



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO. 66 OF 1997

IN THE MATTER OF THE ESTATE OF THE LATE JOHN MUNYASIA KUSIMBA - (DECEASED)

MIRIAM MUNYASIA & 2 OTHERS.....ADMINISTRATORS/APPLICANTS

VERSES

ELIZABETH INGAIZA CHAGARA & 2 OTHERS.....RESPONDENTS

RULING

1. By their application dated **20th August 2020** the Applicants pray that the Respondents be restrained by way of permanent injunction from interfering with the process of subdivision of Land Parcel number **54 Mabusi Settlement Scheme** as per the grant confirmed by this court.
2. The application is supported by the sworn affidavit of **MARTIN MUNYASIA** sworn on the same day. He deponed that in the process of carrying out the subdivision of the above Parcel of Land the Respondents have gone ahead and removed the beacons and other survey marks. He did attached letters from the area Chief as well as the land control board forms. He prayed that this matter ought to be brought to an end since it has taken over 23 years to finalise.
3. The Respondent through the join sworn affidavit of **ELIZABETH INGAIZA CHAGARA** and **NANJALA GLADYS MUTSOLI** dated **6th October 2020** have denied the allegations by the Applicants. They averred that it is the Applicant who has attempted to disposes them of their inheritance after the demise of their husband who was a brother to the Applicants and a son to the deceased herein.
4. They went further to say that they have no objection to the survey exercise as long as they get the share as per the grant due to their late husband.
5. The court has perused the application as well as the proceedings herein. The facts are very clear. The grant was confirmed on 22nd February 2001 and each of the beneficiaries given their respective shares. The land in question was distributed and as at the time of this ruling no objection has ever been raised.
6. All that seems to have happened is the failure by the Administrators to finalise the subdivision and final transmission to the beneficiaries based on the said grant. There have been accusations and counter accusations concerning why the estate is yet to be distributed. This is exemplified by the ruling of this court dated 10th March 2020 as well as another pending application by the respondent dated 4th June 2020 seeking to stop the Applicants from subdividing the land.
7. Litigation must come to an end. There must be foreclosure of the estate. The Administrators must be allowed to complete the process which as admitted has taken about two decades to complete. It is in fact agreed across the board that the estate ought to be divided and each party be given its rightful share as per the grant.
8. For the above reasons this court must exercise its inherent powers provided under the Succession Act and in particular Rule 73 of the Probate and Administration Rules. There must be fairness and In this regard and taking the history and totality of this matter the court makes the following orders;
 - (a) Land parcel number 54 Mabusi Settlement Scheme be and is hereby subdivided as per the confirmed grant issued on 22nd April 2001.
 - (b) Each of the resultant portions shall be transmitted to the beneficiaries accordingly and in the event that the said beneficiary is deceased, then it shall be transmitted to the party agreed upon by the family or in case of any disagreement that specific family/party shall be at liberty to seek the directions from this court.

(c) The parties shall each meet the cost of the survey exercise on a *pro rata* basis or according to the size of his or her portion.

(e) The Officer in charge of Matunda police station shall oversee the implementation of this order and specifically the process of subdivision.

(f) Costs in the cause.

Dated, Signed and Delivered at Kitale this 28th day of October 2020.

H. K. CHEMITEI

JUDGE

28/10/2020