



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

P & A APPEAL NO.5 OF 2008

IN THE MATTER OF THE ESTATE OF MURAGU MUTHEE – DECEASED

R.C.M

R.A.M.....APPELLANTS

versus

M.W.M.....

.....RESPONDENT

(Being an appeal from the judgment and decree of

L. Nyambura, Senior Resident Magistrate in the Senior Resident Magistrate’s Succession Cause

No.11 of 2003 at Kigumo)

R U L I N G

This ruling is the outcome of the **Summons (General Form)** dated 3rd March 2011, in which **R.C.M** and **R.A.M** the Appellants herein are seeking for the following orders:

- 1. That the signature of M.W.M be dispensed with in registration of the transfer or in the alternative the Deputy Registrar of the High Court and is hereby authorized to execute all the necessary papers that are required to be signed by M.W.M to effect transfer of (particulars withheld) in favour of the beneficiaries as decreed by this Honourable Court.***
- 2. That the Deputy Registrar of the High Court be and is hereby authorized to execute the application for consent of the Land Control Board, Mutation Survey Forms, transfer and any other necessary documents required for the excision, survey and transfer of (particulars withheld) in favour of the beneficiaries thereto as decreed by this Honourable Court.***
- 3. That the District Land Registrar, Murang’a be ordered to register the transfer of (particulars withheld) in favour of the beneficiaries as decreed by this Honourable Court by way of transmission without requiring the production of M.W.M’s Personal Identification Number Certificate, National Identity Card and her Passport-sized photographs.***
- 4. That costs of this application be provided for.***

The Summons is supported by the affidavit of R.A.M. **M.W.M**, the Respondent herein filed grounds of opposition to resist the Summons. When the summons came up for interpartes hearing learned counsels appearing in the cause recorded a Consent Order to have the application disposed of by affidavit evidence and by written submissions.

I have considered the material placed before me and the written submissions. The facts leading to the filing of this application are largely straightforward and uncontested. M.M, deceased passed on and was survived by three wives namely: M.W.M, R.C.M and R.A.M. Two of those widows namely: R.C.M and R.A.M hereinafter referred to as the Appellants/Applicants successfully applied for Letters of Administration Intestate at Kigumo Senior Magistrate's Court. M.W.M, hereinafter referred to as the Respondent, filed an Affidavit of Protest to oppose the application for confirmation of grant. The dispute was heard by Honourable L. Nyambura, learned Senior Resident Magistrate. The Appellants had proposed in their schedule of distribution for the estate to be distributed as follows:

“That the identification and shares of all persons beneficiary entitled to the said estate has been ascertained and determined as follows: -

(i) Land parcel (particulars withheld) to be registered in the name of R.C.M on behalf of the children.

(ii) Land parcel (particulars withheld) to be registered in the name of R.A.M on behalf of her children.

(iii) Land parcel (particulars withheld) to be registered in the name of M.W.M on behalf of her children.

(iv) Land parcel (particulars withheld) to be registered in the name of M.W.M on behalf of her children.

(v) Land parcel (particulars withheld) to be shared as follows: -

- J.N.N to get 0.026 Hectare.

- M.N.M to get 0.026 Hectare.

- J.M.G to get 0.052 Hectare.

- M.N to get 0.026 Hectare.

- J.H.M to get 0.052 Hectare.

- B.M.N to get 0.026 Hectare.

- The remaining portion to be shared by the three houses of the deceased equally through the widows.

- 1st house – M.W.M ?.

- 2nd house – R.C.M – ?.

- 3rd house – R.A.M – ?.”

The Respondent on her part opposed the Appellants' proposal and instead gave the following mode of distribution.

“That I agree with:

(i) Land parcel (particulars withheld) to be registered in the name of R.C.M on behalf of the children.

(ii) Land parcel (particulars withheld) to be registered in the name of R.A.M on behalf of her

children.

That the lands should hence be registered as follows:

1. *(a) (particulars withheld) to be registered in the names of F.M.M.*
(b) (particulars withheld) to be registered in the names of K.M.

(c) Land parcel No. (particulars withheld) be registered in the names of M.W.M for herself and her children.

2. *That the deceased also owned 12 shares (particulars withheld) and the same should be registered in the names of M.W.M, R.C.M and R.A to share equally.”*

After hearing both sides, the learned Senior Resident Magistrate agreed with the Respondent’s schedule of distribution hence the grant was confirmed in terms of the protest. The Appellants were dissatisfied and were prompted to file this appeal. The Appeal was heard and determined by Lady Justice Kasango. The Honourable Judge delivered her judgment on 5th March 2009, which was in the following terms:

“1. The Judgment in the Senior Resident Magistrate’s Succession Cause No.11 of 2003 of 7th July 2004, is hereby set aside and the grant issued as a consequence of that judgment dated 3rd August, 2004 is hereby revoked.

2. **This Court substitutes that judgment with the judgment in the following terms: -**

- **M.W.M to get (particulars withheld) absolutely.**
- **R.C.M to get (particulars withheld) absolutely.**
- **R.A.M to get (particulars withheld) absolutely.**
- **(particulars withheld) to be shared equally between the children of the deceased who are as follows:-**

a) F.M – son.

b) R.G – Daughter (unmarried).

c) K.M – son.

d) S.N.M – daughter.

e) S.K.M – son.

f) A.C.M – Daughter(minor).

g) E.G.M – Daughter (unmarried).

h) E.G.M – Daughter (minor).

i) C.N – Daughter.

j) G.K.M – son (minor).

k) D.B.M – son (minor).

Those who are minors will have their share of the property held in trust by R.A.M.

3. There shall be no orders as to costs.”

M.W.M, the Respondent thereafter took out the motion dated 6th April, 2009 beseeching this Court to review the aforesaid judgment. The motion was heard and was dismissed on 19th February, 2010. Having given the background of the dispute, let me now consider the merits or otherwise of the summons.

The Appellants are basically seeking to have the decision of Lady Justice Kasango actualized. It is the Appellant’s submission that their attempts to enforce the decree of this Court in respect of the parcel of land known **(particulars withheld)** has not been successful because the Respondent has refused to execute the relevant forms and or documents necessary to sub-divide and transfer/transmit the suit property to the beneficiaries. The Respondent has averred that a similar application is pending before the Kigumo Senior Resident Magistrate’s Court, hence the Summons amounts to an abuse of the Court process. With respect, I do not think that is the correct position in law. The summons is validly before this Court since the judgment of the Subordinate Court was set aside and substituted with that of this Court. There is no evidence that any of the parties has challenged on appeal the judgment of Lady Justice Kasango of 5th March, 2009 nor the ruling of this Court of 19th February, 2010. It is obvious that what remains in this matter is the execution process which cannot succeed unless the orders sought herein are given. The Respondent does not deny that she has failed to append her signature to the relevant forms and documents. Where a party refuses to cooperate to give effect to the decision of the Court, the Court’s hands are not tied. In the circumstances will exercise its inherent power to give effect to its judgment. Such a residuary power is reserved to address such situations and challenges. In the final analysis, I am convinced the Summons General dated 3rd March, 2011 has merit. It is allowed as prayed. Since the dispute involves members of the same family, I direct that each party meets her own costs.

Dated and delivered this 27th day of April 2012.

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J. K. SERGON

JUDGE

In open court in the presence of Karanja holding brief Gacheru for the Respondent. No appearance Kimundi for Appellant.