



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 101 OF 2007

IN THE MATTER OF THE ESTATE OF RICHARD KASIMU KITIVI (DECEASED)

EMELDA MUKULU KASIMU PETITIONER

VERSUS

MARIANA NGINA KASIMU RESPONDENT

RULING

1. The Petitioner was granted letters of administration intestate on 16th May, 2007 which was confirmed on 7th October, 2014. She alleges that the Respondent has however refused to execute the necessary and or relevant transfer documents in order to give effect to the certificate of confirmation of grant to pave way to have the deceased's estate distributed.

2. She as a result thereof filed a chamber summons dated 25th April, 2016 seeking orders that the court authorizes and order the Deputy Registrar of the High Court, Machakos to sign the relevant transfer documents like mutation forms, application for transfer of land and consent forms or letters on behalf of Mariana Ngina Kasimu.

3. The Respondent on the other hand by a replying affidavit sworn on 30th May, 2017 contended that the grant was issued without her consent and that the deceased had already distributed Kalama/Iiuni/1 and 4 before his death without the petitioner's objection and that he only objected after the deceased's death.

4. I have given due consideration to this application and the response thereto. I have taken the liberty to read through the record. It emerges that the parties advocates entered a consent which was adopted as the order of court by Hon. Makhandia J., (as he then was) on 13th July, 2012. The said consent was on the following terms:

(1) Land Parcel Kalama/Iiuni/4 shall be divided equally among 8 units being the beneficiaries of the estate of the deceased.

(2) In subdividing the said parcel of land regard shall be had to where Patrick Muia Kasimu has put up his residence.

(3) No orders as to costs.

(4) Protester to pay petitioner on or before 13/9/12 KShs. 25,000/= being her share of the plot at Kola market included in the rectified grant and the same be held jointly by Mariana Ngina Kasimu and Emelda Mukulu Kasimu.

That title number Kalama/Iiuni/7 to be included in the rectified grant and be registered in the name of John Muia Koti.

(5) Costs be in the cause"

5. It is clear from the terms of this consent that the method of distribution of the deceased property was settled by the consent and the grant was rectified based on the said consent. While the respondent disputes that method of distribution, she has not established that the consent was set aside. Bearing in mind that any order made in the presence and with the consent of parties is prima facie binding on all parties to the proceedings and on those claiming under it, I find that the respondent's contention to this application fails. In the circumstances, the application herein is allowed in the following terms:

a) The Deputy Registrar of the High Court, Machakos is hereby authorized and ordered to sign the relevant transfer documents; mutation forms, application for transfer of land and consent forms or letters on behalf of Mariana Ngina Kasimu in respect to the estate of Richard Kasimu Kitivi (deceased) for purposes of distribution of the deceased's estate.

b) There will no order as to costs.

Orders accordingly.

Dated and Delivered at Machakos this 24th day of May, 2018.

D.K. KEMEI

JUDGE

In the presence of:

J. N. Kimeu- for the Petitioner

Mariana Ngina Kasimu - the Respondent

Josephine - Court Assistant