

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 339 OF 1990

**IN THE MATTER OF THE ESTATE OF WILLIAM GITAU GITHUMBI alias GITAU
GITHUMBI (DECEASED)**

RULING

1. Grant herein was made on 27th June 1990. It was confirmed on 11th April 1997. The certificate of confirmation of grant issued was subsequently rectified or amended on 2nd November 2003 and 6th October 2004.
2. The application for determination is dated 28th June 2016. It is at the instance of George Githura Gitau, a beneficiary of the estate of the deceased. He would like the administrators to show cause why LR No. 36/1/238 Eastleigh cannot be sold and the proceeds of sale and distributed to all the survivors as they had all attained majority age, why they cannot resolve all boundary disputes, cause transfer of eight (8) shares in Thome Farmers No. 4 Limited to the applicant and to render account of all moneys received as income from LR No. 36/1/238 Eastleigh since confirmation of the grant. He avers that one of the widows has since died and her share should be distributed, and that he has himself attained the age of majority and what is due to him should be transferred to his name.
3. The administrators have responded to the application. They say that LR No. 36/1/238 Eastleigh was not available to all the survivors of the deceased, but to only the four beneficiaries named in the certificate of confirmation of grant. Regarding boundary disputes, they plead that they have transferred the entitlements to the beneficiaries; any disputes over boundaries do not concern them but ought to be placed before the relevant state authorities. Regarding the applicant's entitlement to 8 shares in Thome Farmers No. 4 Limited they aver that the same was erroneously transferred to another person, and urge that it should be the business of the applicant to follow it up.
4. According to the certificate of confirmation of grant, even after rectification, LR No. 36/1/238 Eastleigh was to devolve jointly upon Damaris Wairimu Gitau, Hannah Njoki Gitau, Evanson Githumbi Gitau and Benson Gitau. These four are the persons who became entitled to it. It is not available to the rest, and none of them, apart from the four, is entitled to an account with respect to it.
5. Regarding the assets devolved upon Hannah Njoki Gitau, after her death the same ought to fall into her estate. The said assets are not available for redistribution within the estate of the deceased herein, but ought to be dealt with within a cause initiated in the estate of Hannah Njoki Gitau by the persons who have lawfully survived her.
6. The grant herein was confirmed and the assets distributed. The administrators aver that they caused the land to be transferred and vested, and titles issued. I agree with them that if any disputes have arisen over boundaries between the beneficiaries, then the resolution of those disputes would be beyond the mandate of the administrators. The beneficiaries ought to place the disputes before the relevant lands authorities, including the Environment and Land Court. The mandate of the administrators is limited to distributing the land, and they discharge that duty once they cause the property to vest in the beneficiaries. Thereafter, the beneficiaries are on their own as the assets are no longer in the estate.
7. On the 8 shares in Thome Farmers No. 4 Limited, I note that it was the responsibility of the administrators to cause the shares to be transferred to the applicant. The error that resulted in the said shares going to someone else has nothing to do with the applicant; it was a mistake of the administrators. They did not discharge their duty to the applicant. It should be their duty to correct the anomaly.

8. In the end, I shall dismiss the application dated 28th June 2016, save that the administrators shall cause the 8 shares in Thome Farmers No. 4 Limited to be transferred to the name of the applicant. I hereby grant the administrators thirty (30) days to do so. The matter shall be mentioned thereafter for compliance.

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

W. MUSYOKA

JUDGE