

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION NO. 340 OF 2013

FORMERLY RUNYENJES 185 OF 2011

IN THE MATTER OF THE ESTATE OF NGONDI M'MIRU (DECEASED)

BENSON GICOVI.....PETITIONER

VERSUS

ROSEMARY WANJIRA MURIUKI.....PROTESTOR

RULING

1. This is an oral application by the protestor that her mode of distribution of the suit property land parcel No. Gaturi/Nembure/1805 be effected as shown in paragraph 7 of this court's ruling dated 15th February 2016. I have treated her application as one that is based on Order 45 of the 2010 Civil Procedure Rules, which governs review of court orders on account of error, mistake, discovery of new evidence or for sufficient cause.

2. In this court's ruling of 15th February 2016 in paragraph 26 I ruled as follows: *“In the circumstances, I find that the protestor effectively withdrew her consent in respect of the mode of distribution. It therefore follows that her application is hereby allowed. The result is that the appointment of the petitioner as the administrator of the estate and his mode of distribution is also set aside. The parties are at liberty to restart the confirmation proceedings.”*

3. It is clear that I should have adopted her mode of distribution since I had found in her favour in terms of her protest in that ruling.

4. In the circumstances, I hereby set aside my earlier order removing the petitioner as the administrator of the estate and I hereby restore him to that position. Furthermore, I also direct that the suit property be distributed in terms of her mode of distribution. It therefore follows that the parties will not be required to restart the confirmation proceedings. In passing, I note that the parties have been unable to agree to date as to the mode of distribution following this court's ruling of 15th February 2016.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 8th day of DECEMBER, 2016

In the presence of both the petitioner and the protestor.

Court clerk Njue

J.M. BWONWONGA

JUDGE

08.12.16