

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 673 OF 1990

IN THE MATTER OF THE ESTATE OF JOSEPH GITAU RICHU (DECEASED)

SAMUEL KINYANJUI.....1ST APPLICANT

EDWARD NDUNGU.....2ND APPLICANT

PETER KIAMBUTHI.....3RD APPLICANT

VERSUS

GEOFFREY RICHU.....RESPONDENT

RULING

1. The deceased Joseph Gitau Richo died intestate on 20th December 1985. The grant was issued to the respondent Geoffrey Richu (one of the deceased's son) and was confirmed on 15th November 1991 by consent. It was agreed that the deceased's estate comprised Dagoretti/Kinoo/T.408 and Dagoretti/Kinoo/600 and that they be equally shared among beneficiaries. The beneficiaries were the widow, 4 sons and 6 daughters. Since then the parties have come to court variously. The main dispute being how to share the parcels to each beneficiary on the ground. Surveyors have been on the ground and proposed the sharing, bearing in mind access to the road, to the river and where some of the beneficiaries are presently located. The parcels have developed places, some parts are flat and others have gullies. Several orders have been made, to no avail. Parties cannot simply accommodate one another, and agree on the sharing on the ground.

2. Ideally, the business of the court ought to have ended when the certificate of confirmation was issued on 15th November 1991. After the court, for instance, orders that the beneficiaries will equally share a piece of land it should not enter into the actual sharing on the ground. They are to invite a surveyor to apportion the land.

3. Secondly, it is not easy to get eleven people to each be satisfied with how a piece of land will be shared to them on the ground. Some give and take is certainly expected. All that one may worry about is access to the road, to the river and how go about the existing homes and/or developments. Even then it may become necessary to move some beneficiaries already settled. Parties may agree on compensation.

4. The application dated 27th May 2019 by Samuel Kinyanjui, Edward Ndungu and Peter Kiambuthi against Geoffrey Richu is a continuation of this misunderstanding. I have decided, in the wider interest of justice and peace in the family, to refer this dispute to court annexed mediation. I do this under **Article 159(2)(c)** of the Constitution. I direct the Deputy Mediation Registrar to take over and communicate with the parties accordingly.

DATED and DELIVERED at NAIROBI this 30TH OCTOBER 2019.

A.O. MUCHELULE

JUDGE