



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1515 OF 2009**

**IN THE MATTER OF THE ESTATE OF PAUL MAINGI KATHUKYA- (DECEASED)**

**MICHAEL MUTUNGA MAINGI..... 1<sup>ST</sup> APPLICANT**

**ANTHONY MAINGI..... 2<sup>ND</sup> APPLICANT**

**PETER MAINGI..... 3<sup>RD</sup> APPLICANT**

**ROSE NZISA..... 4<sup>TH</sup> APPLICANT**

**JANE NDUNGE..... 5<sup>TH</sup> APPLICANT**

**VERSUS**

**PATRICK KIVUVA MAINGI.....1<sup>ST</sup> PETITIONER (DECEASED)**

**FRANCIS NDOLO MAINGI.....2<sup>ND</sup> PETITIONER**

**RULING**

1. The deceased Paul Maingi Kathukya died intestate on 17<sup>th</sup> May 2008. He left two houses, each with several children. His estate comprised Donyo Subuk/Komarock Block 1/13297; Kangundo/ Mbilini/1460; Kangundo/Kikambuani/944; Kangundo/ Kikambuani/1242; Kyumbi Trading Centre/58; Katelembo Athiani Muputi Farming Ranch Society Shamba 3508, and 3512; Donyo Subuk/Komarock Block 1/13271, 13284, 13279, 13276 and 13293; and Donyo Sabuk Komarock Block 1/466. The petitioners Patrick Kivuva Maingi and Francis Ndolo Maingi are some of the sons of the deceased. With the permission of the family, they petitioned for, and obtained, a grant. The grant was issued to them on 2<sup>nd</sup> December 2009. The grant was confirmed on 25<sup>th</sup> January 2011 and a certificate issued showing how the estate was to be shared to the beneficiaries.

2. On 18<sup>th</sup> April 2019 the applicants Michael Mutunga Maingi, Anthony Maingi, Peter Maingi, Rose Nzisa and Janet Ndunge (all being some of the children of the deceased) applied to have the grant revoked and, in the place of the petitioners, the 1<sup>st</sup> and 2<sup>nd</sup> applicants be appointed to administer the estate. Their case was that, since the grant was confirmed, the petitioners had failed to transmit Kangundo/Mbilini/1460, Kangundo/Kikambuani 944 and Kangundo/Kikambuani/1242 to the respective beneficiaries. Secondly, the deceased had several plots in Komarock Ranching and Farming Cooperative Society Limited which the petitioners had not managed to their satisfaction; that they had not taken the initiative to represent the rightful beneficiaries to the society; and had not facilitated the distribution of 2 ½ acres from the Society to the beneficiaries.

3. The 1<sup>st</sup> petitioner had since died leaving only the 2<sup>nd</sup> petitioner. The response of the 2<sup>nd</sup> petitioner was that on parcels 944, 1460 and 1242 (above) were graves of the deceased, his two wives and other members of the family. It had been agreed, he stated, that the parcels should be subdivided into portions after setting aside the burial places and then be shared. The process was awaiting the mobilisation of resources. This had been complicated by the death of the 1<sup>st</sup> petitioner on 5<sup>th</sup> June 2019.

4. Regarding the Society, the 2<sup>nd</sup> petitioner stated that the share of the deceased was allocated to one family member, just like another share

had been allocated to the 1<sup>st</sup> applicant. This was by agreement of the beneficiaries, he stated. The individual family members of the deceased were offered a chance to each pay Kshs.50,000/= for a share in the Society. These new shares became individual shares, and not part of the estate.

5. The 2<sup>nd</sup> petitioner denied that he had been indolent, or that he had failed to expeditiously or prudently administer the estate of the deceased. He then added:-

**“16. THAT I would like to state categorically that I would willingly relinquish Administrative duties to any family members who will be nominated by the family and appointed by the court.”**

6. I agree that the grant was confirmed a long time ago, about 10 years ago. The petitioners ought to have completed the distribution and accounted to the beneficiaries and the court. However, the difficulties raised by the 2<sup>nd</sup> petitioner have delayed the administration of the estate. The death of the 1<sup>st</sup> petitioner did not make matters any easy. Infact, upon the death of the 1<sup>st</sup> petitioner the parties ought to have moved to replace him, or have the 2<sup>nd</sup> petitioner proceed alone with the administration.

7. I consider that the 2<sup>nd</sup> petitioner’s offer to relinquish the administration of the estate to any member(s) the family can chose is an indication that he has always acted in good faith. However, he has to know that the grant made him responsible for the administration of the estate, and accounting for the administration. He cannot easily opt out, however difficult the circumstances may be.

8. In the wider interests of justice, I direct that the 1<sup>st</sup> applicant Michael Mutunga Maingi be appointed as the 2<sup>nd</sup> administrator to help the 2<sup>nd</sup> petitioner in the remaining administration of the estate of the deceased. The grant shall not be revoked, but rectified to reflect the 1<sup>st</sup> applicant as a co-administrator. In that limited sense, the application is allowed. I make no order as to costs.

**DATED and DELIVERED electronically, following consent of the parties, at NAIROBI this 8<sup>TH</sup> day of APRIL 2020.**

**A.O. MUCHELULE**

**JUDGE**