



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIVASHA**

**SUCCESSION CAUSE NO. 58 OF 2015**

**(CHIEF MAGISTRATE’S SUCCESSION CAUSE NO. 53 OF 2007)**

**IIN THE MATTER OF THE ESTATE OF M K ALIAS M (DECEASED)**

**AND**

**M K M.....1<sup>ST</sup> PETITIONER**

**J M M..... 2<sup>ND</sup> PETITIONER**

**D M M.....3<sup>RD</sup> PETITIONER**

**RULING**

1. This is a very old succession cause filed by three Petitioners, namely, **M K M**, **J M M** and **D M M** on 17/05/2007, in respect of the deceased **M K M** who died intestate on 2<sup>nd</sup> October, 2006.
2. Thirteen beneficiaries are named in the Petition. The Petitioners are the wife and two sons of the deceased, respectively. A grant was issued to the Petitioners on 3<sup>rd</sup> July, 2007.

Thereafter, it seems that rather than confirm the grant the Petitioners embarked on a series of applications and counter applications. The file is therefore replete with affidavits sworn by parties as they fought over proceeds of the estate by way of rents. It would appear that to-date, these rents are being deposited into a joint account of the parties’ respective counsel and the rental properties managed by estate agents.

3. I have carefully read all the affidavits filed in this matter before I took it over and those filed subsequently, together with submissions upon my directions given on 22/9/15. The court had directed counsel to produce all the parties herein before the court for directions but they did not appear. Instead their counsel opted to file affidavits and submissions.
4. From the material on record, there are 3 undisputed properties which were owned by the deceased at the time of death, namely;

**(a) Nyandarua/[particulars withheld] – 44 ½ acres**

**(b) Nyandarua/[particulars withheld] (Plot)**

**(c) [particulars withheld] at Karati Market**

5. As regards the deceased’s family, it is clear that he had two wives namely, **L M** , mother to the 2<sup>nd</sup> Petitioner and two others; and **M K M** , Mother to the 3<sup>rd</sup> Petitioner and others.

6. As I see it, the bone of contention is the distribution of the property. Indeed, the parties submissions are directed at the issue, more than anything else.
7. In the course of reviewing all the affidavits and material on record, it has become clear to me that the grant issued herein in the year 2007 by the subordinate court was given without the necessary pecuniary jurisdiction by virtue of Section 49 of the Law of Succession Act as at 2007. In 2007, 44 acres of land, being part of the estate of the deceased must have been worth far more than Ksh.100,000/= which was the limit of jurisdiction of the subordinate court.
8. In attempting to bringing this saga to a just end I would nullify the grant issued on 3<sup>rd</sup> July 2007 and substitute therefore a grant of this court to issue forthwith in the names of the three Petitioners. Secondly, I direct that within three months of today's date, the Petitioners do file summons for the confirmation of the grant now issued and propose an agreed mode of distribution.
9. Failing agreement by the parties, this court will make the necessary determination on distribution, on the basis of the latest affidavits and submissions filed by the parties' counsels on 14<sup>th</sup> October, 2015 and 4<sup>th</sup> November, 2015, respectively, as well as the affidavits sworn by the 2<sup>nd</sup> Petitioner on 6<sup>th</sup> October, 2015; by the 1<sup>st</sup> Petitioners, on 1<sup>st</sup> October, 2015 on her own behalf and on behalf of the third Petitioner; and by her witness one **Francis Maingi Wangungu** on 15<sup>th</sup> October, 2015.
10. Finally, I direct that a statement of account in respect of the rents deposited in the Account No. **[particulars withheld] at Family Bank, Naivasha** be availed to the court on the date of hearing of the summons for confirmation.
11. In the premises and save as ordered above no party shall, without leave of this court file any further affidavit or application in this matter.
12. This matter will be mentioned before the Deputy Registrar to confirm compliance and/or give further directions (after 3 months) unless a summons for confirmation has been filed by the three Petitioners. Parties will bear own costs.

Delivered and Signed at Naivasha this **21<sup>st</sup>** day of **April, 2016**.

In the presence of:

For the 1<sup>st</sup> and 3<sup>rd</sup> Petitioners Mr. Gichuki

For the Objector/2<sup>nd</sup> Petitioner Mr. Obino

**C. MEOLI**

**JUDGE**