



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MAKUENI
HC. SUCC. CAUSE NO. 443 OF 2017
FORMERLY MACHAKOS HC. SUCC. CAUSE NO. 63 OF 2016
FORMERLY MOMBASA HC. SUCC. CAUSE NO.385 OF 2011
IN THE MATTER OF THE ESTATE OF DANIEL MUSAU NZYOKA (DECEASED)
LUCA KYALO MUSAU.....PETITIONER/APPLICANT

-VERSES-

MUSAU MUTUKU.....1ST OBJECTOR

JOYCE TOM2ND OBJECTOR

RULING

1. The grant in respect to the estate of the deceased **Daniel Musau Nzyoka** was made in the joint names of **Titus Kyumwa Musau** and **Lucas Kyalo Musau**, on **24th May, 2012** by the High Court Mombasa.
2. To date the said grant is yet to be confirmed due to differences between the administrators.
3. There is filed an application dated **03/07/2017** seeking to have **Titus Kyumwa Musau** revoked as an administrator. The application was overtaken by events since the said **Titus Kyumwa Musau** died on **30/12/2017**. This is confirmed in the supporting affidavit to the summons for confirmation of grant dated **23/05/2019**.
4. The summons for confirmation of grant has set out the proposed mode of distribution which was served on the beneficiaries.
5. The record shows that the court has given the objectors sufficient time to file their proposed mode of distribution or an affidavit of protest. This is since February, 2018.
6. On **23/05/2019**, the objectors **Musau Mutuku** and **Joyce Tom** were before this court together with the Petitioner. The court gave the Protestors 30 days to file affidavits of protest showing their bone of contention.
7. The matter was then fixed for hearing on **11th July, 2019**. On the hearing date it was confirmed that the objectors had not filed any affidavits of protest and neither did they appear before the court despite being aware of the hearing date. This is disrespect to the court.
8. I have considered the summons for confirmation of grant plus the supporting affidavit and the submissions by counsel for the Petitioner. His proposal is for even distribution of the estate among the beneficiaries less the liabilities which are clearly set out. It is obvious that in the process of administration, filing of pleadings, searches, the administrator has incurred expenses which must be reimbursed from the deceased's estate. There is nothing unlawful about that.
9. I therefore allow the application and order that a fresh grant do issue in the names of **Lucas Kyalo Musau** as the administrator. The said grant is hereby confirmed in the following terms:
 - i. The land **NZAU/KALAMBA/80** measuring 39.52 acres to be distributed as follows: -
 - **One acre to Munywoki Mavi.**
 - **One acre to be sold to defray legal costs of Kshs.253,000/=. Any balance out of the sale to be shared out equally among the four (4) beneficiaries.**
 - **Nancy Mutumu to hold 9.38 acres in trust for the estate of the late Titus Kyumwa Musau.**
 - **Joyce Mueni Tom to hold 9.38 acres in trust for herself and the estate of the late Tom Nzioka Musau.**

- **Walter Simon Mutuku and Musau Mutuku to hold for themselves 9.38 acres in equal shares respectively.**

- **Lucas Kyalo Musau to hold 9.38 acres for himself absolutely.**

ii. Joseph Kimanthi John and any other interested parties to make their direct claims to the estate of whoever may have sold them land.

iii. Costs to be defrayed from the estate upon sale of the one acre, as ordered above.

DELIVERED, SIGNED & DATED THIS 29TH DAY OF JULY 2019, IN OPEN COURT AT MAKUENI.

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H. I. ONG'UDI

JUDGE