



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**SUCCESSION CAUSE NO. 984 OF 2012**

**IN THE MATTER OF THE ESTATE OF THE LATE JOHN NTHIWA NTHENGE (DECEASED)**

**BONIFACE MWANGANGI NTHENGE.....1<sup>ST</sup> ADMINISTRATOR/PROTESTOR**

**V E R S U S**

**JOSEPH MUTHOKA NTHENGE.....2<sup>ND</sup> ADMINSTRATOR/APPLICANT**

**RULING**

1. This court vide its Ruling dated 2/04/2019 confirmed the grant in terms proposed by the Administrators vide paragraph 5 of the Affidavit in support of the summons for confirmation of grant sworn on the 4/06/2013. In the said ruling the court dismissed the 1<sup>st</sup> Administrator's protest dated 29/11/2013. The court had further directed that the beneficiaries do appear in court to consent to the proposed mode of distribution since most of them appear not to have signed the consent to confirmation of grant. However none of the beneficiaries turned up despite the fact that they are all adults. Learned counsels took directions regarding the filing of proposed mode of distribution by each of the administrators. It is only the 2<sup>nd</sup> Administrator who filed an affidavit of distribution dated 16/07/2019 while the 1<sup>st</sup> administrator did not file any. It is also noted that the 2<sup>nd</sup> administrator has not made any proposal on the distribution of **parcel Mbee/Kathiani/1094**. The estate comprises of eight properties namely **Mbee/Kathiani/415, 1072, 1094, 1119, 966,340, 748 and 1059**. In the absence of the beneficiaries as well as lack of proposal by the 1<sup>st</sup> administrator, I find it is appropriate to have the estate distributed as prosed vide the summons for confirmation of grant namely that all the eight properties be registered in the names of **Boniface Mwangangi Nthiwa** and **Joseph Muthoka Nthiwa** to hold in trust for the other beneficiaries named in the consent to confirmation of grant namely:-

- **Phoebe Mutio,**
- **Julius Kimalu Nthiwa**
- **Francis Kioko Nthiwa**
- **Wilfred Mutuku Nthiwa**
- **Willy Nthiwa Nthenge**
- **Esther Katoko Nthiwa**
- **Winnie Syomiti Nthiwa**
- **Daniel Mumo Nthiwa**
- **Maingi Nthiwa**
- **Serah Nduku Nthiwa**
- **Kalumbi Nthiwa**

- **Dorothy Mukeli Nthiwa &**
- **Nzula Nthiwa**

As the court has already made a determination on the two properties in dispute namely **Mbee/Kathiani/340** and **748** the administrators are hereby directed to proceed and distribute the properties to the said beneficiaries without any further delay.

It is so ordered.

**Dated and Delivered at Machakos this 21<sup>st</sup> day of April, 2020.**

**D.K. Kemei**

**Judge**