



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Succession Cause 81 of 2005

ESTATE OF JUSTO KINYORI GATHERU - DCD

MARY WARIMA KINYORI

MERCY WANGU KINYORI.....APPLICANTS

VERSUS

HARRISON MUTURI KINYORI

DADSON IRURA KINYORI

JOHNSON GATHERU KINYORO..... RESPONDENTS

RULING

Pursuant to rules 49, 59(5) and 73 of the Probate and Administration Rules, Mary Warima Kinyori and Mercy Wangu Kinyori, the applicants herein, took out the summons dated 11th November 2009 in which they applied for an order to authorize the Deputy Registrar of this court to execute all the necessary documents in place of the respondents namely Harrison Muturi Kinyori, Dadson Irura Kinyori and Johnson Gatheru Kinyori, to effect the partition and issue title deeds in respect of L.R. No. Kirimukuyu/Kiria/162 to the respective beneficiaries. The aforesaid summons is supported by the affidavit of Mary Warima Kinyori.

When served with the summons, the Respondents opposed the summons by filing the replying affidavit of Harrison Muturi Kinyori.

The background of the facts leading to the filing of this application can easily be traced from the affidavits of the parties herein. It is not in dispute that the grant of letters of administration intestate in respect of the estate of Justo Kinyori Gatheru alias Kinyori s/o Gatheru, deceased were issued in the joint names of Harrison Muturi Kinyori, Mercy Wangu Kinyori and Mary Warima Kinyori on 29th March 2006. the aforesaid grant was confirmed on 6th October 2008 subject to the following conditions:

- i*** ***That Parcel No. Kirimukuyu/Kiria/162 shall be shared equally among Harrison Muturi Kinyori, Johnson Gatheru Kinyori, Mercy Wangu Kinyori, Milka Ngunju Kinyori, Nancy Wanjira Mbote and Dadson Irura Kinyori.***
- ii*** ***Gladys Nyachogora Kinyori shall solely inherit the share equivalent to one acre in Mwichuri Farmers Co. Ltd.***
- iii*** ***The Protest is marked as withdrawn.***

It is the submission of the applicants that the respondents have blatantly refused to sign the necessary documents to effect the subdivision and issuance of title deeds in respect of L.R. No. Kirimukuyu/Kiria/162. For the above reason, they were prompted to take out the aforesaid summons.

The Respondents have denied the applicants' allegations. They (respondents) have in turn accused the applicants of refusing to sign the application for Land Control Board consent to enable them carry out the survey and subdivision of the aforesaid parcel of land. They have alleged that all other beneficiaries have signed the relevant forms except for Mercy Wangu and Milka Ngunju. They even annexed copies of the application for consent forms and the letter of consent to the replying affidavit. They urged this court to issue an order to compel the applicants to execute the necessary documents.

I have carefully perused the application and the affidavits filed for and against the application. The parties have exchanged accusations and counter-accusations. I have critically examined the annexures attached to the replying affidavit of Harrison Muturi Kinyori. Those documents include the application for consent of the Land Control Board from the Mathira Land Control Board and the consent duly issued by the chairman, Land Control Board on 4/11/2009. I am convinced that the Respondents have not refused to execute the necessary documents. In fact they have taken steps to comply with the terms of the order issued on 6/10/2008. There is no evidence also to show that the applicants have failed to cooperate in signing the relevant documents to subdivide L.R. No. Kirimukuyu/Kiria/162 into six equal portions. It would appear the parties are willing to execute the relevant documents save that they appear to have some little misunderstanding. For the above reason I do not think it is necessary for this court to exercise its discretion to grant the order. The summons is ordered dismissed with each party meeting its costs. The parties involved in this dispute are directed to exchange and execute relevant documents within 14 days. Mention on 28/1/2010 to confirm whether or not the parties have complied with the above directive.

Dated and delivered this 13th day of January 2010.

J.K. SERGON
JUDGE

In Open court in the presence of the parties.

J.K. SERGON
JUDGE