



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 582 OF 2015**

**IN THE MATTER OF THE ESTATE OF MBUUTHA MAITI (DECEASED)**

**NJIRU MBUTHA.....1<sup>ST</sup> PETITIONER**

**TABITHA KARAMANA.....2<sup>ND</sup> PETITIONER**

**BERNARD T. KINYUA .....3<sup>RD</sup> PETITIONER**

**VERSUS**

**JOSEPH BARIO .....1<sup>ST</sup> PROTESTOR**

**FAITH RIGIRI LAMBII .....2<sup>ND</sup> PROTESTOR**

**JUDITH NKOROI.....3<sup>RD</sup> PROTESTOR**

**BEATRICE MWENGA MBUUTHA...4<sup>TH</sup> PROTESTOR**

**ROSE MURIIRA.....5<sup>TH</sup> PROTESTOR**

**RULING**

1. The Petitioners filed application dated 28/11/2019 under Order 50 of the Civil Procedure Rules, Section 1(a) of the Civil Procedure Act and Article 159 of the Constitution of Kenya 2010 seeking orders that:

- a. the court grants them leave to question legality in the matter of law.
- b. Whether the protesters can deprive them the developed and occupied land after stay of 25 years of deceased sharing by oral will and circumstantial evidence in the matter of law categories manifestly ;
- c. Whether the Protesters have any developments or occupied LR.No.Ntima/Ntakira/1737 to claim the equal shares since from their childhood
- d. Whether the Protesters had been in occupation of LR No.Kirua/Ruriri/607 before subdivision and repaid a loan for Charles Muriira a brother of the Protesters .
- e. Whether by virtue of Section 7 of the Limitation of Actions Act CAP 22 laws of Kenya, the Protesters after the deceased sharing of the estate properties LR.No.Kiirua/Ruiri/607 to the 2<sup>nd</sup> house of the Protesters accruing period of 25 years the Protesters are entitled to any claim of equal shares from LR No.Ntima/Ntakira/1737 of the 1<sup>st</sup> house of the Petitioner/Applicants.
- f. Whether the Protesters actionis motivated by malice and contempt of the deceased sharing with intent to help perversion of the cause of justice for cover up of false fabrication.
- g. Unless by virtue of Section 7 and Section 4(4) of the Limitation of Action Act, the Protesters are entitled to equal shares from LR No.Ntima/Ntakira/1737 the honourable court judgement of 8<sup>th</sup> October 2019 be reviewed, varied, quashed and set aside Quomoto.
- h. They also asked for costs to be provided.

2. The application is supported by a joint supplementary affidavit sworn on 28<sup>th</sup> of November 2019. The application dated 28<sup>th</sup> November 2019 was opposed by the joint replying affidavit of Judith Nkoroi, Beatrice Mwenga Mbuutha and Rose Muriira.
3. The second application by the Protesters is dated 22<sup>nd</sup> January 2020 brought under Rule 49 and 73 of the Probate and Administrative rules seeking that an order do issue that all necessary documents be executed by the Deputy Registrar instead of the administrators to effect transfer to the Applicants and other beneficiaries of their shares as indicated in the ruling dated 29<sup>th</sup> November 2018 or in the alternative that the administrators be relieved of their duties. The Protesters also sought that an order do issue that the OCS Meru Police Station provides security during the survey and subdivision of LR No. Ntima/Ntakira/1737 by District Surveyor Meru County .
4. It was further prayed that the share due to Faith Rigiri Lambii be taken over by her estate made up of Charity Karegi, John Gitonga, Esther Daniel Kaunda, Murithi, Ramsey and Jeremiah. This application was supported by the joint affidavit of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Protesters as well as the ground on the face of the application .The Protesters averred that the Petitioners have not bothered to administer the estate as it was not distributed as per their wishes. The Petitioners filed a notice of appeal dated 30/11/2018 and did not pursue the appeal. They have been making numerous applications to defeat the Protesters claim and have vowed they will not do their duties as administrators.
5. The petitioners in their submissions argued that the court is being misled by the protestors herein as the deceased shared NTIMA/NTAKIRA/1737 in the year 1994 and each house has made developments which the Protestors cannot claim. That the deceased also shared KIIRUA/RUIRI/607 to the second house.
6. On the other hand the Protestors in their submissions argued that the distribution of the estate of the deceased was done vide this court's ruling dated 29/11/2018 and no appeal was lodged against the same. A notice of appeal was issued on 18/12/2018 but no appeal was lodged thereafter. The Petitioners filed an application dated 30/1/2019 which they sought setting aside of the said ruling and the said application was dismissed by the ruling dated 25/9/2019. That the issues that the Petitioners are raising are the same that were determined by the ruling dated 29/11/2018 and 25/9/2019 and litigation must therefore come to an end.
7. The Protestors additionally argued that the ruling on distribution was delivered on 29/11/2018 and the Petitioners have not followed up the issuance of the confirmed letters of administration and it has been over a year since and no transmission of the estate has been done to the beneficiaries. Under section 83 (g) of the Law of Succession Act one of the duties of the Administrator is to complete the administration of the estate within six months or such a longer period as the court may allow.
8. Regarding the application dated 28/11/2019 Justice Majanja in the ruling delivered on 29<sup>th</sup> November 2018 explained that since only 3 beneficiaries were provided for from the second house during the lifetime of the deceased the remaining beneficiaries from that house were entitled to be provided for from the net intestate estate of the deceased herein in equal shares as provided in Section 40 of the Law of Succession Act.
9. Based on the ruling delivered on 29<sup>th</sup> of November 2018 distributing the estate of the deceased, Justice Chitembwe dismissed the Applicant's application dated 30<sup>th</sup> January 2019 which sought to set aside the ruling on 29<sup>th</sup> January 2018. For the reasons that the identity of the 22 beneficiaries of the estate was settled and that there was no good reason to amend the confirmed grant as distribution had properly been done. In the current application dated 28<sup>th</sup> November 2019 the Applicants are referring to the Protesters as depriving them of their developed portion of the estate that was given to them orally by the deceased. The issue of an oral will by the deceased is being raised by the Petitioners almost 5 years after they filed the Petition herein without indicating in the affidavit distributing the estate that the criteria for distribution was an oral will.
10. Upon perusal of the ruling distributing the estate of the deceased there is no order indicating that the Applicants should be deprived of their developments save that those developments should be occupying their share of the estate as per the equal distribution as ordered by the court. It is not the Protesters who are depriving the Applicants/Petitioners it is the court which has determined how the estate should be distributed Under Section 40 of the Law of Succession Act.
11. This court does not understand in what regard the Applicants want Section 4(4) of the Limitation of Actions Act to be interpreted in relation to the cause herein.
12. The prayers that the Applicants are seeking in the Application appear to be an appeal against the orders made by Majanja J in the ruling delivered on 29<sup>th</sup> November 2018 and Chitembwe J on ruling delivered on 8<sup>th</sup> October 2019 and this being court of concurrent jurisdictions this court cannot sit on appeal on orders issued by them. The Applicants application dated 28<sup>th</sup> November 2019 is therefore an abuse of the court process and the same is dismissed with costs.
13. The Petitioners were granted letters of administration intestate on 10<sup>th</sup> December 2015 and the same were confirmed by the ruling of Majanja J delivered on 29<sup>th</sup> November 2018 after the court confirmed the identities of the beneficiaries of the deceased's estate. Subsequent to the said ruling the petitioners brought the application dated 30<sup>th</sup> January 2019 seeking to set aside the orders distributing the estate. After the application dated 30<sup>th</sup> January 2019 was dismissed on 8<sup>th</sup> October 2019 the Petitioner in earnest brought another application dated 28<sup>th</sup> November 2019. The multiple applications filed by the Applicants in succession are an indication that they are not interested in executing the orders of the court. The Applicants being administrators to the estate of the deceased are obliged Under Section 83(g) of the Law of Succession Act to ensure that the confirmed grant is executed and administration of the estate completed within 6 months and accounts provided to the court. It is now over one year since the grant was confirmed and the Administrators have not completed administration and have not come back to court to account as to their duties. In the circumstances this court finds that the application dated 22<sup>nd</sup> January 2020 is merited and the same is allowed with costs.

**HON. A. ONGINJO**

**JUDGE**

**RULING DATED AND DELIVERED AT MERU VIA EMAIL THIS 21<sup>ST</sup> DAY OF MAY 2020 DUE TO THE PRESIDENTIAL DIRECTIVES ISSUED ON 15<sup>TH</sup> MARCH 2020 AND SUBSEQUENTLY ON 7<sup>TH</sup> APRIL 2020 DUE TO COVID-19 PANDEMIC.**

**HON.A. ONGINJO**

**JUDGE**