



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 2940 OF 1999**

**IN THE MATTER OF THE ESTATE OF LOISE WAMBUI WAKABU (DECEASED)**

**RULING**

1. The deceased herein died on 15<sup>th</sup> August 1997. He was survived by a daughter and three sons, being Rahab Wanjiku Wakabu, Geoffrey Njung'e Wakabu, James Waweru Wakabu and Frederick Chege Wakabu. He died possessed of property, being Kabete/Nyathuna/780 and 825, Kabete/Gikuni/T. 328, Ngeria/Megum Block 3 (Kimuri) and money in accounts with Barclays Bank and Postbank. Representation to his intestate estate was obtained by his son Geoffrey Njung'e Wakabu through a petition lodged in this cause on 30<sup>th</sup> December 1999. A grant of letters of administration was made by this court on 23<sup>rd</sup> March 2000. The said grant was confirmed on 22<sup>nd</sup> January 2002. The estate of the deceased was shared equally among all the four surviving children of the deceased, save for Kabete/Gikuni/T. 328 which devolved wholly upon Geoffrey Njung'e Wakabu.

2. One of the sons of the deceased, called James Waweru Wakabu, died on a date that is not documented on the record. His widow, Kezia Njeri Waweru, moved the court by an undated application lodged in the registry on 18<sup>th</sup> November 2011, seeking to substitute Geoffrey Njung'e Wakabu as administrator of the estate and her late husband, James Waweru Wakabu, as a beneficiary of the estate. The said application was allowed on 19<sup>th</sup> December 2011. The orders made on 19<sup>th</sup> December 2011 resulted in the rectification of the certificate of confirmation of grant issued on 22<sup>nd</sup> January 2002.

3. Kezia Njeri Waweru died on 29<sup>th</sup> July 2012. An application was lodged herein on 18<sup>th</sup> April 2014, by Geoffrey Njung'e Wakabu seeking to substitute her as administrator. He also sought rectification of the certificate of confirmation of grant on several grounds. Firstly, as Kezia Njeri Waweru and her husband were childless, the record was to reflect that the deceased herein had been survived by three (3) individuals only. Secondly, all the assets had been distributed, save for Kabete/Nyathuna/780 and 825 which had been amalgamated, in anticipation of distribution, into one parcel known as Kabete/Nyathuna/2979, to be distributed equally between Rahab Wanjiku Wakabu, Geoffrey Njung'e Wakabu and Frederick Chege Wakabu. That application was heard on 8<sup>th</sup> July 2014, and allowed, and a rectified certificate of confirmation of grant was duly issued in those terms.

4. The application that I am called upon to determine is a summons dated 13<sup>th</sup> January 2015. It is brought at the instance of David Kuria Mwangi. He purports to have had bought the portion of Kabete/Nyathuna/2979 which had devolved upon Kezia Njeri Waweru, that is to say Kabete/Nyathuna/3253. The sale allegedly took place in 2009, prior to the demise of the said Kezia Njeri Waweru. Upon the death of Kezia Njeri Waweru, the applicant petitioned for representation to her estate in Kiambu RMCSC No. 325 of 2012, he obtained the representation and the said property was confirmed to him. His application is poorly drafted and the only sense I make of it is that he would like all the parcels hived off Kabete/Nyathuna/2979 to be cancelled, and especially Kabete/Nyathuna/3253.

5. The applicant has attached a number of documents to his affidavit in support of the application. There is a copy of a land sale agreement dated 24<sup>th</sup> April 2009, being a transaction between Kezia Njeri Waweru and the deceased, where Kezia Njeri Waweru, who is described as owner and proprietor of Kabete/Nyathuna/2979, purported to sell a piece of land out of that property to the applicant. There is also copy of the grant made in Kiambu RMCSC No. 325 of 2012, together with a certificate of confirmation thereof, which devolved Kabete/Nyathuna/3253 to the applicant.

6. The matter was first placed before me on 15<sup>th</sup> January 2015 under certificate of urgency, and I directed that it be served on the respondents. Upon service, counsel for the respondents appeared before me on 27<sup>th</sup> April 2015, and pleaded for time to reply and for orders that the court file in Kiambu RMCSC No. 325 of 2012 be availed. I gave orders to that effect and the file in Kiambu RMCSC No. 325 of 2012 was accordingly availed but the respondents did not reply to the application.

7. The application came up for hearing on 31<sup>st</sup> May 2016. The applicant attended court, but the respondents were absent, and their advocate was not in court either. An affidavit of service sworn on 23<sup>rd</sup> May 2016 and filed herein on 24<sup>th</sup> May 2016, indicated that a hearing notice had been duly served on the respondents through their advocates. The applicant pleaded that he wanted the court to assist him get a title deed for Kabete/Nyathuna/3253, as a confirmation had been done by the Kiambu court.

8. I have perused the court files in the instant cause and in Kiambu RMCSC No. 325 of 2012. The position in the instant cause is as narrated here above. Kiambu RMCSC No. 325 of 2012 was initiated by Hannah Wanjiku and David Kuria on 14<sup>th</sup> November 2012, in their purported capacities as sister and brother, respectively, of the deceased. They presented themselves as the sole survivors of her estate, alleging that she died possessed of an asset known as Kabete/Nyathuna/3253. A grant of letters of administration intestate was accordingly made to the petitioners on 4<sup>th</sup> January 2013. The said grant was confirmed through orders made in the cause on 16<sup>th</sup> July 2013, and a certificate of confirmation of grant issued on 17<sup>th</sup> July 2013, devolving Kabete/Nyathuna/3253 wholly upon the applicant herein, David Kuria Mwangi. On 20<sup>th</sup> September 2013, the applicant filed an application in Kiambu RMCSC No. 325 of 2012, dated 18<sup>th</sup> September 2013, seeking an order that a title deed in respect of Kabete/Nyathuna/3253 be issued to him. The trial court dismissed the plea on the grounds that it was *functus officio* after confirming the grant. It would appear that it was upon that dismissal that he brought the instant application.

9. The property in Kabete/Nyathuna/3253 is not before the court in the instant cause. There is therefore no basis for this court making any orders relating to that property. In any event, the applicant has not laid any proper basis for grant of the order sought. He can only achieve his object by having the orders made previously in this cause varied to accommodate his claims, but certainly the court cannot possibly grant what he seeks in the instant application, and in the instant cause.

10. Kabete/Nyathuna/3253 was the subject of Kiambu RMCSC No. 325 of 2012, and it was only in that cause that he could possibly obtain orders with regard to transfer of that property. However, that court declined to grant the orders he sought. He should therefore look elsewhere. I agree with the lower court in Kiambu RMCSC No. 325 of 2012 that once the grant was confirmed and the property devolved to him, there was really not much that the court could do to ensure that he got the title deed in Kabete/Nyathuna/3253 issued to him. Title deeds are issued by the Land Registrar. It is only an action against the Land Registrar that can yield to the applicant the title deed that he seeks.

11. The grant in the instant case has been confirmed and the estate devolved to various people. I have already indicated here above that I cannot grant the orders sought in the current application as framed. I therefore find that the application before me is not merited and I do hereby dismiss the same. There shall be no order as to costs.

12. The estate herein comprises of assets located in the Kabete area of Kiambu. It therefore falls within the jurisdiction of the High Court of Kenya at Kiambu. I shall direct that the file in respect of the instant cause be transferred to the High Court of Kenya at Kiambu. The court file in Kiambu RMCSC No. 325 of 2012 shall be returned to the Chief Magistrate's Court at Kiambu.

13. It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 9<sup>TH</sup> DAY OF DECEMBER, 2016.**

**W. MUSYOKA**

**JUDGE**