

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1040 OF 2004

IN THE MATTER OF ESTATE OF MWENJA KAGIRI (DECEASED)

RULING

1. The application dated 30th October 2009 seeks confirmation of the grant made herein on 29th July 2009.
2. The deceased herein, Mbugua Mwenja Kagiri, died on 5th April 2003. The letter from the Chief of Githunguri Location, Kiambu County, indicates that the deceased was survived by two (2) widows – Grace Nyambura and Monica Wanjiru, and eleven (11) children Wambui Mbugua, Felix Kimani, Simon Kagiri, Amos Ndungu, Rahab Mumbi, Kimani Mbugua, Wambui Mbugua, Muthoni Mbugua, Wanjiku Mbugua, Wambui Mbugua and Kimani Mbugua. He had married three times and the eleven (11) children were born of the deceased's three (3) wives.
3. Representation to his estate was sought on 20th April 2004 by his widow, Grace Nyambura Mbugua, and son, Amos Ndungu Mbugua. Their petition listed the two widows and the eleven (11) children as surviving the deceased. He is expressed to have died possessed of an asset known as Githunguri/Kiairia/2232.
4. On 3rd November 2009, one administrator, Grace Nyambura Mbugua, moved the court by a summons for confirmation dated 30th October 2009. She proposes that Githunguri/ Kiairia /2232 be given to her.
5. The co-administrator, Felix Kimani Mbugua, swore an affidavit on 11th March 2011 in response to the application dated 30th October 2009. He avers that Githunguri/ Kiairia /2232 does not exist as it had been cancelled reverting back to the original titles, being Githunguri/ Kiairia /687, 1999 and 1970. Githunguri/ Kiairia /1970 was registered in the name of the deceased and therefore it was the only asset making up the estate. There were other assets, including Ruiru East/Juja East Block 2/4515, and shares in Kenya Breweries Ltd Ndumberi Farmers Company Ltd, Thome Farmers (No.4) Ltd and Kamiti Farmers Company Ltd. He alleges that the deceased had orally distributed the estate. Githunguri/ Kiairia /1970 was to go to Monica Wanjiru Mbugua and a purchaser called Zachary Ndungu Kagwe at defined shares, Ruiru East/Juja East Block 2/4515 to a purchaser called Stephen Chege Mwaniki, the shares in Kenya Breweries Ltd to Naomi Wambui, shares in Ndumberi Farmers Company Ltd to Teresia Wanjiku, shares in Thome Farmers (No.4) Ltd to Grace Nyambura and her children, the shares in Witeithie Gwaka Investment Ltd to Naomi Wambui and Grace Wambui, and the shares in Mboi-I-Kamiti Farmers Company Ltd to Grace Wambui.
6. Monica Wanjiru Mbugua Mwenja, a widow of the deceased, swore an affidavit on 26th June 2013 in similar terms to support the contention by the co-administrator, Felix Kimani Mbugua.
7. The affidavit of Felix Kimani Mbugua sworn on 26th June 2013 is also relevant. He explains that Githunguri/Kiaria/2232 was cancelled by Ransley J. on 20th December 2001 and remitted to the original titles Githunguri/ Kiairia/687, 1970 and 1999. Githunguri/ Kiairia/687 was gifted *inter vivos* to Felix Kimani Mbugua and Simon Kagiri Mbugua and a portion of it was sold to Zachary Ndungu Kagwe. To formalize the said transaction, Githunguri/ Kiairia /687 was subdivided into Githunguri/ Kiairia/1969 and 1970 with Githunguri/ Kiairia/1969 being registered in the joint names of Simon Kagiri and Feliz Kimani while Githunguri/Kiaria/1970 was registered in the name of Mbugua Mwenja Kagiri. 0.6 acres were excised from Githunguri/ Kiairia /1970 and sold to Zachary Ndungu Kagwe. As at the time of the

deceased's demise Githunguri/ Kiiria/2232 had ceased to exist.

8. The issues that arise from the affidavits before me require further probing. I am convinced that the summons dated 30th October 2009 can only be disposed of effectively upon hearing the evidence.

9. I hereby direct as follows:-

(a) That the application dated 30th October 2009 shall be disposed of by way of affidavit and oral evidence;

(b) That the matter shall be given a date for hearing at the registry on priority basis.

DATED, SIGNED and DELIVERED at NAIROBI this 26th DAY OF September, 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Kimani for Mr. Ng'ang'a advocate for the petitioner.

In the presence of Mr. Kariuki advocate for the objector.