



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

SUCCESSION CAUSE NO. 747 OF 2009

**IN THE MATTER OF THE ESTATE OF KIMUNYA GITUTO alias KIMUNYA S/O
GITUTO.....DECEASED**

**JACKSON NGATIA KIMUNYA
HUMPREY GAKURU
KIMUNYA.....PETITIONERS**

VERSUS

**JOSEPH KIMARU
KIMUNYA.....RESPONDENT**

RULING

The grant of letters of administration intestate in respect of the estate of Kimunya Gituto alias Kimunya s/o Gituto, deceased was given in the joint names of Jackson Ngatia Kimunya, Humprey Gakuru Kimunya and Joseph Kimaru Kimunya on 10th December 2009. The grant was confirmed on 16th July 2010. The assets of the estate available for distribution were identified as follows:

1. Karatina Town Block 1/99.
2. Magutu/Gathehu/418
3. Narok/Mutara/Block 1/653.
4. Plot no. Giakabei/1

The three administrators were to be jointly registered as proprietors of the aforesaid parcels of land in

trust for themselves and the members of the houses they represented.

Jackson Ngatia Kimunya and Humprey Gakuru Kimunya, hereinafter referred to as the Applicants, have taken out the summons General dated 15th February 2011, the subject matter of this ruling, in which they seek for the following orders:

- 1. That the Honourable court be pleased to authorize its Deputy Registrar to sign all the necessary documents on behalf of JOSEPH KIMARU KIMUNYA to give effect to the confirmation of Grant issued on 16th July 2010.**
- 2. That the honourable court be pleased to issue an order directing the Manager Equity Bank Karatina Branch to sign on behalf of JOSEPH KIMARU KIMUNYA and/or release the money held in the joint account Number 0040294296322 in the names of the three petitioners herein JACKSON NGATIA KIMUNYA, HUMPREY GAKURU KIMUNYA AND JOSEPH KIMARU KIMUNYA to the said three petitioners in equal shares, being the amount paid to them after the sale of KARATINA TOWN BLOCK 1/99 and PLOT NO. GIAKABEI/1, which are items No. 1 & 4 indicated in the certificate of the confirmed grant issued on 16th July 2010 and as per their mutual agreement.**
- 3. Costs of this application be provided for.**

The summons is supported by the joint affidavit of the applicants. The applicants have stated that the three administrators mutually agreed to sell: (i) Karatina Town Block 1/99 and (ii) Plot no. Giakabei/1 and share the proceeds equally. The trio are said to have agreed to open an interest earning account in their joint names. As a result of the later agreement account no. 0040294296322, Equity Bank, Karatina Branch was opened. The proceeds of the sale of the aforesaid parcels of land was deposited into that. The applicants are now saying that their brother Joseph Kimaru Kimunya, the Respondent herein has refused to sign the necessary documents at the bank to enable them withdraw the case and share as agreed. The Respondent on his part swore a replying affidavit to oppose the summons. He admitted that he has refused to sign the withdrawal slips because he is of the view that the money should be shared equally between the deceased's 19 children instead of houses yet the houses are not even.

I have considered the material placed before me and it is clear that the dispute between the parties is that relates to the sharing of the proceeds of the sale of the two parcels of land. There is no dispute that the deceased was married to three wives. From the averments it would there is only one widow which survived the deceased i.e Charity Wakwaya. The law is very clear as how the estate of a polygamous man should be shared. The same should be shared according to the provisions of section 40 of the Law of Succession Act. I am convinced the Respondent was right in declining to sign the withdrawal slips and in declining to share the money in equal measure as proposed by the Applicants. I declined to grant orders sought and direct the administrators to share out the proceeds under section 40 of the Law of Succession Act. Consequently the Summons General dated 21st May 2010 is dismissed. Each party to bear his or her own costs

Dated and delivered this 15th Day of July 2011.

J.K. SERGON

JUDGE

In open court in the presence of the parties.

J.K. SERGON

JUDGE