



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
SUCCESSION CAUSE 1640 OF 2005
IN THE MATTER OF THE ESTATE OF DAVID KIHARA NYAGA (DECEASED)

R U L I N G

The application before the Court is brought by Chamber Summons dated 2nd November, 2010 and taken out under **Section 83 (g) and (i) of the Law of Succession Act**, and **Rules 49 and 63 of the Probate and Administration Rules**. By the application, the Applicant seeks the following orders –

1. *That this Honourable Court do declare that the administration of the deceased's estate in respect of the property Land Reference Number Nairobi/Block 93/672 is complete.*
2. *That this Honourable Court do declare that the Applicant, JULIANA NJAMBI KIHARA is entitled as a beneficiary to a half (½) share of the property Land Reference Number Nyandarua/Ngorika/772 and the remaining half (½) share be held in the names of the joint administrators as trustees for Elizabeth Cynthia Wanjiku and Margaret Catherine Njoki.*
3. *That this Honourable Court do declare that the Applicant, JULIANA NJAMBI KIHARA is entitled as a beneficiary to a half (½) share of the property Land Reference Number Nyandarua/Ngorika/773 and the remaining half (½) share be held in the names of the joint administrators as trustees for Elizabeth Cynthia Wanjiku and Margaret Catherine Njoki.*
4. *That this Honourable Court do declare that the Applicant, JULIANA NJAMBI KIHARA is entitled as a beneficiary to a half (½) share of all those shares held at the Housing Finance Company of Kenya Limited and the remaining half (½) share be held in the names of the joint administrators as trustees for Elizabeth Cynthia Wanjiku and Margaret Catherine Njoki.*
5. *That this Honourable Court do declare that the Applicant, JULIANA NJAMBI KIHARA is entitled as a beneficiary to a half (½) share of all monies held as bank deposit in account number 01105840, Housing Finance Company of Kenya Limited and the remaining half (½) share be held in the names of the joint administrators as trustees for Elizabeth Cynthia Wanjiku and Margaret Catherine Njoki.*
6. *That consequently the Applicant, JULIANA NJAMBI KIHARA do sequester her half (½) share portion of the properties distributed to her in the schedule of the Certificate of Confirmation of Grant.*
7. *That upon the said sequestration and the Applicant taking possession of the properties distributed to her, this Honourable Court do declare that the administration of the deceased's estate is complete in respect of all matters other than the continuing trusts.*

8. That the costs of this application be in the cause.

The application is supported by the annexed affidavit of Juliana

Njambi Kihara sworn on 2nd November, 2010 and is based on the grounds that -

- (a) A period of more than six (6) months has elapsed from the date of confirmation of the grant.**
- (b) Administration of the deceased's estate has not been completed because the Applicant has not yet sequestrated and taken possession of her shares of the distributed properties.**
- (c) The Applicant must first sequestrate and take possession of her shares of the distributed properties to enable the Court declare that the administration of the deceased's estate is complete save for the continuing trusts.**
- (d) It is absolutely necessary to complete the administration of the deceased's estate so as to discharge the administrators.**
- (e) The Applicant shall, upon completion of administration of the deceased's estate, file to the Court a full and accurate account of the complete administration.**

According to the Court record, M/S Mboya & Wangong'u, Advocates

for the Respondents, were served on 5th December, 2011. The matter came for hearing on 17th January, 2012, which was nearly six weeks from the date of service of the hearing notice. Unfortunately, neither the Advocates nor the Respondent attended Court on the material date. Being of the view that he had been served in sufficient time to allow for them to attend Court, or to file a replying affidavit or grounds of opposition but did not do so, the Court allowed the matter to proceed *ex parte*.

Mr. Kimondo for the Applicant submitted that the Applicant sought a determination of her share. Once that was done, the administration of the estate would be completed for, as it stands now, the administration is still pending. Once the administration is completed, the Applicant would file an account so that the administration could be closed and the administrators discharged. However, only the trust would continue. Counsel urged the Court to give the orders as prayed.

As observed earlier hereinabove, in spite of being served, the Respondents did not respond to the application and they did not appear in Court on the hearing date in spite of being served in sufficient time to do so. In the circumstances, the application is unopposed and the Applicant is entitled to the orders sought.

On account of the foregoing, prayers 2, 3, 4, 5 and 6 of the application by Chamber Summons dated 2nd November, 2010 are hereby granted as prayed. Costs in the Cause.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 26th day of April, 2012.

L. NJAGI
JUDGE