



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Joseph Gatungo Mwaniki (Deceased) (Succession Cause 70 of 2009) [2024] KEHC 16998 (KLR) (17 September 2024) (Ruling)

Neutral citation: [2024] KEHC 16998 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 70 OF 2009
RN NYAKUNDI, J
SEPTEMBER 17, 2024**

BETWEEN

MARY NJERI KINYANJUI 1ST PETITIONER

JOSEPH GATUNGO 2ND PETITIONER

AND

MATAYO MASITSA 1ST OBJECTOR

HODO MWAMBUSHI MUG'ASIA 2ND OBJECTOR

RULING

1. Before this court is a Notice of Motion dated 31.7.2024 seeking the following orders
 - a. That this application may be heard on an Application for Orders that
 - b. That the court be pleased to summon the chief Timboroa location, Baringo County to confirm the death of the 1st Administrator one, Mary Njeri Kinyanjui.
 - c. That this Honourable court be pleased to order that one Mary Njeri Kinyanjui (deceased) be removed as administrator of the estate of Joseph Gatungo Mwaniki
2. That the Application is based on the following grounds:
 - a. That the grant in the matter was confirmed on 21.3.2023
 - b. That 1st administrator one Mary Njeri Kinyanjui died soon after before she could transfer the land to the purchaser's from the deceased's estate.
 - c. That as such the purchasers are stuck as they cannot get their title deeds without the approval of the 1st administrator who is now deceased



- d. That the purchasers are unable to obtain the death certificate as the family members have declined to co-operate with them
 - e. That it is interest of justice that the chief be summoned to confirm the death of the 1st administrator to enable the court to order her name be removed as an administrator.
3. In addition, the Applicant filed an affidavit claiming purchasers interest which has not been secured by the administrators.
 4. I have considered the matter within the provisions of Sections 3,3A of the *Civil Procedure Act* Order 40 rules 1 of the Civil Procedure Rules and All Other enabling Provisions of the Law) and I am of the considered view that the court has no material evidence to declare Mary Njeri Kinyanjui as having passed on and to be declared dead by virtue of the Applicant's assertions in the affidavit. It is also not maintainable in law that the Chief Timboroa location should be the one to confirm the death of the deceased. What is required is evidence of a death certificate or burial permit in any event. Looking at the certificate of confirmation of grant there is every indication that the beneficiaries to the estate comprising of Ester Wambui, Geoffrey Kinyanjui, Naomi Mumbi, would be better placed to produce evidence before this court as to the demise of the deceased.
 5. As a consequence, this court shall cause the summons to be issued to Esther Wambui, and Geoffrey Kinyanjui to attest to the survivorship or demise of Mary Njeri Kinyanjui
 6. Status Conference on 15. 10. 2024

DATED, SIGNED AND DELIVERED AT ELDORET THIS 17TH DAY OF SEPTEMBER 2024.

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R. NYAKUNDI
JUDGE

