

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

SUCCESSION CAUSE NO. 773 OF 2009

IN THE MATTER OF THE ESTATE OF KIGAMBA KIGUURA ALIAS KIGAMBA KAGUORA (DECEASED)

RULING

1. There are 3 applications interconnected and pending. The first is dated 23rd February, 2016 and seeks to rectify the confirmed grant to hive off 0.012 hectares as a burial site. The same was filed by Naphtally Mbiyu Kigamba a beneficiary and the 1st administrator.

The second application is dated 7th October, 2019 filed by a beneficiary Sammy Kaguura Kigamba and seeks for substitution of the 2nd administrator on account of age and for provision of ? of an acre to cater for the grave yard and for further directions towards completion of distribution of Limuru/Kamirithu/7.

The third application is by the 1st administrator and dated 28th August 2019. It seeks to include the name of Grace Waceke Kariuki in the confirmed grant as part of the 3rd house and again for the provision of a grave site.

2. The first application is based on grounds that there are several members of the deceased family who include, the deceased himself his first wife, daughter from 3rd house and several others buried in an area the deceased had preserved as a grave site and, there is need to hive off this area before equal sharing of the property. It is said that majority of the family members are in support of this proposition.

3. In the second application the grounds are that; the age of the 2nd administrator and her state of mind require that she be replaced as an administrator further it was urged that there is need to respect the deceased decision of creating a grave yard for the family.

4. The 3rd application is based on grounds that the family had agreed on setting aside a grave site for the family at a meeting before the local administration in line with the wish of the deceased.

5. In her response to the issues emerging the 2nd administrator responded by filing a replying affidavit dated 4th December, 2019 where upon she state that despite her age she is able to act alongside the other administrator to conclude the distribution herein and the application is in bad faith and informed by the differences she has with her eldest son Sammy Kaguura Kigamba. As relates to the issue of the grave site it is her contention that each house should inter their departed in their respective shambas as has happened before and she finds the issue to be an afterthought.

6. I have considered the application and the issues raised in all the 3 applications, namely adding the name of Grace Waceke Kariuki, substituting the name of the 2nd administrator and provision of a grave yard. Since there is no opposition to the inclusion of Grace Waceke Kariuki as part of the 3rd house this prayer is duly granted.

7. The 2nd administrator was appointed by her children to represent their interest and the application by her eldest son to replace her and appoint him does not seem to have the support of the other family members. In my view replacement of the 2nd administrator is likely to widen the differences the family already has. Secondly the pending issues is not significant and for the said reasons the prayer is declined.

8. What comes out of the evidence on record is that the entire estate has been divided equally amongst the three houses left behind by the deceased save one property where the issue of what becomes of the graves in a portion of the land and who gets that portion is unresolved.

9. Seven members including the deceased herein were buried on the land subject matter, though the court is informed that others have died and buried elsewhere. It also appears that majority of the beneficiaries seem to be for the idea of setting aside the grave yard and whoever wants to be buried there can be buried there when they depart.

10. From the list of deceased persons interred in that portion it appears that the 2nd family may not have any one buried in the said grave side and this may inform the refusal by the 2nd administrator to have her portion exercised. I must confirm though that this does not clearly come out from the evidence on record. Parties here stated though that the graveside was the deceased idea.

11. Whatever the case one of the houses is not expected to inherit all the graves this would not only be unfair but illogical and unreasonable.

12. Consequently, and based on the spirit of sharing property L.R. No. Limuru/Kamirithu/7 equally amongst the 3 houses as indicated in the confirmed grant I direct that ? of the same be hived off as a family grave yard and registered in the names of the three administrators. Thereafter the rest of the property be shared equally in accordance with the confirmed grant.

13. Each party to bear their own costs.

DATED AND DELIVERED IN NAIROBI ON THIS 5TH DAY OF MARCH, 2020.

ALI-ARONI

JUDGE