



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 3079 OF 2002**

**IN THE MATTER OF THE ESTATE OF JOSEPH GICHUKI RIUNGE (DECEASED)**

**FRANCIS KIMANI GICHUKI.....1<sup>ST</sup> APPLICANT**

**DAVID MUNIU RIUNGE.....2<sup>ND</sup> APPLICANT**

**-VERSUS-**

**THERESA WANJIRU RIUNGE.....1<sup>ST</sup> RESPONDENT**

**JOSEPHINE NJERI RIUNGE.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. On 9<sup>th</sup> July 2018 a certificate of confirmation in respect of the estate of the deceased Joseph Gichuki Riunge was issued to Theresa Wanjiru Riunge (1<sup>st</sup> respondent), Francis Kimani Gichuki (1<sup>st</sup> applicant), Francis Mburu Riunge and David Muniu Riunge (2<sup>nd</sup> applicant). The 2<sup>nd</sup> respondent Josephine Njeri Riunge is one of the daughters of the deceased, and a beneficiary of the estate. On the application by the respondents, on 27<sup>th</sup> November 2019, the applicants and Francis Mburu Riunge were directed to distribute the estate of the deceased as per the certificate of confirmation within 60 days, failing which the Deputy Registrar was to effect the distribution.

2. It is clear that by 17<sup>th</sup> February 2020 when the applicants brought the instant application, the estate had not been distributed. Instead they had unilaterally identified a valuer (Q Macs Realtors Ltd) to value the properties of the estate, and on the basis of this valuation they had come up with a new proposal on the distribution of the estate. An example will suffice. LR No. Limuru/Bibirioni/246 was according to the certificate of confirmation supposed to be shared equally to all the 9 beneficiaries of the deceased who include the respondents. In the distribution proposal contained in the application, it was only the applicants and the other male beneficiaries (Francis Mburu Riunge and Boniface Njunge Gichuki) who were going to equally share this property. The women beneficiaries, including the respondents, were not going to share in this parcel of land. Secondly, in the proposal Naivasha/Mwicingiri Block 1/297 has been shared so that the applicants each gets 1 acre, Mary Wanjiru Riunge gets 3 acres, the 1<sup>st</sup> respondent gets 1.5 acres, Francis Mburu Riunge gets 1.5 acres, Boniface Njunge Gichuki gets 1.5 acres and the 2<sup>nd</sup> respondent gets 2 acres. In the certificate of confirmation each beneficiary was to get an equal share from the parcel.

3. It is clear that the intention of the instant application is not only to delay the distribution of the estate of the deceased but also to disinherit the women beneficiaries of some of the properties of the estate. The applicants did not like the ordered equal sharing of every piece of land comprised in the estate of the deceased. They have not come to terms with the confirmation that was done on 9<sup>th</sup> July 2019, which they challenged on appeal but did not care to obtain the stay of the decree and orders. Now that the court ordered that the administrators of the estate do share the estate or the Deputy Registrar comes into the picture, once again applicants have sought to challenge that by the present application.

4. Further, the applicants undertook a valuation without the consent and participation of the other administrators and incurred a bill of Kshs.623,330/= and other expenses bringing the total of Ksh.900,000/= which the 2<sup>nd</sup> applicant allegedly paid. They will shoulder this illegal transaction, and will not commit the estate of the deceased in any way.

5. The certificate of confirmation can only be overturned by an appeal process, or varied and/or set aside by the process of review. The present notice of motion was brought under **sections 82 and 83 of the Law of Succession Act, Articles 22 and 23 of the Constitution, sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act and Order 51 rules 1 and 4 of the Civil Procedure Rules**. It was neither an application for stay of the certificate of confirmation nor an application to review the same.

6. The consequence is that, I dismiss the application with costs.

**DATED AND DELIVERED AT NAIROBI THIS 5TH DAY OF JULY 2021.**

**A.O. MUCHELULE**

**JUDGE**