

REPUBLIC OF KENYA

IN THE HIGH COURT KENYA AT MERU

SUCCESSION CAUSE NO. 281 OF 2009

IN THE MATTER OF THE ESTATE OF THE LATE IBUTU RINTURI - DECEASED

ROBERT KITHINJIAPPLICANT

VERSUS

PETER KINOTI RESPONDENT

RULING

What is coming up for ruling is application dated 24th February 2016 filed by Robert Kithinji to when letters of grant were made on 23rd November 2009 and subsequently confirmed on 13th July 2011 by Hon Justice Lesiit who was satisfied that all beneficiaries had signed and consented to mode of distribution of the estate. By an application dated 7th September 2011 Peter Kinoti one of the beneficiaries to the estate applied that the court authorises the Executive Officer of the court to execute documents to enable the estate to be distributed as the Administrator had refused to execute the process of distribution of the estate as per Certificate of Confirmation mode on 13th July 2011.

Peter Kinoti claimed that by conduct of the Administrator it appears he now wanted the whole parcel land to himself. The application was settled by way of consent on 22.11.2011 where it was agreed that parcel No. Ntima/Igoki/937 be subdivided on the ground by M/S Geoland Surveys on 23rd November 2011 or so soon as is practical in the presence of the parties and that the surveyor to file mutation in court within 7 days of survey. On 30.11.2011 the mutation was filed in court and Mr Arithi Advocate said that it is clear the petitioner is not keen to have the grant concluded. Mr Muriuki Advocate for the petitioner concurred that his client was uncooperative.

Application dated 7th September 2011 was set down for hearing on 7th December 2011. Ruling whether the Executive Officer was to execute documents was set for 8th December 2011. In his ruling delivered on 8th December 2011.

My brother Justice J.A. Makau noted that the matter/cause herein has been finalized and there is no pending application save for implementation/execution of the confirmed grant. He held that the petitioner/Administrator was introducing new matters contrary to the mode of distribution consented to as the surveyor in the mutation form had spared the petitioners permanent house. He said the petitioner's change of mind to deprive his sisters of their portions on the ground is contrary to the constitution. Judge Makau found there was no justification in delaying transmission of respective portions to the beneficiaries as per Geoland Surveys mutation form which was carried out with consent of the parties and on a date agreed in court.

The application dated 20th September 2011 was allowed and petitioner condemned to pay costs.

In the application dated 24th February 2016, the petitioner claims that there is an error apparent on the subdivision on the ground for want of fraud and that he was not notified of the surveyors' attendance to do the subdivision. He also says that the respondent colluded and got bigger shares from parcel LR. No. Ntima/Igoki/93. He alleged that if records are not rectified it will cause him prejudice.

From the ruling of Justice Makau on 8th December 2011 this cause in my view is spent and the applicant

is becoming unnecessarily litigious wasting a lot of judicial time on a matter that is res-judicate. From the ruling his house which encroached on portions that would have been inherited by Peter Kinoti were spared during subdivision.

He doesn't say why he did not attend during the subdivision, when they consented to have this particular surveyor subdivide the land on a specific date.

Litigation must come to an end and until and unless the petitioner goes to the court of appeal to challenge the decision in this matter, I think that he has exhausted all his rights in this court. The application has no merit and same is disallowed. The applicant Robert Kithinji is condemned to pay costs of application dated 24th February 2016 to the respondents.

Ruling Delivered and signed on this 29th day of March 2017.

A.ONG'INJO JUDGE