



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CAUSE NO. 87 OF 2017

(Formerly Nairobi Succession No. 206 Of 1994)

IN THE MATTER OF THE ESTATE OF THE LATE KIMACHIA GITUANJA (DECEASED)

EDWARD NGUGI KABAA.....APPLICANT

VS

PATRICK NJENGA KIMACHIA.....1ST RESPONDENT

JOSEPH GITAUNJA KIMACHIA.....2ND RESPONDENT

JANE WANJIRU KIMACHIA.....3RD RESPONDENT

STEPHEN KABAA KIMACHIA.....4TH RESPONDENT

RULING

1. **EDWARD NGUGI KABAA** (hereinafter Edward) filed summons dated 14th July, 2020. He seeks an injunction to restrain parties he names as defendants, four of them, and to also restrain the District Kiambu Surveyor from “*transferring, alienating, subdividing disposing, evicting or in any manner whatsoever dealing with the deceased’s Estate by affecting transaction inconsistency with the applicant/administrator (presumably Edward) right of entitlement ... in all that parcel of land known as MUGUGA/KANYIRIRI/69 and KABETE/KIBICHIKU/290.*”

2. Edward is not legally represented and acts in person. From what I am able to understand in his affidavit in support of the application, he seeks the injunction because some of the beneficiaries of this Estate are deceased and because some of those deceased beneficiaries have not been substituted and accordingly, that the administrators of this Estate should not have the subject properties surveyed.

ANALYSIS

3. Edward’s application is without merit.

4. This is a long standing succession cause. *Justice W. Musyoka* delivered a judgment, in this matter on 12th May, 2017. In that judgment the learned Judge considered Edward’s affidavit of protest to an application for confirmation of Grant. Edward’s protest was considered and the learned Judge ordered that the distribution of the Estate be in accordance with the determination of the Kikuyu Court, which court implemented the decision of a panel of elders. The learned Judge stated in part, as he concluded his judgment:-

“These proceedings were mere formality as distribution had already been carried out. My humble task appears limited to confirming the distribution of the Kikuyu Court so that at the end of it there is a certificate of confirmation of the grant of letters of administration intestate. At the end of the day the distribution should be as that stated in the title documents on record in respect of the two parcels of land.”

5. Edward was dissatisfied with the above judgment and filed an application dated 12th May, 2017 seeking review/variation of that judgment. *Justice C. Meoli* by the Ruling dated 13th July, 2018 dismissed the application with costs.

6. Having the above background in mind, it is difficult to grasp what grievance Edward wishes addressed with the present application. He

complains that some of the beneficiaries who obtain portions of the two estate properties are now deceased. One such beneficiaries is Edward's father.

7. The fact that Edward's father was deceased was subject of discussion and determination of *Justice W. Musyoka's* judgment. Further, as stated by the said learned Judge, his judgment was a formality because on the Kikuyu Court adopting the determination of panel of elders, the two estate properties were registered as per that determination. In other words, the two parcels of land are no longer in the name of the deceased but rather they are jointly owned by all the beneficiaries who inherited the deceased's Estate. Indeed, this is what *Justice W. Musyoka* stated in one of his final orders of his judgment:-

“That the estate of the deceased shall be distributed in the manner set out in the title deeds on record in respect of MUGUGA/KANYIRIRI/69 and KABETE/KIBICHIKU/290 both issued 10th July, 1987”.

8. The learned Judge ordered that a certificate of confirmed Grant do issue for the named beneficiaries to inherit the parcels of land jointly.

9. It is baffling for Edward to seek injunction to stop distribution to the beneficiaries in equal share as ordered hereof. Edward needs to be reminded that *Justice W. Musyoka*, by his judgment, ordered that his late father's (Edward's) share should devolve upon the estate of his late father.

10. Edward did not appeal that determination of *Justice Musyoka W.* and he cannot now be permitted to put to question that determination in an application such as the one before me. I reiterate Edward's application is without merit and is for rejection.

CONCLUSION

11. The summons dated 14th July, 2020 is dismissed with costs. **Edward Ngugi Kabaa** is barred from filing any further applications in this matter until he pays the costs awarded today and those awarded by *Justice C. Meoli* on 13th July, 2018.

12. Orders accordingly.

RULING DATED AND DELIVERED AT KIAMBU THIS 7TH DAY OF OCTOBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

For Edward Ngugi Kabaa : No appearance

For the Respondents : Mr. Chepkurui

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE