



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 10 OF 2018**

**IN THE MATTER OF THE ESTATE OF STEPHEN KIRIMI M'AMANJA**

**alias S. KIRIMI M'AMANJA (DECEASED)**

**DANIEL KABURU STEPHEN.....PETITIONER**

**VERSUS**

**JOHN MARANGU STEPHEN.....RESPONDENT**

**PAUL KINYUA STEPHEN.....INTERESTED PARTY/APPLICANT**

**RULING**

1. Before the Court is an application by way of summons for rectification dated 26<sup>th</sup> February 2021 seeking for review of the Court's Judgement on distribution and seeking that the Applicant, Paul Kinyua Stephen be appointed as the Administrator in the place of the Petitioner, Daniel Kaburu Stephen. The applicant further seeks that the shares in an Association equally between the beneficiaries.

***Applicant's Case***

2. The Applicant's case is that the Catholic Men Association Small House Shares held by the deceased cannot be sold as per the confirmed grant but may only be distributed to the heirs equally in accordance with the Articles of Association. He also urges that despite numerous requests to distribute the estate to the beneficiaries, the administrator Daniel Kaburu Stephen has ignored, refused or he is prolonging the process since he is collecting income from the commercial properties to the disadvantage of other beneficiaries.

***Petitioner's Case***

3. The application is opposed. The Petitioner filed a replying affidavit sworn on 29<sup>th</sup> June 2021. He urges that it is not true that the Catholic Men Association does not allow its members to sell their shares and that he attempted to sell the deceased shares to his sister Esther Ruguru but the Applicant frustrated the whole process and objected to the transfer; that he has not refused to distribute the estate to the beneficiaries and it is the Applicant who has previously refused to release the original title deed for NKUENE/KITHUNGURI/183 and that the said title was only released to him on 22<sup>nd</sup> October 2020 despite him having requested for the same on 20<sup>th</sup> March 2020; that when he attempted to distribute the said parcel, he came to learn that the same had a charge registered against it in favour of Agricultural Finance Co-operation and Ksh 3,000/= was needed to have the charge discharged; that he requested for the Ksh 3,000/= but the Applicant refused to remit the same forcing him to pay for the same and the discharge was then registered; that he has already obtained a Lands Control Board consent to subdivide the parcel and that he has already engaged a surveyor, M/S Geoland Surveys Limited to carry out the subdivision; that the Applicant and the Interested Party have adamantly refused to co-operate particularly in the area of finances and he has had to keep shouldering all the expenses alone despite his limited means and that he solely paid the Agricultural Finance Corporation, for the certificate of grant, confirmed grant and order, valuation of NKUENE/TAITA/398/160 and surveyors fees (Ksh 20,000/=); that he has not delayed in distributing the estate and it is the Applicant who has been the stumbling block in the distribution exercise.

***Determination***

***Rectification of grant***

4. The present application, posited as one for review in real sense seeks rectification of the grant. It is claimed that there is difficulty in distributing part of the assets of the deceased estate, being shares from Catholic Men Association Small House as per the confirmed grant. The Applicant claims that the Articles of Association of the Catholic Men Association Small House do not allow for the sale of deceased member shares, but they only allow for distribution of the shares. To support this assertion, the Applicant has annexed a letter dated 8<sup>th</sup> February 2021 signed by the Secretary of the association to confirm that the deceased was their member who died holding 25 shares of Ksh

100,000/= per share and that the association does not sell shares but instead distributes the shares among the heirs of the deceased member. It is interesting that this information is coming from the Applicant, a mere beneficiary as opposed to the Petitioner who is the administrator.

5. The Petitioner on his part denies that the Catholic Men Association Small House precludes its members from selling their shares and that he previously attempted to sell the deceased shares to his sister Esther Ruguru but the Applicant frustrated the whole process. He has annexed a sale agreement dated 30<sup>th</sup> June 2020 to prove this.

6. This Court finds this to be a factual issue which can only be determined by the analysis of evidence. The Applicant makes reference to the Articles of Association but he has failed to adduce this as evidence. He has however annexed a letter by the Secretary dated 8<sup>th</sup> February 2021 to confirm the same. The letter is signed by the Association's Secretary and is stamped by the Association's stamp. The authenticity of this letter has not been challenged. Despite claiming that the Applicant frustrated attempts to sell the shares, the Petitioner has not illustrated with sufficient detail how this frustration was manifest. This Court finds the Applicant's arguments to this extent more plausible.

7. Further, this Court has perused the Ruling of 25<sup>th</sup> April 2019 which resulted in the grant sought to be rectified. On the mode of distribution of the shares in the Catholic Men Association Small House, the grant only requires for these to be shared equally. It does not indicate that the same should be sold and then have the proceeds shared. It is therefore not clear why the grant that was extracted indicates 'to be sold.' This Court will thus order that the shares be distributed equally among the beneficiaries.

### ***Substituting the Administrator***

8. This Court has also considered the claim that the Petitioner who is the administrator has refused or is prolonging the administration process. The grant in issue was extracted on 28<sup>th</sup> January 2020 and the present application was filed on February 2021 approximately one year later. The Petitioner administrator has explained the difficulties he has been facing which have been contributing to the delay in the administration of the estate. These include the purported reluctance or refusal by the Applicant to surrender the original title deed for parcel NKUENE/KITHUNGURI/183 and the process of discharging the charge over the parcel. He claims that he has obtained the Lands Control Board Consent to subdivide the property and that he has in fact been single handedly shouldering the incidental expenses in relation to the administration. On a balance of probabilities, this Court is not convinced that the Petitioner has completely failed to account for the time, as to make it necessary to substitute him as sought by the Applicant. The Court will however order for the administrator to render accounts in accordance with the duties of a personal representative as per Section 83 of the Law of Succession Act.

### **ORDERS**

9. Accordingly, for the reasons set above, this Court makes the following orders: -

*i. The confirmed grant dated 28<sup>th</sup> January 2020 be rectified to delete the requirement for sale of the deceased shares with Catholic Men Association Small House Shares and to require only the equal distribution of the shares as decreed in the judgment of 25/4/2019.*

*ii. The Administrator of the estate of the deceased is hereby ordered to complete the administration of the estate in respect of all matters and to produce to the court a full and accurate account of the completed administration within six (6) months from the date of this Ruling.*

*iii. Costs in the cause.*

*Order accordingly.*

**DATED AND DELIVERED ON THIS 24<sup>TH</sup> DAY OF AUGUST, 2021.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances**

**M/S Maitai Rimita & Co. Advocates for the Applicant.**

**M/S Kiautha Arithi & Co. Advocates for the Petitioner.**