

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 134 OF 1984

IN THE MATTER OF THE ESTATE OF EVANS KAMAU GATIBA

also known as EVANS BORO KAMAU (DECEASED)

RULING

1. In the Motion dated 30th January 2017, Geoffrey Wainaina Evans, the applicant, seeks two principal orders, to wit: a clarification on the mode of distribution of Kiambaa/Ruaka/153, now Kiambaa/Ruaka/5252 and 5253 or, in the alternative, a direction that the land in dispute be subdivided horizontally from the road in the middle to the river and not across so that both sides can have access to the river, and referral of the matter for arbitration.

2. His case is that the land in question has been subdivided on paper and two title deeds issued, yet there was no agreement on the subdivision on the ground. He states that the respondent, Cecilia Nduta Kamau, who is his mother and the administrator of the estate, proposes to evict him from the land, and to subdivide the same in a manner that would disadvantage him, including having some of the assets developed on it destroyed.

3. The respondent on her part states that the applicant has been uncooperative with regard to the subdivision of the property. She says that she had approached him with regard to having the property surveyed for subdivision purposes but he refused and she went ahead without him. She denies intending to evict him saying that she only wanted to take possession of her matrimonial home and the properties she had developed on the land. She argues that she has subdivided the property in a manner that has taken into account the interest of both herself and the applicant.

4. On 27th July 2011, Maraga J had made an order in the following terms -

‘That the Certificate of Confirmation of Grant and the Land Registry records relating to Title No. Kiambaa/Ruaka/153 be rectified to show that the property is owned by Cecilia Nduta Kamau and Geoffrey Wainaina Evans as tenants in common in equal shares after which the property should be surveyed and subdivided into two-equal portions and separate titles be issued to the two.’

5. The fact of the existence of that order is not in dispute. Indeed, it is that same order that I am being invited to clarify, by stating how the land is to be shared equally between the applicant and the respondent.

6. Normally after the probate court confirms a grant and orders distribution of an estate it leaves it at that. It never follows up to supervise the actual distribution of the property on the ground. That is usually a matter for the administrator, guided of course by such factors on the ground as the value of the property, its size and location, and the existence of any developments thereon. The law does not have any provisions on how the court may intervene in case of any disagreements on the actual distribution.

7. In view of the above, it would not be prudent for me to purport to make any order at this stage one way or the other. I do not think I have sufficient facts of what is on the grounds to warrant my intervention. I am persuaded that what the applicant proposes could be the best way out of the matter, referral of the matter to arbitration.

8. The Judiciary is currently in the process of mainstreaming mediation as part of its processes. The Chief

Justice recently commissioned the Court Annexed Mediation Programme, which is currently running at, among others, the Family Division at the High Court at Nairobi. I shall accordingly order that the dispute set out in the application dated 30th January 2017 be placed before the Mediation Deputy Registrar for screening as to its suitability for reference to mediation. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 29TH DAY OF SEPTEMBER, 2017

W. MUSYOKA

JUDGE