



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CAUSE NO. 92 OF 2018

IN THE MATTER OF THE ESTATE OF THE LATE WAIHAKA KERU PETER (DECEASED)

RULING

1. There are two protests filed herein against the application of confirmation of grant hereof dated 22nd July, 2020. One of the affidavits of protest was sworn by **David Waithaka Kinyanjui, Stephen Thuo Kinyanjui** and **James Kariuki Kinyanjui** dated 17th March, 2021. The other affidavit was sworn by **Judith Wambui Kinyanjui**.
2. When the learned counsels appeared before me on 28th September, 2021 they intimated that the protest could be determined by affidavit evidence.
3. I have considered the matter and I am of a contrary view. It is not possible to determine what property of **Stanley Kinyanjui Kiru Deceased** is still available for distribution. **Stanley Kinyanjui Kiru Deceased** was brother of **Waithaka Keru Peter Deceased**. This succession relates to the estate of **Waithaka Keru Peter deceased**.
4. During the lifetime of **Stanley Kinyanjui Kiru deceased** and **Waithaka Keru Peter deceased**, it was accepted by all that Parcel No. **Ndumberi/Ndumberi/1891** was registered in the name of **Waithaka Keru Peter deceased**, who held part of that land in trust for **Stanley Kinyanjui Kiru deceased**. That property was sub-divided and parcels No. **Ndumberi/Ndumberi 3210, 3211, 3212, 3213, 3214, 3215, 3216, 3217, 3218, 3219, 3220 and 3221** were determined as the parcels belonging to **Stanley Kinyanjui Kiru deceased**. Those parcels of land however remained registered in the name of **Waithaka Keru Peter deceased** upto the date of his demise and the demise of **Stanley Kinyanjui Kiru deceased**. The controversy is who amongst the beneficiaries of **Stanley Kinyanjui Kiru deceased** should inherit those parcels and there is yet the added controversy of whether some of those parcels are available for distribution for it is alleged that parcels **Nos. 3213, 3214, 3215, 3219, 3220 and 3221** are either sold or are earmarked to specific beneficiaries.
5. It does seem however that the distribution of the land belonging to **Waithaka Keru Peter deceased** has no controversy.
6. My consideration of the issues raised in the protests before me has led me to conclude that the controversy of the estate of **Stanley Kinyanjui Kiru deceased** can only be determined after the court receives viva voce evidence. At the reading of this Ruling, a date will be given for the hearing of the protests by viva voce evidence.

RULING DATED AND DELIVERED AT KIAMBU THIS 18TH DAY OF NOVEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Maurice

For Judy Wambui Kinyanjui

For Teresiah Wanjiku Waithaka...Miss Mwema H/B Mrs. Morara

For Peter Kimani Kinyanjui

For James Kariuki

David Waithaka

Stephen Thuo

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE