



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO.1013 OF 2011

IN THE MATTER OF THE ESTATE OF KIAGO MWANIKI alias KIAGO s/o MWANIKI (DECEASED)

AND

WATURI KIAGO MWANIKI.....APPLICANT

VERSUS

ELIZABETH NYAGUTHII KIAGO

ESTHER WAITIEGENI MUCHEMI

JOSHUA KIAGO KIMURI

GLADYS WANGECHI KIAGO

JOHN GACHUCHA KIAGO

MICHAEL KARIUKI KIAGO

JANE WAGUTHII KAHORO

ANDERSON MUCHUCHE KIAGO

WARO KIAGO.....RESPONDENTS

RULING

The matter was coming for hearing of the Summons General of 3rd January 2019 brought under Rule 49 and 73 of the Probate and Administration Rules. It seeks the following orders:

- 1. THAT** the Respondents be ordered to sign Forms RL 7 and RL 19 and all the requisite Land Control Board Applications, Mutations and any other necessary documents and avail their passport size photos, photocopies of ID Cards and the Pin Number Certificates to facilitate conclusion of this matter.
- 2. THAT** in the alternative the court do authorize the Deputy Registrar to sign all the above documents and do order the Land Registrar to dispense with the production of original Title Deed of LR NO. AGUTHI/GAKI/303, the production of the passport size photos and photocopies of ID Cards, Pin Number Certificates of the Respondents to effect the registrations.
- 3. THAT** the costs of this application be borne by the Respondent.

The application is based on the grounds herein below set forth and supported by the annexed affidavit of WATURI KIAGO MWANIKI.

During the call over Anderson Muchuche Kiago one of the respondents brought it to the attention of the court that the certificate of confirmation of grant as made distributed the estate to parties who were already deceased, and whom the application as filed indicated had refused to execute the requisite documents to ensure the completion of the transmission process.

I have perused the record. I delivered a ruling on 6th September 2017 in which the estate AGUTHI/GAKI/303 was shared among the three houses of the deceased.

1st House (8.4 acres)

Elizabeth Kiago – daughter

Esther Waithiegeni- daughter in law

Joshua Kiago Kimuri- grandson

2nd House (8.4 acres)

John Gachuche Kiago- son

Michael Kariuki Kiago-Son

Jane Waguthii Kahoro-daughter in law

3rd House (4.2 acres)

Anderson Muchuche Kiago –son

Muthinga plot: - to be shared among the three houses in the same ration of **4:4:2**

However, the certificate of confirmation of grant dated 17th December 2018 does not reflect the said orders. It contains names that were not in the judgment as delivered on 6th September 2017.

In the 1st house, the widow is deceased, and similarly in the 3rd house. In the 2nd house she is still alive and is the applicant.

It is therefore necessary that the certificate of confirmation of grant reflects the judgment. In the exercise of powers under s.76(e) of Laws of Succession Act the grant as issued on 17th December 2018 is and is hereby revoked and a fresh one to issue Waturi Kiago Mwaniki and Anderson Muchuche Kiago. Consequently, a certificate of confirmation of the grant to issue as per the judgment of 6th September 2017 and **Aguthi/Gaki/303** be shared as follows: -

1st House: - 8.4 acres in equal shares

1) Elizabeth Nyaguthii Kiago

2) Esther Waithiegeni Muchemi

3) Joshua Kiago Kimuri

2nd House 8.4 acres in equal shares:-

1) Waturi Kiago

2) John Gachuche Kiago

3) Michael Kariuki Kiago

4) Jane Waguthii Kahoro

3rd House 4.2 acres absolutely

Anderson Muchuche Kiago

MUMBUA T. MATHEKA

JUDGE

It was stated in court that John Gachuche Kiago is deceased, having died in 2017. It is upon the Administrators to provide a suitable representative of his house to be registered in trust for John's family's share.

The application dated 3rd January 2019 is allowed subject to all those who are supposed to sign the documents failing to do so within 14 days of the date of these orders in default of which Deputy Registrar to do so as sought in prayer no. 2 above.

Dated, delivered and signed at Nyeri this 20th day of February 2019.

MUMBUA T. MATHEKA

JUDGE

In the presence of:

Court assistant: Juliet

No appearance for parties who were aware of the date.

MUMBUA T. MATHEKA

JUDGE