



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**SUCCESSION CAUSE NO. 215 OF 2008**

**IN THE MATTER OF THE ESTATE OF PHILIP MOKAYA GESANDA (DECEASED)**

**RULING**

1. On the 12<sup>th</sup> October 2021 Steven Mangi Mokaya (the applicant) filed an application dated the 27<sup>th</sup> of September 2021 seeking the following orders;

- i. An order do issue directing the Land Registrar/ Surveyor Nyamira County to assist in demarcating land parcel LR No. Ekerubo Settlement Scheme/14 indicating the sizes of each household as per the boundaries therein and wishes of the deceased.
- ii. That the OCS Manga police station to provide security during the exercise
- iii. That costs be in the cause.

2. The applicant depones in his supporting affidavit that he was issued with the grant of letters of administration of the 10<sup>th</sup> of November 2009. The same was confirmed on the 13<sup>th</sup> December 2016. As per the confirmed grant he holds the title LR No. Ekerubo Settlement Scheme/14, the only asset, in trust for all beneficiaries of the deceased estate. The deceased had 4 wives. The deceased allocated shares of each of the 4 houses and the Land Registrar is only to confirm the acreage for each of the 4 houses. That section 40 does not apply since the deceased had already allocated the shares. That on the 20<sup>th</sup> August 2020 to the county surveyor did a letter to the Deputy County Commissioner to provide security and attend for survey. That one of the beneficiaries Joseph Mokaya Gowanda from the 1<sup>st</sup> house disrupted the meeting and the surveyor did not carry his duties. That the Land Registrar/ Surveyor seeks a court order to enable them carry out the exercise.

3. I have considered the application. The applicant is the administrator of the deceased's estate. He seeks an order to have the Land Registrar / Surveyor assist in demarcation of the land parcel the subject of the deceased's estate. The Law of Succession Act and the Rules confer jurisdiction to the probate court to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested.

4. In this matter the orders being sought cannot be granted by a probate court. The issues of ownership of land, declaration of parties' interests and demarcation are matters which do not fall under the preamble of the Law of Succession Act and must be filed as separate suits in the Environment and Lands Court. Under the Land Registration Act the Land Registrar has the authority to deal with demarcation of land. The applicant should therefore move to the appropriate court the ELC court for this court lacks the jurisdiction to grant the orders being sought. No order as to costs

**Dated, Signed and Delivered at KISII this 2<sup>nd</sup> day of November 2021.**

**R.E. OUGO**

**JUDGE**

**In the presence of:**

**Mr. Anyona For the Applicant**

**Ms. Rael Court Assistant**