



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MIGORI**

**SUCCESSION CAUSE NO. 440 OF 2015**

**(Formerly Kisii High Court Succession Causes No. 658 and 659 of 2009)**

**IN THE MATTER OF THE ESTATE OF: CHACHA MWITA MURIMI alias CHACHA MWITA MURIMI(DECEASED)**

**AND**

**MURIMI MWITA MURIMI .....DECEASED**

**-between-**

**JOHN MWITA MURIMI & 3 OTHERS.....APPLICANTS**

**-versus-**

**MWIKWABE CHACHA MWITA & ANOTHER .....RESPONDENT**

**RULING**

1. By a ruling rendered on 11/10/2017 this Court made the following orders: -

(a) *The Grant of Letters of Administration made to the Mwikabe Chacha Mwita in respect to the Estate of Chacha Mwita Murimi on 18/10/2012 and the Grant of Letters of Administration made to the Julius Magige Murimi in respect to the Estate of Murimi Mwita Murimi on 18/10/2012 be and are hereby revoked and/or annulled.*

(b) *Since the Estate of Chacha Mwita Murimi and the Estate of Murimi Mwita Murimi comprise of only one property being the land known as BUGUMBE/ MABERA/324 and given that the Causes are now consolidated, a single Grant of Letters of Administration shall forthwith issue in both estates in the joint names of Mwikabe Chacha Mwita, Julius Magige Murimi, John Mwita Murimi and Joseph Mwita Murimi.*

(c) *The Administrators and/or any of them shall apply for the confirmation of the Grant within 21 days of the issuance of the joint Grant.*

(d) *As the matter involves close family members and since there are further pending proceedings each party to bear its own costs.*

2. Pursuant to the said orders the John Mwita Murimi and Joseph Mwita Murimi applied for the confirmation of the joint Grant and the distribution of the estate property *vide* the Summons for Confirmation dated 16/04/2018 (hereinafter referred to as '**the Summons**'). The Summons was supported by the Affidavit of John Mwita Murimi sworn on 16/04/2018.

3. When the Summons came before this Court for directions the Petitioners indicated that they had preferred an appeal against the ruling of 11/10/2017. That notwithstanding, upon concurrence of the Counsels for the parties and the approval of the Court, directions were given that the Summons be dispensed with by way of the Affidavit evidence and written submissions. Timelines were given within which the parties were to comply. The Petitioners failed to comply as directed and thereafter this Court fixed the matter for a ruling instead of a judgment. The purpose of the ruling was to *inter alia* consider whether this Court had the jurisdiction to determine the issue of the trust as raised in the Summons.

4. Despite the lack of the input by the Petitioners I will nevertheless deal with the issue. The issue is rather straight-forward. The Objectors/Protestors contended that the parcel of land in issue being **Bugumbe/Mabera/324** (hereinafter referred to as '**the land**') was registered in the names of four of the eldest children of the late Murimi Mwita in trust of the rest of the family members including the children and wives. Whereas two of the children of Murimi Mwita who were jointly registered with two other children are dead and their estates the subject of this cause, the remaining two joint registered owners are still alive.

5. It is not in dispute that the issue of trust is not settled. The parties herein have taken rival and firm positions. The duty of a Succession Court is principally to protect estates of deceased persons which it has jurisdiction over and to oversee the transmission of those estates to the lawful beneficiaries. The duty of the Court to deal with any dispute arising out of that mandate cannot be gainsaid. However, if a dispute arises on the ownership of the land subject of the succession proceedings and/or the declaration of trusts over the land in issue, then such a dispute transcends the jurisdiction of a Succession Court courtesy of **Article 165(5) of the Constitution, Section 13 of the Environment and Land Court Act**, No. 19 of 2011 among other relevant legal provisions. It is a dispute which calls for evidence to establish ownership or the existence of such a trust upon which finding a party may be a beneficiary for purposes of the distribution of the estate property before a Succession Court or not. (See the Court of Appeal in **Peter Moturi Ogutu vs. Elmelda Basweti Matonda & 3 others (2013) eKLR, Muthuita vs. Muthuita (1982-88) 1 KAR 42** and **Chogera vs. Maria Wanjira Kimani & Others (2005) eKLR**).

6. That is the position in this matter. Therefore, this Court lacks the jurisdiction to determine the issue of whether the land was registered in the names of four of the eldest children of the late Murimi Mwita in trust of the rest of the family members including the children and wives. That is an issue which must be first determined by the Environment and Land Court before this Court can proceed on with the Summons.

7. Consequently, the following orders do hereby issue: -

- (a) **This Court has no jurisdiction to deal with ownership and/or the declaration of trust over Bugumbe/Mabera/324.**
- (b) **There shall be a stay of any further proceedings in respect to the Summons for Confirmation dated 16/04/2018 pending the determination of the issue of ownership and/or the declaration of trust over Bugumbe/Mabera/324 by the Environment and Land Court.**
- (c) **The prevailing status quo shall be maintained pending further orders of this Court.**
- (d) **Parties be at liberty to apply.**

Orders accordingly.

**DELIVERED, DATED and SIGNED at MIGORI this 23<sup>rd</sup> day of November, 2018.**

**A. C. MRIMA**

**JUDGE**

**Judgment delivered in open Court and in the presence of: -**

Messrs. Soire & Company Advocates for the Petitioners.

Messrs. Ogutu Mboya & Company Advocates for the Objectors/Protestors.

Evelyne Nyauke - Court Assistant