern & Western By-Pass Project	
Rebecca Kinaitore Mítirimania	Wholly

d) Plot No. 37 A Gakoromone	
Rebecca Kinaitore Mítirimania	To share equally
Florence Kirugu Mítirimania	
Mary Karimi	

2. By a notice of motion dated 02nd January, 2020 filed on even date, **CHARLES MANYARA STANLEY** (*Applicant*) seeks orders THAT:

1) This Honourable Court be pleased to direct the district land survey, Imenti North to resurvey land parcel LR. NO. NTIMA/IGOKI/307 with all parcels touching the tarmac

2) This Honourable Court be pleased to direct the land registrar Imenti North to cancel all title deeds emanating from the sub-division of LR. NO. NTIMA/IGOKI/307 to wit LR. NO. NTIMA/IGOKI/10147, 10148, 10149 and 10150

3) Costs be provided for

3. The application is supported by the Applicant's affidavit sworn on 02nd January, 2020 mainly on the ground that **LR. NO. NTIMA/IGOKI/307** was subdivided in such a way that not all the four parcels touch on the tarmac

4. The application is opposed on the basis of a replying affidavit sworn by **REBECCA KANAITORE M'ITIRIMANIA, GEORGE MWENDA TIRIMANIA** and **DWARD NDUMDA TIRIMANIA** on 27th January, 2020. The deponents contend that this court has no jurisdiction to issue orders sought for the reason that **LR. NO. NTIMA/IGOKI/307** has already been subdivided into four portions to wit **LR. NO. NTIMA/IGOKI/10147, 10148, 10149** and **10150** and title deeds issued to the beneficiaries and no longer forms part of deceased's estate.

5. The application is devoid of merit and that her mother is seeking to deny her a share of his father's estate.

6. It is the Respondents' case that the surveyor carried out his work in strict compliance with consent of all beneficiaries and are fully in support of the distribution the surveyor had done except for the Applicant who already harvested and sold all trees on his portion which now has no development.

Analysis and Determination

7. I have considered the notice of motion in the light of the affidavits on record and submissions filed on behalf of the respondents and the issue for determination is whether the survey work has been in strict compliance with the orders of Court.

8. Concerning the appropriateness of the surveying, the Certificate of Confirmation of Grant dated 30th June, 2017 undoubtedly provided that that **LR. NO. NTIMA/IGOKI/307** was to be subdivided into 4 equal units in favour of George Mwenda Tirimania, Edward

Ndumba Tirimania, Charles Manyara Stanley (*Applicant*) and Rebecca Kinaitore M’Itirimania in compliance with the Court order.

9. The issue of whose portion was to fall on what part of the land was not canvassed.

10. Unless, there is a complete gift *inter vivos*, the estate of the deceased person remains for distribution in accordance with the provisions of the **Law of Succession Act**, in our particular case Section 40 thereof and in the absence of an agreement, no party would be at liberty to claim a preferred portion. (See **In re Estate of Benson Ndirangu Mathenge (Deceased) [2018] eKLR**).

11. The parties concede that **LR. NO. NTIMA/IGOKI/307** has already been subdivided into four portions to wit **LR. NO. NTIMA/IGOKI/10147, 10148, 10149** and **10150** and title deeds issued to the beneficiaries.

12. I have looked at the sketch map of the subdivisions and noted that the surveyor has carved out the 4 portions out of the **LR. NO. NTIMA/IGOKI/307** in compliance with the Court order.

13. Whereas it’s on record that **LR. NO. NTIMA/IGOKI/307** has already been subdivided into four portions to wit **LR. NO. NTIMA/IGOKI/10147, 10148, 10149** and **10150** and title deeds issued to the beneficiaries and no longer forms part of deceased’s estate, none of them annexed the new title deeds. I am therefore persuaded that **LR. NO. NTIMA/IGOKI/307** which formed part of deceased’s estate is no longer available and the orders sought cannot therefore issue.

14. In this regard, I find fortification in the case of **Jackson Kamau Nthiga vs. Humphrey Kirimi Mbuba & Another [2016] eKLR** where the Court stated;

“..... the jurisdiction of a family court dealing with a Succession Cause is limited. Such a court’s inquiry is limited to ascertaining what assets are available to the estate, who the beneficiaries are and the mode of distribution of the estate.....”.

15. From the foregoing, I have come to the conclusion that the notice of motion dated 02nd January, 2020 and filed on even date has no merit and is dismissed with costs to the Respondents.

DATED AT MERU THIS 22ND DAY OF APRIL 2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Applicant - Mr. Muthomi for M/s John Muthomi & Company

For Respondent - N/A