



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
PROBATE AND ADMINISTRATION DIVISION
SUCCESSION CAUSE NO. 494 OF 1994
IN THE MATTER OF THE ESTATE OF MWANGI MBOTHU (DECEASED)

JONATHAN NJUGUNA MWANGI.....APPLICANT

-VERSUS-

JOHN GITATA MWANGI.....1ST RESPONDENT

JOSEPHAT NJOROGE MWANGI.....2ND RESPONDENT

STEPHEN NJUGUNA MWANGI.....3RD RESPONDENT

CHRISTOPHER MWAURA MWANGI.....4TH RESPONDENT

RULING

- 1.** Following an application dated 12th October 2017 filed on behalf of Jonathan Njuguna Mwangi (Applicant) as against John Gitata Mwangi, Josephat Njoroge Mwangi, Stephen Njuguna Mwangi and Christopher Mwaura Mwangi (1st-4th Respondents), and responses filed thereto the parties entered into various consents including engagement of Experts to wit; valuers and surveyors to assist with the valuation and eventual distribution of L.R. No. 6909/7 Kihuu Estate.
- 2.** It has emerged that the parties cannot not agree on terms of engagement of the experts and each has filed their own terms and the court has been called upon to consider both sets and make a verdict on the terms. It is to be noted however that the parties did agree on a number of terms.
- 3.** Having considered the terms of reference filed by both sides, both dated and file on the 6th of March, 2019, the court adopting the agreed terms and settling the disputed one's orders and directs as follows; -
 - a. Each party shall appoint a valuer and a surveyor. Thereafter the Chairperson, Chartered Institute of Arbitrators Kenya shall appoint the Umpire in consultations with the valuers and Surveyors appointed by the parties. The five will form the Arbitral Tribunal (Tribunal)
 - b. In determining how the property is to be shared equally, the tribunal will take into account, among other factors the terms of the will of the late Mwangi Mbothu and the Certificate of Confirmation issued on 29th September, 1999;

- c. The Tribunal will further take into account the propriety of confirming or varying the respective proposals made in a letter dated 3rd November, 1997 or if need be make fresh determination;
- d. The Tribunal will assume that each party will use his share as a farm and consequently, consider usage and access to River Kiu and will ensure that portions of arable land and those which are not are to be shared equally;
- e. In addition, the tribunal shall take into account the respective benefits enjoyed by the parties amongst them occupation of the farm house and improvements on the land by all parties since 2003.
- f. The tribunal shall schedule a meeting and/or hearing at which it may seek further information that is relevant to the matters in issue from the respective parties.
- g. The tribunal shall finalize and issue its report to the respective parties within 60 days from the date of engagement.
- h. The award of the tribunal shall be binding on all parties.

4. Each party will bear its own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 9th DAY OF May, 2019.

.....

ALI-ARONI

JUDGE

In the presence of:

..... Advocates for Applicants

..... Advocates for Respondent