



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CAUSE NO. 59 OF 2016

IN THE MATTER OF THE ESTATE OF MUNYUA MBEKE (DECEASED)

RULING

1. This succession cause relates to the **ESTATE OF MUNYUA MBEKE** (deceased). The deceased died on 14th February, 2000. Tragically to date this succession has lingered in the courts and it was not until *Justice W. Musyoka* by his judgment of 16th September, 2016 that the order on distribution of the estate was made. After delivery of that judgment, this matter was transferred to Kiambu High Court.

2. Parties consented on 14th June, 2018 for the Kiambu County Surveyor to undertake survey and to propose subdivision as per the judgment of the learned *Judge W. Musyoka*.

3. Understandably, due to the prolonged period it has taken to conclude this cause, beneficiaries of this estate have passed away and each time there has been a death it necessitated an application to rectify the grant and the confirmed grant. That is one such application before me.

4. The deceased had two wives, namely, **Beth Wamaita Kanyoro** (deceased) of the first home and **Jane Nduta Munyua** (deceased) of the second home. On the death of the wife of the second home, her daughter, **Lilian Waithera Kimani** (now deceased) was substituted as one of the administrators representing that second home. **Lilian Waithera Kimani** died on 25th October, 2019. There is therefore an application dated 11th December, 2019 filed by **Teresia Wanjiru Kimani** (the applicant). The applicant seeks by that application the following orders:-

1. That the re-amended grant of letters of administration intestate that were re-amended on the 5th day of March, 2018 be further amended to have the administrator Lilian Waithera Kimani (deceased) be substituted with Teresia Wanjiru Kimani.

2. That the schedule of distribution in the confirmed grant be rectified on the share of the late Lilian Waithera Kimani (deceased) to be passed on to Esther Njoki Muriqi.

3. That cost of this application be in the cause.

5. I have considered the opposition filed by **James Ngige Warobo**. James is from the first home. Although in his grounds of opposition James has stated that the application is defective, misconceived and bad in law, he did not elaborate on what makes the application to be defective, misconceived or bad in law. On my part, I am unable to find that it is as James states in his grounds of opposition. The only fault I find in the application is that it is filed as an originating summons and yet the application is not originating the action. The applicant would have well been advised to file a summons application. That slight error in my view is cured by the provisions of **Article 159** of the Constitution which provides justice shall be administered without undue regard to procedural technicality.

6. It follows that because James failed to state what makes the application to be bad in law and because this Court is enabled by Article 159 to be guided by broad sense of justice, the said objection is rejected.

7. Equally, the objection by James that the application cannot be entertained before an administrator is appointed for the estate of **Lilian Waithera Kimani, deceased** is misconceived. This is because no title had been issued to **Lilian Waithera Kimani deceased** by the time of her demise. What I understand the applicant to seek is to substitute **Lilian (deceased)** as a co-administrator in this estate and for the share of Lilian to be divided between two people. The application is merited and will be allowed.

ANCILLARY DETERMINATION

8. As stated above, parties agreed for the Kiambu County Surveyor to carry out subdivision of the estate as per the confirmed grant. There is a report dated 3rd December, 2018 filed by **Kiambaa sub-county surveyor**. Kiambaa sub-county falls under Kiambu County. On 27th October, 2020 the court, after submissions by the learned counsels appearing in this matter, ordered the said surveyor to be cross examined. It does look like there are some beneficiaries who were dissatisfied with the survey and distribution carried out by the said surveyor.

9. I am of the view that any party who is dissatisfied with the sub-division carried out by *C.N. Kimani Surveyor* of Kiambaa sub-county should carry out their own survey indicating the alternative method of subdividing the estate properties.

10. In the absence of that alternative mode of subdividing the estate properties, the court will not allow the cross-examination of *C.N. Kimani Surveyor*. It is only when the court has the survey or distribution report of *any* other Surveyor proposing alternative way of subdividing the deceased's estate that the court will be in a position to determine the dispute that has arisen on distribution. **DISPOSITION**

11. On the ancillary issue raised by the court's own motion, I direct as follows:-

(a) Any party may within 60 days of today's date file before this Court their alternative report of the Surveyor of their choice setting out the sub-division they propose if different from the one proposed by the Surveyor of **Kiambaa Sub-county, C.N. Kimani**.

(b) At the reading of this Ruling, a date will be given after 60 days when the court shall receive such reports as set out in (a) above and for further directions to be given by the court, if necessary.

12. In respect to the Originating Summons dated 11th December, 2019, I grant the following orders:-

(a) The Grant re-amended on 5th March, 2018 is hereby further rectified by substituting the name of **Lilian Waithera Kimani** deceased with the name of **Teresia Wanjiru Kimani**.

(b) The confirmed grant hereof is further rectified to reflect that the share of **Jane Nduta Munyua deceased** shall be shared equally by **Teresia Wanjiru Kimani and Esther Njoki Murigi**.

(c) There shall be no order as to costs to the Originating Summons dated 11th December, 2019.

13. Orders accordingly.

RULING DATED AND DELIVERED AT KIAMBU THIS 5TH DAY OF OCTOBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

For Teresia Wanjiru Kimani : Ms. Madama holding brief for Rose

Mbanya

For James Ngige Warobo : No appearance

For David Mbeke Kanyoro & Mr. T. J. Gichuki

Grace Njeri Kanyoro :

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE