



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

SUCCESSION CAUSE NO. 15 OF 2018

(FORMERLY MERU HIGH COURT SUCC. CAUSE NO.202 OF 1996)

IN THE MATTER OF THE ESTATE OF THE LATE ISHMAEL MUCHIRI NKINYANGI alias ISMAEL MUCHIRI NKINYANG alias MUCHIRI NKINYANGI (DECEASED)

FRANCIS NJERU MUCHIRI.....APPLICANT/ADMINISTRATOR

VERSUS

MERCY KAMBURA MUCHIRI.....RESPONDENT/PROTESTOR

R U L I N G

1. Before me is an application by way of summons taken out by **FRANCIS NJERU MUCHIRI** under **Section 47 Law of Succession Act, Rule 49** as read with **Rule 59 (1)**, and **Rule 73** for Probate and Administration Rules together with the provisions of **Article 159(a) (b) (d) and (e)** of the **Constitution of Kenya 2010**. The Applicant has sought the following reliefs namely:-

i. Spent

ii. That this court be pleased to suspend the registration of the survey works conducted by the Respondent and her surveyor done on 10th April 2019 in respect to L.R. Mwimbi/Murugi/253 pending determination of this application and/or until further orders from this honourable court.

iii. That inhibition orders be issued and registered against the original L.R. MWIMBI/MURUGI/253 and the attendant subdivisions Numbers MWIMBI/MURUGI/5754-5766 pending hearing and final determination of this application and/or until further orders from this court.

iv. That survey work conducted on 10th April 2019 be nullified and fresh subdivisions be conducted in humane manner with participation of all beneficiaries taking into account where each beneficiary has occupied and developed.

v. Costs of this application.

2. The grounds upon which this application is based are as follows:

a) That the Respondent hired a surveyor and conducted survey works on L.R No. Mwimbi/Murugi/253 without his knowledge and that of other beneficiaries.

b) That the Respondent hired goons who assaulted one beneficiary named Agusta Gatwiri Kithinji who reported the matter at Chogoria police station vide OB No. 10/11/04/19.

c) That this court should intervene and avoid bloodshed on the estate of the deceased.

3. The Applicant has supported his application with an affidavit sworn on 15th April 2019 where he has deposed that the Respondent Mercy Kambura Muchiri in his view is not an administrator of the estate and should not be registered vide Transmission.

4. The Applicant further contend that the Deputy Registrar of this court did not order for execution of the certificate of confirmation as per orders issued by this court on 16th October 2018.

5. The Applicant states that the beneficiaries have been displaced by the rectified grant issued on 17th September 2018.

6. This application is opposed by Mercy Kambura Muchiri, the Respondent herein who has relied on her Replying Affidavit sworn on 7th May 2019. The Respondent has disputed the allegations that the subdivisions carried out as per certificate of confirmation displaces any beneficiary. She asserts that the dwelling houses of the following were left intact;

a) Fenkson Mbae Muchiri

b) Alex Mucunku Ismael

c) Francis Njeru Muchiri

d) James Nyaga Ishmael

e) James Gitari Muchiri

7. The Respondent contends that the Applicant's discomfort arises from the inevitable fact that he will be forced to cede some of the portion he has been utilizing exclusively at the expenses of other beneficiaries especially daughters.

8. The Respondent further alleges that the Applicant is only interested in causing delays pointing out that this matter has been in court for 24 years now. She further contends that she was kicked out by the Applicant from the estate and has been suffering.

9. This court has considered this application and the response made. I also summoned the District/County Surveyor with a view to establishing the veracity of the Applicant's claims. This court wishes to state from the onset that a litigant coming to court should never be heard issuing threats of bloodshed unless he/she gets his/her way. That in my view is illegal, distasteful and is tantamount to intimidation. Such a posture taken is an aversion to the rule of law and that is not only discouraged but is not tenable in law for obvious reasons. Because really, what would happen to the rule of law if litigants would come to court and boldly states a court should either rule in their favour or there would be bloodshed. Counsels appearing for parties who come before us are officers of this court and should be best placed to advise their clients and give them the right information that unlike the rule of the jungle where the survival is for the fittest, we are way beyond that as a society because this country is an open democratic society that cherishes the rule of law. I have said enough in that regard and I will leave it at that.

10. Now turning back to the issue before me is that, though the Applicant refers to a rectified grant, what was rectified by this court on 17th September 2018 was simply the descriptive part of the actual name of the property forming the estate from L.R Mwimbi/S. Mugumango/334 to L.R Mwimbi/N/ Mugumango/334. The name of the deceased here was also rectified to Ismael Muchiri Nkinyangi alias Ismael Muchiri Nkinyangi. There was no dispute that the rectification was necessary to rectify the typographical errors pursuant to the provisions of **Section 74 of Law of Succession Act**. The question of respective shares of all beneficiaries remained as pronounced by this court and no beneficiary has raised any issue to that because this court adopted a mode of distribution that largely took care of all the beneficiary equally without any discrimination.

11. The applicant now says that the Respondent did not involve him in the survey work. I have seen the survey work. I have seen the survey work conducted by a private surveyor engaged by the Respondent owing to the apparent reluctance by the Applicant to agree on the surveyor which appears to stem from the inevitable fact that he will be forced eventually to cede part of the estate to his sisters. And that appears to be a factor in the delay in this cause.

12. I have taken everything into consideration in this matter and that fact that the Respondent is not utilizing the estate as she should. For the interest of justice, I will allow this application only to the extent that I will direct the District Surveyor to go to the ground (read the estate) under the company of police officers be provided by OCS Chogoria and confirm if the work done by the surveyor is correct as per the certificate of confirmation herein. The District Surveyor is given 7 days from today to do so and present a written report to this court for further orders. The Applicant shall meet the Surveyor's fees and in default, the Surveyor work done by Obadia

M. Wainaina will be registered by the Land Registrar which should bring this matter to an end. In view of the directions given, I will fix this matter for mention within 14 days from the date of this ruling for further orders of this courts.

Dated, signed and delivered at Chuka this 24th day of October 2019.

R.K. LIMO

JUDGE

24/10/2019

24/10/2019

Ruling signed, dated and delivered in the open court in presence of Mutani holding brief for Kirimi for Petitioner/Applicant and Magara holding brief for Murithi for Respondent.

R.K. LIMO

JUDGE

24/10/2019