



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 367 OF 2008

IN THE MATTER OF THE ESTATE OF BENSON WAINAINA WAMBURA (DECEASED)

JOHN GAKUNYI WAINAINA.....1ST APPLICANT

JAMES NG'ANG'A WAINAINA.....2ND APPLICANT

GEORGE NJENGA WAINAINA.....3RD APPLICANT

SIMON NJENGA WAINAINA.....4TH APPLICANT

LEONARD MUTURI WAINAINA.....5TH APPLICANT

BEATRICE WANJIKU LUBEMBE.....6TH APPLICANT

VERSUS

GEOFFREY NGUNJIRI WAINAINA.....RESPONDENT

RULING

1. The Applicant filed a Notice of Preliminary Objection dated 8th October 2019 on the ground that this Court lacks Jurisdiction to entertain this suit through viva voce evidence for reasons that the matter has been concluded through Court Annexed Mediation.
2. The parties filed written submissions in the NOPO which I have considered. The Applicants submitted that this Court is functus Officio since the matter has been finalized and further that the proceedings will offend the mandatory provisions of the mediation rules and compromise the confidentiality of the successfully concluded Court Annexed Mediation Process.
3. The Applicant further submitted that the Court Annexed Mediation Process resulted in signing of the Mediation agreement on 27.7.2019 which agreement was executed by all the parties and their advocates.
4. The Mediation Agreement was adopted as a Court Order and the parties were accordingly notified of the same. The Applicants proceeded to the Court Registry to obtain the Certificate of Confirmation of Grant for the estate in line with the Mediation Agreement.
5. The applicant further submitted that the summons for rectification were filed because one property land parcel No. Kabete/Lower Kabete/395 was mistakenly not included in the certificate of confirmation.
6. The Respondent in their submissions stated that the NOPO lacks in merit as the High Court has Unlimited Jurisdiction under Article 165 (1) (3) of the Constitution in Criminal and Civil Matters.
7. The Respondent also submitted that there are intervening factors such as the death of one of the beneficiaries and also issues to do with the size of the land which will require adjudication through oral evidence.
8. Upon considering the submissions I find that the Respondent does not deny that this matter was conclusively determined during the Mediation Process.
9. I find that the issue at hand is that Land Parcel LR KABETE/LOWER KABETE/395 was omitted by mistake.

10. The issue of the demise of one of the beneficiaries has not been raised in the summons for rectification. I find that this Court is functus officio and lacks jurisdiction to hear this matter which has been settled during the Mediation process.

11. I accordingly allow the NOPO and direct that the Summons for Rectification be allowed and the said parcel of land Title No. KABETE/LOWER KABETE/395 be included in the Certificate of Confirmation.

12. The said Parcel to be distributed in accordance with the Mediation agreement dated 27.7.2018.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 6TH DAY OF MARCH, 2020

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.