



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 86 OF 2012**

**(P&A 10 OF 2003 GITHUNGURI LAW COURTS))**

**IN THE MATTER OF THE ESTATE OF MUIRURI NJUGUNA (DECEASED)**

**TERESIAH WANGARI.....APPLICANT**

**VERSUS**

**JOSEPH GACHEMA MAAI**

**MARY NYOKABI MUCHIRI**

**JASON KIMANI MAAI**

**FRANCIS GACHEMA MUIRURI**

**JOSEPH MBURU MAAI..... RESPONDENTS**

**RULING**

The application filed on 7<sup>th</sup> July, 2015 the Applicant David Waburi Muiruri sought the following orders;

- a. This Court's Ruling of 4<sup>th</sup> March, 2015 be reviewed to reflect shareholding and correct names as appears in the confirmed grant of **Succession Cause No. 10 Of 2003**.
- b. That caution By David Charles Kamau Gachigua of 20<sup>th</sup> June, 2012 and restriction by D.O's letter of 22<sup>nd</sup> June, 2012 be removed and pave way for the subdivision in terms of the confirmed grant.

On 21<sup>st</sup> March, 2016 the Counsel for the Respondents informed the Court of typographical errors made on the names of the beneficiaries as laid out in paragraph **A** of the Application in the Court's Ruling of 4<sup>th</sup> March, 2015.

The Applicant asked the Court to determine the distribution of the 2 portions of land as the Ruling referred to the one parcel of land Gatamaiyu/Kagwe/548 and did not comment or allude to Gatamaiyu/Kagwe/471

This Court also sought to know the position with regard to the administrator's whereabouts pursuant to the issues raised in Court during the hearing with regard to her safety. On 20<sup>th</sup> April, 2016 the parties appeared in Court and sought a further 30 days to avail the administrator and/or confirm her whereabouts.

The Court wishes to address the matter as follows;

The Court Ruling of 4<sup>th</sup> March, 2015 in a nutshell found as follows;

- a. The confirmed grant issued by Senior Resident Magistrate's Court Githunguri on 14<sup>th</sup> September, 2006 provided for the distribution of the estate of the deceased Muiruri Njuguna with regard to Gatamaiyu/Kagwe/471 and Gatamaiyu/Kagwe/548.
- b. The Court considered the mode of distribution in light of the following new facts;
  - i. 2 cows and 6 sheep not disclosed to be distributed.
  - ii. Kenya Commercial Bank Account proceeds not included
  - iii. The confirmed grant was not with consents of all beneficiaries
  - iv. The administrator is sick and cannot remain as administrator
  - v. The administrator had fled/relocated and was in danger
  - vi. Eunice Kuria did not want her share of the estate and whether it would go to the daughters or sons of the deceased
- c. The Court Ruling of 4<sup>th</sup> March, 2015 dealt with each and every one of these issues as follows;
  - i. Proof of ownership of the livestock was not conclusive and distribution of the same would not be impossible;
  - ii. No evidence of Kenya Commercial Bank Account was availed to this Court, therefore the relevant orders could not be obtained ;
  - iii. The confirmed grant did not require consents of the beneficiaries as it was a culmination and result of the hearing and determination of the objection of the confirmation of grant and judgment of 14<sup>th</sup> September, 2006;
  - iv. The reappointment of an administrator was to be determined when the administrator is located and found in good health and order;
  - v. If one of the beneficiaries Eunice Kuria would want to forgo her share, her share to be shared between the daughters of the deceased.
- d. With regard to the correction of names in the Ruling, this Court relies in **Section 99 and 100 of the Civil Procedure Act**;

**Section 99** provides;

*“Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”*

**Section 100** provides;

*“The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”*

The same maybe done and a corrected copy of the Ruling shall be delivered to the partes.

- e. With regard to Change in shareholding the measurements shall be as in the confirmed grant.
- f. The Court shall review its orders of 4<sup>th</sup> March, 2015 to the following effect under **Order 45 Rule 1 Civil Procedure Act 2001** for a sufficient record that the property Gatamaiyu/Kagwe/471 is property of the deceased and there is no Will to show that the deceased bequeathed the same to the only beneficiary Jason Kimani Maai. There are no specific circumstances explained to the Court to

confirm the allocation of the land to one beneficiary. The beneficiary has not given consent on the same. Therefore it shall be divided amongst the children of the deceased equally and held jointly.

- g. The whereabouts of the widow shall be confirmed on 10<sup>th</sup> May, 2016 by the parties and Deputy Registrar Family Division to issue summons to OC'S/OCPD Kilgoris/Chief of Kilgoris to confirm existence of Teresiah Wangari Muchiri's her whereabouts progress and state and report filed in Court.
- h. The order for review the caution shall be reviewed upon service to the interested party David Charles Kamau Gachigua of the application and for hearing of his claim or after agreement on mode of distribution.

**READ AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22<sup>nd</sup> DAY OF APRIL, 2016**

**MARGARET W. MUIGAI**

**JUDGE**

***In the presence of;***

*Mr. Wamae holding brief J. M. Njengo for the Respondent.*