



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 2491 OF 1999**

**IN THE MATTER OF THE ESTATE OF SCHOLASTICA WANJIRU WANYEE (DECEASED)**

**RULING**

1. On 2<sup>nd</sup> February 2016, and on subsequent court appearances, counsel for the beneficiaries complained that the orders made on 24<sup>th</sup> June 2014 had not been complied with. She was particularly concerned about two issues – the sub-division of Longonot/Kijabe/12/51191 and Ngong/Kajiado/13886, and the bank statement of the estate account. I directed that I would study the court file and thereafter give comprehensive directions.

2. I have had occasion to peruse through the record. I have noted that a comprehensive consent was recorded before Kimaru J. on 24<sup>th</sup> June 2014. With respect to the two issues the subject of the proceedings on 24<sup>th</sup> June 2014, it was ordered as follows:-

*‘(i) LR No. Ngong/Kajiado/3886 shall be surveyed and demarcated so that each beneficiary, i.e. Patrick Roki, David Gathuku, Christine Wambui Wanyee and Stephen Kamau Wanyee;*

*(ii) Parcel No. Longonot/Kijabe/5191 shall be sold and the proceeds of sale therefrom shared between Stephen Wanyee Kamau, Paul Kinuthia Wanyee, David Gathuku and Mary Wanjiku...*

*(iv) J M Njenga & Co. and Maisore Nyanga’u & Co. Advocates shall avail to the court the bank statements of the estate so that the balances thereof may be distributed to the beneficiaries. The accounts to be supplied within 14 days.’*

3. I will deal first with order (iv) of the consent. It has been submitted by the beneficiaries that there has been non-compliance with the said order.

4. The record shows that in purported compliance with the said order, the law firms concerned filed a joint statement of account. Paragraph 3 thereof sets out the monies that were allegedly paid into that estate bank account with the I & M Bank. Paragraph 4 sets out the moneys withdrawn from the said account, while paragraph 5 states the balances that are currently standing in that account.

5. I agree with the beneficiaries that the statement of account filed by the two law firms does not comply with the order. The law firms were required to avail to court the bank statements’ of the estate. What has been availed in not a bank statement, but a purported representation, in the words of the advocates, of what they allege to be an account of their dealing with the bank account or accounts of the estate.

6. Regarding LR No. Ngong/Kajiado/3886, it would appear that there has been a hitch as there was a

caution placed against the title by Stephen Wanyee. He was directed on 30<sup>th</sup> May 2016 to remove it so as to facilitate subdivision. There has been no statement that the caution has been removed, but the surveyor reported on 6<sup>th</sup> September 2016 that he had done the subdivision. Parties were to meet again on site to iron out outstanding issues and are due to report back to court on 13<sup>th</sup> October 2016.

7. The issue of Longonot/Kijabe/12/5191 was not been raised again after 30<sup>th</sup> May 2016. There has been no indication as to whether the property was ever sold as ordered by the court and the proceeds of sale distributed as directed..

8. Consequently I shall direct as follows:-

**(a)That the law firms of Messrs. J M Njenga & Co. and Masore Nyang'au & Co. shall file the bank statement or statements referred to in order (iv) of the consent that was recorded before Kimaru J. on 24<sup>th</sup> June 2014;**

**(b)That the administrators are given fourteen (14) days to furnish the court with information relating to the disposal of Longonot/Kijabe/12/519; and**

**(c)That in non-compliance with (a) and (b) above will attract sanctions once the non-compliance is reported.**

**DATED, SIGNED and DELIVERED at NAIROBI this 13<sup>TH</sup> DAY OF OCTOBER, 2016.**

**W. MUSYOKA**

**JUDGE**