



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Succession Cause 304 of 1994**

**IN THE MATTER OF THE ESTATE OF STEPHEN KIURI KAGUIRI .....(DECEASED)**

**AND**

**JANE WANJIRU KIURI ..... PETITIONER**

**VERSUS**

**1. GERALD KIMARU KIURI )**

**2. JOHNSON MWANGI TUMBU ) ..... OBJECTOR**

**RULING**

The grant of letters of administration intestate was issued in respect of this estate on 9<sup>th</sup> December 1998 to Jane Wanjiru Kiuri and Gerald Kimaru Kiuri. There is before this court pending the determination of the summons for confirmation of that grant. What seems to be blocking the hearing of the summons for confirmation is an affidavit by Mwangi Stephen Kiuri whereby he deponed that the distribution of the estate property had not been agreed upon and that there were parcels of land which were included in the summons which were not forming part of the estate. However what is for determination in this ruling is a chamber summons dated 30<sup>th</sup> may 2000. It was filed by Johnson Mwangi Tumbu. It seeks the following prayers.

- 1. That Johnson Mwangi Tumbu be added as a co-petitioner in this matter.*
- 2. That the award of the Mukurweini land disputes tribunal in Mukurweini LDT 15/96 be read and adopted by this court.*
- 3. That the applicant be awarded 1.6 acres from the land parcel number GITHI/IGANA/116 and 174.*

The applicant described himself in the affidavit in support as the nephew of the deceased. He stated that as such he was entitled to 1.6 acres of those parcels of land which was in accordance with the determination of the tribunal at Mukurweini LDT No. 15/96. He stated that that award to date had never been challenged. That accordingly it should be read by this court and adopted. He annexed that award to the affidavit. The award in its conclusion had this to say:

*“..... We considered that the property of Stephen Kiuri which is registered in his name*

*Githi/Igana/116 and Githi/Igana/174 21 acres should be shared to his 13 sons. That means Johnson Mwangi Tumbu 1.6 acres, and Kiuri Tumbu 1.6 acres being sons of his brother be given 3.2 acres”.*

The application was opposed on various fronts. In opposition the respondent stated that the applicant was not an heir to this estate. That this application was belated having been brought after the grant was issued. Mr. Kiminda learned counsel for Mwangi Stephen stated that there was no provision for reliance on order 1 rule 1 of the civil procedure rules. In my view that is the correct position. Rule 63 of the probate and administration rules does not provide for the reliance on Order I rule 1. What however defeats this application is the applicant’s prayer for the court to adopt the tribunal’s award. The record of this matter does not show that the tribunal herein was ordered by this court. It does seem that the tribunal herein was proceeding during the subsistence of this Succession Cause. Indeed that becomes obvious from the applicants affidavit sworn on 8<sup>th</sup> January 1998. He deponed in paragraph 8 as follows:-

*“That I and my brothers and other heirs who are included in the petition have had disputes before the district Officer Mukurweini and the land disputes tribunal wherein the tribunal had ruled that the estate be shared in equal shares but it was disclosed to the tribunal that there is an pending succession cause and it is when I discovered about this cause in October 1997 (annexed are summons from the D.O. and the disputes tribunal marked JMT I).”*

That being so since this court was seized with this matter the tribunal had no jurisdiction to determine the very same matter. Further the tribunal’s jurisdiction is well spelt out in section 3 of the Land Disputes Tribunal Act. That section provides as follows:

***“(1) Subject to this Act, all cases of a civil nature involving a dispute as to-***

- (a) The division of, or the determination of boundaries to, land, including land held in common;***
- (b) a claim to occupy or work land; or***
- (c) trespass to land,***

***Shall be heard and determined by a Tribunal established under section 4.”***

That jurisdiction as can well be seen does not include making decisions relating to title of land nor to decisions relating to succession. The court of appeal in the case of *HUMPHREY OLLWISI MURANDA vs YAKOBET NECHESA WABUKO Civil appeal no. 44 of 2006* has this to say on jurisdiction;-

***“Before embarking on the hearing of any matter, every court must be satisfied that it has the jurisdiction i.e. the legal power or authority to hear the matter. If the court has that power, then and only then does it proceed to hear the matter; but if the court determines that it has no jurisdiction then as was said in the case of THE OWNERS OF THE MOTOR VESSEL ‘LILIAN S’ vs CALTEX OIL (KENYA) LTD (1989)KLR 1 “..... the court must down tools.”***

The tribunal had no jurisdiction to determine the distribution of the deceased’s estate. The tribunal’s award on that basis alone cannot be read nor adopted by this court. In considering the evidence brought before court there is no basis shown why the applicant should be added as an administrator of this estate. That prayer too is defeated. The finding of this court is that the chamber summons dated 30<sup>th</sup> May 2000 has no merit and is dismissed with costs being awarded to Gerald Kimaru Kiuri, Mwangi Stephen Kiuri and Jane Wanjiru Kiuri to be paid by Johnson Mwangi Tumbu.

***Dated and delivered at Nyeri this 16<sup>th</sup> day of October 2008.***

**MARY KASANGO**

**JUDGE**