



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 1449 OF 2000**

**IN THE MATTER OF THE ESTATE OF FRANCIS KANG'ETHE FELIX (DECEASED)**

**RULING**

1. The application for determination is a summons dated 8<sup>th</sup> February 2016. It seeks several principal orders:-

- (a) appointment of new administrators, Edward Mbithi Kang'ethe and Rose Gachiku Kinuthia;
- (b) confirmation of the grant to be made to the administrators to be appointed under (a) above; and
- (c) The removal of the name of Josephine Waithera Kang'ethe from the schedule of beneficiaries.

2. The factual background to the application is set out on the face of the application. The original grant that had been made to Edward Mbithi Kang'ethe and Margaret Njambi Mbithi on 29<sup>th</sup> December 2000 and confirmed on 23<sup>rd</sup> July 2001, but was revoked on 18<sup>th</sup> November 2003. Josephine Waithera Kang'ethe is said to have died on 2009, while the family is said to have agreed on the appointment of administrators and distribution of the estate.

3. The application in support of the application is sworn by the proposed administrators, Edward Mbithi Kang'ethe and Rose Gachiku Kinuthia. It is averred that the deceased had been survived by three (3) individuals, the two applicants and Margaret Njambi Mbithi. Josephine Waithera Kang'ethe, a widow of the deceased, is said to have had died on 28<sup>th</sup> August of 2009, however, there is no proof of the death, although it is purported that a certificate of death is attached to the affidavit. She allegedly died childless. The estate comprised of only one asset, Kabete/Kabete/43, which is proposed to be distributed between the three survivors and three (3) other individuals, Francis Kiarie Mbithi, Patrick Njenga and Stephen J. N. Mbugua. There are two consents to the proposed distribution purportedly executed by Margaret Njambi Mbithi.

4. I have perused the court record herein. There is evidence that a grant of letters of administration intestate in respect of the estate was made on 29<sup>th</sup> December 2000 to Edward Mbithi Kang'ethe and Rose Gachiku Kinuthia. There is also evidence that that the said grant was confirmed on 23<sup>rd</sup> July 2001 and a certificate of even date duly issued, distributing Kabete/Kabete/43 and 47. Kabete/Kabete/43 went to Edward Mbithi Kang'ethe, Margaret Njambi Mbithi and Loise Gachiku Kinuthia, while Kabete/Kabete/47 devolved upon Edward Mbithi Kang'ethe. There is also a decree in Kikuyu Resident Magistrate's Court Miscellaneous Application No. 170 of 1998, awarding Kabete/Kabete/43 to Edward Kinuthia, Margaret Njambi Mbithi and Francis Kang'ethe. The grant herein was revoked on 18<sup>th</sup> November 2003, a fresh grant was to issue to three (3) individuals representing the three houses of the deceased.

5. According to the letter from the Chief of Kabete Location, dated 2<sup>nd</sup> June 2000, the deceased had been survived by Edward Mbithi Kang'ethe 'A,' Charles Kamau, Kang'ethe, Jimna Kinuthia Kang'ethe, Njoki Mungai, Grace Wairimu Mwaura, Edward Mbithi Kang'ethe 'B,' Susan Wangari Muriithi, Beatrice Njeri Kang'ethe and Josephine Waithira Kang'ethe. Out of the nine (9) individuals identified by the Chief as survivors, only four (4) were listed by the petitioners in Form P & A 5, that is to say Edward Mbithi Kang'ethe 'B,' Charles Kamau, Kang'ethe, Beatrice Njeri Kang'ethe, Josephine Waithira Kang'ethe, Edward Mbithi Kang'ethe 'A.' In the schedule of survivors appears the names of John Kinuthia

Kang'ethe and Margaret Njambi Mbithi. It is not clear whether John Kinuthia Kang'ethe is the same person as Jimna Kinuthia Kang'ethe.

6. The individuals named in the Chief's letter are children and widow of the deceased. Although it is alleged that the widow, Josephine Waithira Kang'ethe, has since died, no proof has been provided. It is not explained why some of the children listed in the Chief's letter were omitted in the list placed before the court on 13<sup>th</sup> July 2000.

7. In the application now before me, the deceased is said to have been survived by three (3) individuals. The number does not tally with the number mentioned in the Chief's letter, nor in the schedule in the petition filed herein on 13<sup>th</sup> July 2000. There is no narrative as to what became of those other survivors, and why they, or their survivors, are not being provided for. If they are alive, it is expected that they would be identified as survivors, and their consents sought to the appointment of the proposed administrators as well as to the proposed distribution. If they are dead, their survivors should be disclosed and their consents obtained to the proposed appointment of administrators and distribution.

8. The Chief's letter identified two (2) assets as making up the estate. That is to say Kabete/Kabete/43 and 47. These two are identified in the petition as the assets forming the estate. When the original grant was confirmed on 23<sup>rd</sup> July 2001 the two assets were distributed. That distribution was vacated by the order of Koome J. of 18<sup>th</sup> November 2003. It is not clear why the two assets are not being placed before court now for fresh distribution. There is no explanation as to why only one asset is being proposed for distribution. There is also the question of Francis Kang'ethe Mbithi, Patrick Njenga and Stephen J. N. Mbugua. They are not identified in the affidavit in support of the application as survivors of the deceased, yet they are projected to take a share of Kabete/Kabete/43. There is no explanation as to who these people are with relation to the estate or the circumstances under which they are being allotted estate property.

9. There are many gaps in the application before me. I am not convinced that I should grant the orders sought in the circumstances. I shall proceed to dismiss the application, which I hereby do. The applicants should move the court in an application that addresses all the issues raised above. There shall be no order as to costs.

10. I note that the estate comprises of two assets, being two pieces of land known as Kabete/Kabete/43 and 47, situated within Kiambu County, within the jurisdiction of the High Court of Kenya at Kiambu. The matter is hereby accordingly transferred to the High Court of Kenya at Kiambu for disposal.

**DATED, SIGNED and DELIVERED at NAIROBI this 25<sup>TH</sup> DAY OF NOVEMBER, 2016.**

**W. MUSYOKA**

**JUDGE**