



REPUBLIC OF KENYA



**In re Estate of Makimei Kuria (Deceased) (Succession Cause 84 of 2017 & Civil Case 1683 of 1989 (Consolidated)) [2024] KEHC 8555 (KLR) (12 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8555 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
SUCCESSION CAUSE 84 OF 2017 & CIVIL CASE 1683 OF 1989 (CONSOLIDATED)**

**A MSHILA, J**

**JULY 12, 2024**

**FORMERLY SUCCESSION CASE NO. 703 OF 1984  
IN THE MATTER OF THE ESTATE OF MAKIMEI KURIA(DECEASED)  
AS CONSOLIDATED WITH HCCC NO. 1683 OF 198**

**RULING**

1. Before court is the Summons dated 2<sup>nd</sup> June, 2022 and brought under Section 47, 83(f) of the [Law of Succession Act](#) and Rule 73 of the [Probate and Administration Rules](#). The Administrator/Applicant Peter Muturi Makimei sought for orders:-
  - a. Spent
  - b. That an order do issue directing the District Land Surveyor, Kiambu to forthwith proceed and carry out the picking of the boundaries on Lari/Kirenga 754 and Lari/Kambaa/50 in terms of earlier orders of this Honourable Court.
  - c. That an Order do issue directing the OCPD Lari Police Division to provide adequate security for the performance of prayer (b) herein above.
2. The application is premised on the grounds that the Executor has to complete his mandate as ordered by this Court and the delay in distributing the estate maybe visited upon him to his detriment.
3. The application is supported by the affidavit of Peter Muturi Makimei sworn on even date where he deposed that a Certificate of Confirmation of Grant was issued on 15/10/1999 but process of distribution has been frustrated by his co-executor as such his appointment was revoked on 9/11/2000. That his former co-executor continued to frustrate the distribution process by placing cautions claiming he had been left out but the court threatened to find him in contempt as such he removed the said cautions save for LARI/KIRENGA/754 and LARI/KAMBAA/50. That the court ordered for the restrictions to be removed. Nevertheless as he made arrangements with the District surveyor to visit the parcels of land an application dated 16/10/2009 was made and injunctive orders were issued and the same registered as such the surveyor work was not carried out. He deposed that the final



- orders by the court have not been vacated. Rose Waithira Kuria was said to have participated in the proceedings herein. The court was urged to order the raising of the restrictions on the two properties afore mentioned.
4. Rose Waithira Kuria filed her replying affidavit sworn on 4/9/2023. The same was not availed to the court.
  5. Samuel Kuria Makimei filed his replying affidavit sworn on 23<sup>rd</sup> September, 2022. He deposed that the estate of the deceased should be distributed in accordance to the will and that the petition by the respondent seeking to award Wanjiru Makimei deceased with 11.4 acres out of LARI/KAMBAA/GITHOGOIYO 50 was dismissed. The respondent was said to be the one derailing the distribution process as he is always walking out of meetings. Rose Waithira Kuria and the late Patterson Kuria were said to be beneficiaries of the deceased's estate as they are beneficiaries of Lari/Kirenga/Gituamba/754. The respondent was accused of embezzling funds as the cost of surveying the properties was borne by the beneficiaries while the administrator chose to use funds belonging to the estate. The estate of the deceased was said to be too vast to be entrusted to one person. The family stated that they are confident that Rose Waithira Kuria would administer the estate without fear or favour.
  6. The summons was canvassed by way of oral submissions.
  7. Mr. Njenga counsel for the Applicant submits that the summons for revocation of grant stopped the distribution process while the administrator has the mandate to complete the process. The court was urged to make an order for police assistance when picking properties. The deceased was said to have identified the parcels as such everyone would get their share. The confirmed grant was said to conclude the matter as such the court was urged to allow the orders as sought.
  8. Mr. Nyaberi counsel for Rose Kuria a beneficiary opposed the application. He contended that there was an agreement made by the family on sharing of the estate as per the will left by the deceased. LARI/KAMBAA/50 was said to have been shared out on the ground and each beneficiary gets 13.75 acres. That Stephen Njuguna surrendered his share to John Kuria and Peter Muturi to get 2.75 acres and 11 acres respectively. That Lari/754 was shared amongst Samuel Kuria and John Kuria, Charles Kuria and Patterson Makimei and that the executor has no share in this parcel and the beneficiaries named have no issue sharing out this property without being forced by the police. The respondents were said to be ready to divide the property without assistance by the police.
  9. Oonge Counsel for Samuel Makimei submitted that a replying affidavit sworn on 23/9/2022 has been filed and the same states that the purpose why police assistance is being sought is for evil intents. That a ruling was made to include Lari/Kambaa/50 in the Certificate of confirmed grant and that only persons named in the will were entitled to share as well as Lari/774. It was stated that police assistance is not required during the sub-division of the property. The court was urged to dismiss the application and to allow the parties to sub-divide the property as per the will.
  10. Mr. Njenga in rejoinder submitted that there is hostility on the ground as such he prays for police assistance. That Rose was not provided for and she wants to be added and that they should go by the record to finalize the matter.

## **Analysis**

11. The fundamental duty of this court is to do justice between the parties and denial of this relief is found to limit and prejudice the Applicant's interest in the estate; from the circumstances of the case the material, placed before this court and in order to meet the ends of justice and also to bring closure to



this matter this Court is inclined to reconsider the application requesting for security to enable the surveyor execute his duty;

12. For the forgoing reasons this court is satisfied that there is *bona fide* reason to grant the surveyor provision of security whilst visiting the subject property for purposes of partitioning the property so as to give effect to the determination made.

### **Findings And Determinations**

13. For the forgoing reasons this court makes the following findings and determinations;
- i. This Court finds the application has merit and it is hereby allowed
  - ii. An order do and is hereby issued directing the District Land Surveyor, Kiambu to forthwith proceed and carry out the picking of the boundaries on Lari/Kirenga 754 and Lari/Kambaa/50 in terms of earlier orders of this Honourable Court.
  - iii. An Order do and is hereby issued directing the OCPD Lari Police Division to provide adequate security for the performance of prayer (ii) herein above.
  - iv. The Applicant to bear the costs on (ii) and (iii)
- Orders Accordingly

**DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 12<sup>TH</sup> DAY OF JULY, 2024.**

**A. MSHILA**

**JUDGE**

In presence of;

Mourice – Court Assistance

Kinyua h/b for Njenga for administrator

Oonge – for Samuel for Patterson Kuria beneficiary

Nyaberi for Rose

