



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

Succession Cause 453 of 2001

IN THE MATTER OF THE ESTATE OF FRANCIS MUCHIRU MBUTHIA (DECEASED)

WALTER MBUTHIA..... 1ST OBJECTOR/APPLICANT

MICHAEL KURIA.....2ND OBJECTOR/APPLICANT

EMILY WANJIRU.....3RD OBJECTOR/APPLICANT

LEAH WANJIKU NJENGA.....4TH OBJECTOR/APPLICANT

VERSUS

JENIFFER WAMBUI.....RESPONDENT

RULING

1. This Succession Cause has been pending unresolved for ten (10) years because the Co-Administrators, Walter Mbuthia and Jeniffer Wambui cannot agree on the distribution of Land parcel No.Kabete/Lower Kabete/2065. Although the grant issued to them was confirmed on 5th February 2007, Jeniffer Wambui, by her Summons dated 15th February 2007, sought revocation of the grant for the single reason that when Rawal J. confirmed the same, she did so allegedly without taking into account the way the beneficiaries were occupying the Land and without regard to what they had previously agreed. That Summons is pending before this Court and is undetermined.

2. On 21st March 2011, Walter Mbuthia, without waiting for the prior Application by his sister and co-Administrator to be determined, filed a Summons under **Section 47** of the **Law of Succession Act** seeking that the Summons dated 15th February 2007, *“be dismissed for Want of Prosecution”* and that Emily Wanjiru Njoroge be allowed to substitute her deceased husband, William Njoroge, brother of Walter Mbuthia and Jeniffer Wambui.

3. I have read the Supporting Affidavit sworn by Mbuthia on 17th March 2011 and the Replying Affidavit sworn on 22nd June 2011 by Jeniffer Wambui. Each blames the other for delay in finalizing the process of distribution but those reasons are not important to restate because there is clearly bad blood between the siblings and neither has addressed the more fundamental issue at hand; **By what means should the distribution of parcel No.Kabete/Lower Kabete/2065 be finalized?**

4. According to Walter Mbutia, the distribution as ordered by Rawal, J. was proper and should be implemented. Jeniffer on the other hand, is of the view that the learned Judge made certain errors and ignored the Report of the Kiambu District Land Surveyor which had apportioned the Land in a certain manner. Further, that the learned Judge ignored the fact that Jeniffer Wambui had built a house on portion C which had instead been allocated to Michael Kuria.

5. None of the issues raised by Mbutia and Jeniffer are idle and need to be resolved quickly and on the merits. However, the issue of the substitution of William Njoroge by his wife, Emily Wanjiru Njoroge is not an issue.

6. In the event, I will therefore order as follows;

i) The Application by Walther Mbutia dated 17th March 2011 is allowed to the extent that Emily Wanjiru Njoroge shall substitute her deceased husband, William Njoroge. The Prayer for dismissal of the Summons dated 15th February 2007 is however declined.

ii) The Summons dated 15th February 2007 is to be listed for hearing on a date to be agreed between the parties and it should be concluded expeditiously.

iii) Each party to bear its costs thereof.

7. Orders accordingly.

DATED, DELIVERED AND SIGNED AT NAIROBI THIS 20TH DAY OF JANUARY, 2012.

20/1/2012

CORAM:

ISAAC LENAOLA – JUDGE

Miron – Court Clerk

Applicant present

Respondent present

ORDER

Ruling duly read.

FURTHER ORDER

Mention on 24/1/2012 before G.B.M. Kariuki for taking of dates in respect of the Application dated 15th February 2007.

ISAAC LENAOLA

JUDGE