



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 891 OF 1999

IN THE MATTER OF THE ESTATE OF MBURU KIUKA

(Deceased)

J U D G M E N T

This judgment is this court's final decision in connection with the summons dated 15th February 2001 for confirmation of a grant of letters of administration issued on 30th March 2000. The judgment follows my ruling dated 30th September 2002 in which I said I could not distribute the estate of the deceased because before me the parties had presented three different and inconsistent lists of the assets required to be distributed. I therefore stayed the distribution of the estate as well as the confirmation of the grant until one agreed list of all the distributable assets in the estate of the deceased was filed in court together with fresh written submissions.

On 31st October 2002 the parties filed what they called an agreed list of assets in the estate of Mbaru Kiruka (Deceased). The said agreed list consisted of the following:

- (a) GITHUNGURI/GITHIGA/221 (3.25 Acres)
- (b) GITHUNGURI/GITHIGA/T.711 (0.25 Acre)
- © GITHUNGURI/GITHIGA/1521 (0.50 Acre)
- (d) GITHUNGURI/GITHIGA/1462 (0.25 Acre)
- (e) ½ plot No. 1 Matuguta Shopping Centre (developed)
- (f) Plot No. 1427 situate at Githurai owned by Githurai Tinganga Co. Ltd.
- (g) One ordinary share in Githiga Mui Company Ltd.
- (h) One ordinary share in Gema Holdings Limited.
- (i) One share in Nakuru Mutukanio Farmers Co. Ltd. (j) Motor Vehicle Registration Number KSE 377.

I note that that list does not include all the assets that were discussed in my ruling dated 30th September 2002. I have been told that the asset which had been referred to as L.R. NO. Githunguri/Githiga/821/11 also written as L.R. NO. Githunguri/Githiga/821/J or Plot No. 11 at Matuguta Shopping Centre, has been left out because it was now recognized and agreed that it had been transferred by the Deceased to Lucy Muthoni Mburu intervivos and that therefore the dispute whether that asset was

an asset in the estate of the Deceased no longer existed. I was however asked to take it into account when distributing the present estate of the Deceased.

Although I had said that fresh written submissions were to be filed together with the agreed list, Mr. Mbigi and Mr. Ongego were not keen in doing so as they felt that was not necessary in view of what each had said in his previous submissions. They did not realize that those submissions were made in consideration of the assets some of which have been omitted from the agreed list of assets.

But since that is how they wanted it to be, I will proceed with the judgment to finalise the issues of distribution and confirmation relying on the agreed list of assets in this matter where the parties may be proving to be evasive on the identification of assets. As requested, I do take into consideration the fact that the Deceased, before his death, had transferred to Lucy Muthoni Mburu the asset known as L.R. No. Githunguri/Githiga/821/11, being the most valuable asset among the assets which had been owned by the Deceased as disclosed to the court in this Succession Cause. I recognize the fact that the Deceased was polygamously married to two wives who are Co-Administrators in this Succession Cause. I will therefore proceed to divide assets in the agreed list between the two houses of the Deceased. Thereafter each house should distribute its assets among beneficiaries in the house.

Accordingly it is hereby ordered that the assets mentioned in the agree list be distributed between the two houses of the Deceased as follows: GLADYS WANJIRU MBURU

- (a) Land parcel Githungui/Githiga/T. 711 (
- b) Land parcel Githunguri/Githiga/221
- (c) Land parcel Githunguri/Githiga/1462
- (d) Deceased's share interest in Gema Holdings Limited
- (e) Deceased's share interest in Githiga Muiri Company Limited.

LUCY MUTHONI MBURU

- (a) Land parcel Githunguri/Githiga/1521
- (b) ½ Plot No. 1 Matuguta Shopping Centre (developed)
- (c) Deceased's interest in Githurai Tinganga Co. Ltd in Relation to Plot No. 1427
- (d) Deceased's share interest in Nakuru Mutukanio Farmers Co. Ltd.
- (e) Motor Vehicle Registration Number KSE 377.

The above having been done, the Summons before me dated 15th February 2001 for confirmation of grant issued on 30th March 2000 be and is hereby granted in terms of the distribution of the estate of the Deceased done in this judgment.

Costs in the cause.

Dated, delivered and signed at Nairobi this 11th Day of December 2002.

J.M. KHAMONI

JUDGE