



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI LAW COURTS)

SUCCESSION CAUSE 1302 OF 2011

IN THE MATTER OF THE ESTATE OF MICHAEL NJOROGE MUCHIRI (DECEASED)

RULING

1. This ruling is delivered in the Summons for Confirmation of Grant dated 8th June 2012 in which the administratrix/applicants propose to distribute the deceased's three immovable properties, stock and death benefits to themselves to hold in trust for the widow (1st administratrix) and the deceased's minor children Pascal Muchiri Njoroge and Andrew Gachagwa Njoroge in equal shares.

2. The particulars of the properties proposed for distribution are as follows:-

1. **50% shareholding in L.R. No. 18113/112 Nyari estate, Nairobi.**
2. **50% in Ithanga/Ngelelia Block 1/381.**
3. **Kajiado/Ntashart/694**
4. **10,400 Safaricom shares**

5. **USD 457,500 being fatal accident compensation by Georgian Airways.**

3. Not being satisfied that the proposed mode of distribution met the legal requirements for intestacy succession, I directed that written submissions backed by authorities be filed for my consideration. Counsel for the applicants filed brief submissions citing only the definitions of a tenancy in common as provided for in **BLACKS LAW DICTIONARY** and **MODERN LAW OF REAL PROPERTIES**.

4. The applicants claim that the 50% sought to be distributed represents the deceased's 50% share in the properties held with the 1st applicant as tenants in common. Copies of the documents of title to the three immovable properties were filed as follows:-

(i) Title Deed dated 16th January 1992 in respect of KAJIADO/MTASHART/694.

(ii) Title deed dated 19th January 2006 in respect of ITHANGA/NGELELIA Block 1/381.

(iii) Certificate of Title dated 20th May 1997 in respect of L.R. No. 18113/112.

5. The first title document, (Kajiado/Mtashart/694) indicates that the deceased was the sole proprietor of the land. In my view it is the only immovable property available for distribution under this succession cause.

6. The second title document, (Ithanga Ngelelia Block 1/381) indicates that the deceased and the 1st administratrix (widow) own the property as absolute proprietors. A presumption is properly made that

they owned the same as tenants in common since the title does not say they were joint proprietors. The said property is, in my considered view, not subject to succession as it is now governed by the provisions of **Section 119 of the Registered Land Act** which provides for transmission upon the death of a proprietor in common.

7. The third title document (L.R. No. 18113/112) shows that the deceased Muchiri Njoroge owned the property with the 1st administratrix as joint tenants. The same cannot therefore be said to have been held by the deceased and the 1st administratrix as tenants in common. It is not available for distribution since the same is deemed to have passed to the widow being a joint tenant, subsequent upon the deceased's demise.

8. The authorities cited do not negate but rather confirm my findings herein as regards the tenancy in common which gives each tenant (owner) the equal right to ownership of the whole property but without the right to survivorship, the legal interest being one of a whole and several tenancy, conferring an equal but undivided (and indivisible) share over the whole.

9. For the above reasons I am unable to confirm the Grant as prayed, since the mode of distribution does not satisfy the provisions of **Section 71 of the Law of Succession Act**. Accordingly, the summons for confirmation is stayed pending the necessary amendments as to the mode of distribution.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF JULY, 2012.

M.G. MUGO
JUDGE

In the presence of :

Mr. Ali holding brief for Koech for the Applicants.