



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: CHERERE-J)

IN THE MATTER OF THE ESTATE OF M'NKABU MARETE

SUCCESSION CAUSE NO. 276 OF 1998

JULIUS KIRIMI N'KABU.....1ST ADMINISTRATOR

VERSUS

WILFRED KANGANGI.....2ND ADMINISTRATOR

GRACE GAUKU NKABU.....3RD ADMINISTRATOR/APPLICANT

RULING

Background

1) By a ruling dated, Julius Kiriimi M'Nkabu, Wilfred Kangangi M'Nkabu and Grace Gauku M'NKabu were appointed Joint Administrators of deceased's estate.

2) By another ruling dated 06th December, 2018, deceased's estate was distributed as follows:

L.R.NO. U-KITHANGARI/57 (16.78 ACRES)

a. First House

- | | |
|--------------------------------|---|
| 1) Julius KiriimiM'Nkabu-Son | 1.6 Acres |
| 2) Wilfred KanganagiNkabu- Son | 1.6 Acres (distributed among the beneficiaries of his estate) |

b. Second House

- | | |
|------------------------------------|-----------|
| 1. Kajuju Nkabu- 2nd Wife | 1.6 Acres |
| 2. Patricia Kimathi Nkabu- Son | 1.6Acres |
| 3. Grace Gauku Nkabu- Daughter | 1.6Acres |
| 4. Nancy Karoki Nkabu- Daughter | 1.6Acres |
| 5. Margaret Mugure Nkabu- Daughter | 1.6 Acres |
| 6. Frola Kathambi Nkabu- Daughter | 1.6Acres |

7. Moses Kabiti Nkabu & Kithinji Nkabu –Sons 1.6 Acres

8. Harriet GatwiriMagiri- Daughter 1 Acre

Nb. Distribution will factor in where each of the beneficiaries reside.

L.R. ABOGETA/U-CHURE/441 (1.359 Acres)

1. KithinjiNkabu-Son 0.6 Acres

2. Harriet GatwiriMagiri- Daughter 0.6Acres]

K.T.D.A Imenti Tea Shares- 580

To be shared equally between 2nd House Kithinji Nkabu & Harriet Gatwiri Magiri

K.T.D.A Farmers Shares-158

To be shared equally by the 1st House

Summons

3) By summons dated 24th May, 2021, 3rd Administrator/Applicant prays for orders **THAT**:

1. Leave be granted to the firm of Ms. Kiautha Arithi & Co. Advocates to come on record for the Applicant

2. This Honourable Court be pleased to issue an order directing the Land Registrar Meru to dispense with the production of title deeds for L.R.NO. U-KITHANGARI/57 and L.R. ABOGETA/U-CHURE/441

3. This Honourable Court be pleased to empower the Executive Officer of this court to execute all relevant documents in respect of for L.R.NO. U-KITHANGARI/57 and L.R. ABOGETA/U-CHURE/441 in place of the co-administrator JULIUS KIRIMI N’KABU

4. This Honourable Court be pleased to lift all the inhibitions, cautions and/or restrictions registered on land parcels L.R.NO. U-KITHANGARI/57 and L.R. ABOGETA/U-CHURE/441

4) The application is based on grounds among others that title deeds for L.R.NO. U-KITHANGARI/57 and L.R. ABOGETA/U-CHURE/441 cannot be traced; there are inhibitions on the two parcels of land restriction distribution and finally that the co-administrator JULIUS KIRIMI N’KABU has failed and/or refused to cooperate to enable a speedy distribution of deceased’s estate.

5) The application is supported by an undated affidavit sworn by the Applicant and filed on 25th May, 2021 in which she reiterates the grounds on the face of the application. Annexed to the affidavit is the Certificate of Confirmation of Grant by which deceased’s estate was distributed and search certificates for L.R.NO. U-KITHANGARI/57 and L.R. ABOGETA/U-CHURE/441 which were to be in in force pending the determination of this cause.

6) When the application came up for directions on 19th July, 2021, I directed that the 1st Administrator files and serves his response and that the application be heard by way of written submission to be filed by 22nd September, 2021. Come 22nd September, 2021, 1st Administrator had not filed any response and both parties had not filed submissions.

Analysis and determination

7. I have considered the application in the light of the supporting affidavit and the proceedings on record.

8. Section 83 (g) of the Law of Succession Act requires the personal representative to complete the administration of the estate within six months from the date of confirmation of the grant, or such longer period as the court may allow. It is now 26 months since the grant was confirmed and deceased’s estate remains undistributed.

9. The Applicant blames the 1st Administrator for the delay that has constrained the distribution of deceased’s estate by his failure to sign the necessary transmission documents.

10. Court orders are not made in vain. If for any reason a party has difficulty in complying with court orders the honourable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order. Once a Court order is made in a suit the same is valid unless set aside on review or on appeal.

11. In **Central Bank of Kenya & Another vs. Ratilal Automobiles Limited & Others Civil Application No. Nai. 247 of 2006**, the Court of Appeal held that Judicial power in Kenya vests in the Courts and other tribunals established under the Constitution and that it is a fundamental tenet of the rule of law that court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.

12. In **B vs. Attorney General [2004] 1 KLR 431**, Ojwang, J (as he then was) appreciated the duty to obey court orders and stated that:

“The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.”

13. In this case there has been no explanation why the 1st Administrator has failed and/or refused to cooperate to enable a speedy distribution of deceased’s estate. Applicant’s former advocate has not raised any objection to Applicant being represented by another advocate. It has been averred that title deeds for L.R.NO. U-KITHANGARI/57 and L.R. ABOGETA/U-CHURE/441 cannot be traced. L.R.NO. U-KITHANGARI/57 and L.R. ABOGETA/U-CHURE/441 cannot be distributed until the inhibitions thereon are lifted.

14. From the foregoing, I am persuaded that the summons dated summons dated 24th May, 2021 has merit and it is allowed in the following terms:

- 1. Leave be and is hereby granted to the firm of Ms. Kiautha Arithi & Co. Advocates to come on record for the Applicant**
- 2. This Honourable Court be hereby issues an order directing the Land Registrar Meru to dispense with the production of title deeds for L.R.NO. U-KITHANGARI/57 and L.R. ABOGETA/U-CHURE/441**
- 3. This Honourable Court be and hereby directs the Land Registrar Meru to lift all the inhibitions, cautions and/or restrictions registered on land parcels L.R.NO. U-KITHANGARI/57 and L.R. ABOGETA/U-CHURE/441**
- 4. This Honourable Court hereby empowers the Deputy Registrar of this court to execute all relevant documents in respect of for L.R.NO. U-KITHANGARI/57 and L.R. ABOGETA/U-CHURE/441 in place of the JULIUS KIRIMI N’KABU (1st Administrator)**
- 5. Costs shall be borne by JULIUS KIRIMI N’KABU (1st Administrator)**
- 6. Mention on 06th December, 2021 to confirm compliance with these orders**

DELIVERED AT MERU THIS 04TH DAY OF OCTOBER, 2021

WAMAE. T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - Kinoti

For 1st & 2nd Administrators - Ms. Muriithi for M/s Kiautha Arithi & Co. Advocates

For 1st Administrator - N/A for M/s Gikunda Anampiu & Co. Advocates