



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT EMBU**

**SUCCESSION CAUSE NO. 516 OF 2002**

**IN THE MATTER OF THE ESTATE OF HEZEKIAH M'MWANDO (DECEASED)**

**FELISTA WANJIRI NJERU.....APPLICANT**

**VERSUS**

**GITARI M'MWANDO.....1<sup>ST</sup> RESPONDENT**

**FLORENZO KIMOTHO GITARI.....2<sup>ND</sup> RESPONDENT**

**JOHN BAPTISTA MUGENDI.....3<sup>RD</sup> RESPONDENT**

**RULING**

**A. Introduction**

1. This is a ruling for the summons dated 14<sup>th</sup> November 2019 in which the applicant seeks orders lifting the restriction placed by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents over land parcel No. Ngandori/ Kirigi/14, which comprises the deceased's entire estate.
2. It is the applicant's case that she is unable to implement the grant issued herein and confirmed on the 2/07/2015 as a result of the aforementioned restriction placed over the suit land by the 2<sup>nd</sup> and 3<sup>rd</sup> respondent who are not beneficiaries of the deceased's estate but sons of the 1<sup>st</sup> respondent.
3. It is the applicant's contention that the only thing pending in these proceedings is the distribution of the deceased's estate after the 1<sup>st</sup> respondent's appeal to the Court of Appeal was dismissed and the order of the high court in respect of distribution of the deceased's estate upheld.
4. It is the applicant's case that the orders sought will not prejudice any of the parties if allowed as the grant will be fully implemented in favour of all the beneficiaries including the 1<sup>st</sup> respondent.
5. In rejoinder, the 1<sup>st</sup> respondent deposed that he and his children depend on the land LR. Ngandori/Kirigi/14 for their livelihood and further that they are not against the mode of distribution but that the contentious issue is the position of the portions of the respective beneficiaries.
6. The 1<sup>st</sup> respondent further deposes that prior to the deceased's death, he had shown him where to settle with his family and build which he did. The respondent further argues that if this application is allowed, it will amount to the applicant encroaching on the space where he has settled and further expose him and other beneficiaries to irreparable loss.
7. The parties herein agreed that the court rely on their affidavits to dispose of the summons dated 14/11/2019.

**B. Analysis & Determination**

8. I have carefully considered the application, the affidavits tendered by both parties in support and in rebuttal of issues herein as well as the judicial precedence and the law of the subject of amendments.
9. The issue for determination herein is whether the restriction placed over the land Ngandori/Kirigi/14 should be lifted.
10. In the instant case the applicant and the 1<sup>st</sup> respondent are siblings and beneficiaries of the deceased. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents are

children of the 1<sup>st</sup> respondent. The applicant was issued with letters of administration on the 23/06/2000. The 1<sup>st</sup> respondent filed a protest against the confirmation of grant on the mode of distribution, which protest was dismissed via this court's judgement dated the 7<sup>th</sup> May 2015.

11. The 1<sup>st</sup> respondent subsequently moved to the Court of Appeal in Nyeri vide Appeal No. 47 of 2015 which was dismissed thus confirming the equal distribution of the suit land amongst the three (3) remaining beneficiaries, that is, the applicant, 1<sup>st</sup> respondent and one Salome Gichuku.

12. In this case the grant was confirmed on 2/07/2015 by this court and the 1<sup>st</sup> respondent filed an appeal against the mode of distribution claiming a bigger share. The Court of Appeal having dismissed the 1<sup>st</sup> respondent's appeal, there is no suit pending and the restrictions placed on the land are serving no useful purpose.

13. Accordingly, the 2<sup>nd</sup> and 3<sup>rd</sup> respondent had no right to place restrictions over LR. Ngandori/Kirigi/14. This is an impediment to the distribution of the whole estate of the deceased which denies continues to cause delay of the distribution of the estate.

14. The upshot of the above is that the summons dated 14<sup>th</sup> November 2019 is meritorious and it is hereby allowed by making the following orders: -

*a) That all restrictions placed over land parcel No. Ngandori/Kirigi/14 be removed forthwith.*

*b) There will be no orders as to costs.*

15. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 29<sup>TH</sup> DAY OF JANUARY, 2020.**

**F. MUCHEMI**

**JUDGE**

**In the presence of: -**

**Ms. Muriuki for Ithiga for Petitioner/Applicant**