

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Succession Cause 754 of 2008

**[IN THE MATTER OF THE ESTATE OF SIMEON KINGAU MUGA alias SIMON K. MUGA
(DECEASED)**

AND

BENSON MUGO KING'AU..... 1ST PETITIONER

DANIEL MAINA KING'AU..... 2ND PETITIONER

VERSUS

PETER KARANI KING'AU..... OBJECTOR

RULING

This ruling is the offshoot of two applications namely:- The summons dated 4th December 2009 and the summons dated 4th February 2010. In the summons dated 4th December 2009, Daniel Maina King'au, the 2nd petitioner herein, seeks to have the caution registered against title No. Mutira/Kaguyu/123 removed so that the terms of the certificate of the confirmed grant effected. In the summons dated 4th February 2010, Peter Karani King'au, the objector herein, sought for the following orders interalia:

- (i) **The parcel known as L.R. Mutira/Kaguyu/123 be subdivided in accordance with the annexed sketch to take into account the developments made thereon by the beneficiaries.**
- (ii) **The beneficiaries be given sufficient time to relocate their developments that may fall outside their portions or that they be compensated for the same.**

I propose to begin by dealing with the summons dated 4th December 2009. The summons is supported by the affidavit of Daniel Maina King'au sworn on 4th December 2009. Peter Karani King'au filed a replying affidavit to oppose the summons. Basically, the applicant is seeking to have the caution removed. It is said the cautioner is dead and that the existence of the caution is impeding on the implementation of the terms of confirmed grant. Peter Karani King'au, opposed the summons on the basis that the same is frivolous, vexatious and premature. It is his submission that parties have not agreed on the demarcation. It is his argument that this application be stayed pending the outcome of the summons dated 4th February 2010.

I have considered the rival submissions. It is not denied that the person who lodged the caution i.e. Margaret Karuana King'au is dead. It is also not in dispute that the grant has been confirmed and no one has so far applied for the grant to be revoked and or annulled. In view of the foregoing I do not see the need of sustaining the caution because the cautioner is dead. If the caution is maintained, it will impede the implementation of the certificate of confirmed grant. I find the summons to be well founded. I allow the summons as prayed.

Having concluded the summons dated 4th December 2009, let me now turn my attention to the summons dated 4th February 2010. I have already set out the orders sought in the aforesaid summons. The application is supported by the affidavit of Peter Karani King'au. Daniel Maina King'au opposed the application by filing a replying affidavit. The applicant is seeking to have the parcel of land in dispute subdivided in accordance to the sketch map attached to the affidavit filed in support. The applicant has also sought for an order giving the

beneficiaries time to relocate to their portions. The applicant has stated the developments he has done on his portion. The applicant has stated that the beneficiaries have not agreed on how the subdivisions should be carried out. Daniel Maina King'au opposed the application on the basis that since the confirmation of the grant the beneficiaries have agreed to occupy and continue developing their respective portions as well as retaining their developments therein. I have considered the rival submissions. I find the application curious. It is obvious that the grant was confirmed in the names of Benson Mugo King'au and Daniel Maina King'au. The duo are the administrators of the estate of Simeon King'au Muga alias Simon K. Mugo, deceased. The issue relating to the subdivision of the property in dispute is within the powers of the administrators. Peter Karani King'au is not one of the administrators. I expected such an application to be made by the administrators. I find the application to vexatious, incompetent and premature. The same has no merit in any event. I dismiss the summons dated 4th February 2010 with costs.

Dated and delivered this 14th day of May 2010.

J.K. SERGON

JUDGE