



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

SUCCESSION CAUSE NO. 338 OF 2013

[FORMERLY NYERI HIGH COURT P&A CAUSE 289 OF 2011]

RE ESTATE OF DAVID THIONG'O MAHUTI ALIAS THIONG'O MAHUTI (DECEASED)

JOSEPH MWANGI THIONG'O.....ADMINISTRATOR/APPLICANT

VERSUS

FRANCIS MWANGI THIONG'O.....CO-ADMINISTRATOR/RESPONDENT

JECINTA WANJIKU MWANGI THIONG'O.....RESPONDENT

PAUL WAITHAKA THIONG'O.....RESPONDENT

SAMUEL MUIRURI THIONG'O.....RESPONDENT

ESTHER MWITHAGA THIONG'O.....RESPONDENT

RULING

1. The petitioner craves three reliefs in the *amended summons* dated 14th July 2020. Firstly, that he be authorized to execute all necessary documents on behalf of the five respondents relating to distribute *Loc.20/Kambirwa/477* in accordance with the confirmed grant. Secondly, that the Land Registrar be directed to dispense with the production of passport photographs and PIN Certificates of the respondents; and, thirdly, that the Land Registrar dispense with the production of the original title deed of the said property.

2. The application is contested by the respondents through a replying affidavit sworn on 26th February 2021.

3. The substratum of the application is that the respondents have refused to execute the requisite forms or to provide their passport size photographs and PIN Certificates to enable distribution of the land as per the rectified grant issued by the court on 3rd December 2019.

4. The retort by the respondents is that they have not obstructed distribution but want it to follow the judgment of the Court of Appeal delivered on 30th September 2015. The 1st respondent claims that the original title is in safe custody but does not disclose where or with who. He also says that he is willing to provide his identity card, PIN and passport size photos.

5. On 27th April 2021 I heard brief arguments from all the parties. It is instructive that they are all acting in person.

6. The history of the litigation is material. The deceased was polygamous and died intestate. On 6th October 2014, the High Court (*Ngaah J*) decreed that the suit property be divided in half and shared equally between the two houses. Following an appeal, the Court of Appeal delivered judgment on 30th September 2015 in the following terms-

“The upshot of our consideration of this appeal is that it succeeds in part. The learned judge’s, rejection of the appellant’s protest is upheld. The confirmation of the letters of administration is upheld but the terms thereof are set aside with the following substitution;

1. The parcel **LOC.20/KAMBIRWA/477** shall be divided between the first and the second houses in the ratio of **4:5**.

2. Joseph Mwangi Thiong'o, Margaret Wanjiku Mwangi, Jane Gitiko and Eunice Muthoni Waweru shall have equal shares in the portion allocated to the first house.

3. Esther Mwithaga Thiong'o, Francis Mwangi Thiong'o, Jecinta Wanjiku Thiong'o, Paul Waithaka Thiong'o and Samuel Muiruri Thiong'o shall have equal shares in the portion allocated to the second house.

4. Esther Mwithaga Thiong'o shall hold a life interest in the portion to be allocated to her.”

7. On 2nd December 2019, I directed that a rectified grant be issued in conformity with the orders of the Court of Appeal. The *rectified certificate of grant* was formally issued on 3rd December 2019. Clearly, the litigation should have ended and there is no good reason for the road blocks set up by the respondents to distribution.

8. My orders are thus as follows-

i. That all the respondents shall within the next 21 days provide the original title of the suit land, copies of their identity cards, PIN certificates and passport size photographs to the administrator/applicant and execute all necessary forms and instruments to subdivide and transfer the suit property in accordance with the judgment of the Court of Appeal and the rectified grant.

ii. That in default of compliance with order (i) above, the Deputy Registrar of the High Court shall execute all necessary documents on behalf of the five respondents to distribute Loc.20/Kambirwa/477 in accordance with the judgment of the Court of Appeal above and the rectified grant issued on 3rd December 2019.

iii. That in the event of order (ii) above, the Land Registrar shall dispense with the production of the original title, the passport photographs and PIN Certificates of the respondents in issuing the new titles to the beneficiaries.

iv. That I make *no order on costs*.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 6TH DAY OF JULY 2021

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Applicant (in person) present.

Protestors absent.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.