



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 1060 OF 1987
IN THE MATTER OF THE ESTATE OF LOONTASATI OLE LOLOWUAYA (DECEASED)

TWAARARI OLE LOONTASATI OLOLOWUAYA.....1ST APPLICANT

MARTHA NASHIPAI LOONTASATI.....2ND APPLICANT

SAKAI ENE LOONTASATI OLOLOWUAYA.....3RD APPLICANT

VERSUS

MOSES MOOKE LOONTASATI.....RESPONDENT

RULING

1. The deceased Loontasati Ole Lolowuaya died intestate on 20th February 1980 in Kajiado. He left five houses. Following several years of dispute, on 4th April 2016 this court delivered a judgment in which the deceased's estate was distributed to the respective beneficiaries. The grant issued to the applicants Twaarari Ole Loontasati Ololwuaya, Martha Nashipae Loontasati, Sakai Ene Loontasati and the respondent Moses Mooke Loontasati was confirmed. The respondent was dissatisfied with the distribution. He appealed to the Court of Appeal in **Civil Appeal No. 32 of 2018**. The appeal was heard and dismissed on 20th November 2020.

2. In the summons dated 15th January 2020 the applicants ask for the orders that the Surveyor Kajiado County be authorized to come to the site, on Kajiado/Elangata/Wuasi/4, to survey and subdivide the parcel in accordance with the certificate of confirmation that followed the judgment. They have asked that the court does command the Kajiado West Sub-County Police Commander to provide security during the survey and subdivision. Their case is that the respondent has resisted all attempts to have the estate shared to the beneficiaries.

3. There is no dispute that the respondent still feels that the two courts were not right. He is seeking permission from the Court of Appeal to approach the Supreme Court. Secondly, the respondent says that he has to be involved in the process of securing a surveyor, and the entire process of subdivision, otherwise he will be prejudiced.

4. The respondent feels that there are outstanding issues, such as the settlements and occupants on the disputed parcel, and also matters related to access roads and the borehole.

5. Attempts to have the land subdivided have not succeeded. The applicant says that the respondent resists the survey and subdivision by bringing goons to the scene to scuttle the process.

6. It is clear that there is no order staying the execution of the certificate of confirmation. The certificate was issued on 4th April 2016, which is a long time back. Court orders are issued to be obeyed.

7. If the applicants were proposing a private surveyor, then the request by the respondent that he be consulted would make sense. But a government surveyor would not be subject to such request. He has obligation to share the land to the beneficiaries as was ordered by the court.

8. The result is that I allow the application with costs. Within 60 days the surveyor in charge of Kajiado County, or such surveyor as he will appoint, shall move to survey the parcel of land Kajiado/Elangata/Wuasi/4 measuring 1204.5 Ha and distribute to the beneficiaries of the deceased Loontasati Ole Lolowuaya in accordance with the certificate of confirmation herein. Security for the surveyor and the exercise shall be provided by the sub-county Police Commander of Kajiado West.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF OCTOBER, 2021

A.O. MUCHELULE

JUDGE