



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 382 OF 2014**

**IN THE MATTER OF ESTATE OF LYDIA NTIBUKA IGWETA (DECEASED)**

**DANIEL MUTWIRI M'IGWETA.....1<sup>ST</sup> PETITIONER/APPLICANT**

**DAVID MWIRARIA IGWETA.....2<sup>ND</sup> PETITIONER/APPLICANT**

**VERSUS**

**GLADYS KATHURE KITHINJI.....RESPONDENT**

**RULING**

Daniel Mutwiri M'Igweta filed application dated 22<sup>nd</sup> January 2019 seeking that the court directs that rent collected from LR Ntima/Igoki/5674 be deposited in an interest earning account in the joint names of the applicants counsel and 2<sup>nd</sup> Petitioners counsel.

That Gladys Kathure Kithinji be ordered to render account over rental proceeds from LR No. Ntima/Igoki/3478 be shared by the children of the deceased as per prayer 5(a) and (b).

The application is supported with grounds on face of application and supporting affidavit of Daniel Mutwiri M'Igweta who averred that the deceased bought and fully developed LR. Ntima/Igoki/5674 and that Gladys Kathure Kithinji has since the death of the deceased has been collecting and utilizing rental income which she has not accounted for.

As per annexure DMM1 the applicant estimated rental income due at Kshs 1317168/= which he wanted Gladys Kathure Kithinji to account for. He urged the court to redistribute LR. Ntima/Igoki/3478 and 5674 David Mwiraria Igweta in Replying Affidavit sworn on 13<sup>th</sup> February 2019 opposed the application saying the court on 9<sup>th</sup> August 2018 concluded this matter and the application is incompetency and applicant only has right of appeal if dissatisfied with the decision of the court.

He averred that applicant has been very uncooperative and therefore delayed transmission of the estate. He said the estate was fully distributed and the applicant was privy in the disposal of some properties and 3<sup>rd</sup> parties have fully developed properties disposed to them. He said Gladys Kathure has already accounted for all rents collected in her affidavit sworn on 25.4.2017.

He said that the applicant was charged in CR.C. No. 904 of 2016 in which tenants complained when he broke and damaged the front door of LR Ntima/Igoki/5674.

The Respondent said it is applicant who is an intermeddler and should be declared so and should be removed as Administrator.

In supplementary affidavit Daniel Mutwiri M'Igweta sworn on 22<sup>nd</sup> February 2019 he averred that it is Gladys Kathure to be declared intermeddler and not himself and David Mwiraria. Mr Ayub Anampiu said that application by Daniel Mutwiri is similar to one dated 28.1.2015. He said the application should be determined based on affidavits on record since applicant had not filed written submissions as directed.

This court vide ruling delivered on 9<sup>th</sup> August 2018 distributed the estate of the deceased as agreed by a majority of the beneficiaries in the presence of the chief of Ruiru location on 3<sup>rd</sup> December 2013. The applicant stands alone in claiming that this distribution will disturb peace and harmony amongst the beneficiaries. The applicant has not given reasons why he wants distribution reviewed and none of the other beneficiaries have supporting him in his quest to have redistribution done. The application dated 22.1.2019 does not have merit and is dismissed with costs to the Respondent David Mwiraria Igweta.

**HON A. ONG'INJO**

**JUDGE**

**RULING DELIVERED, DATED AND SIGNED IN COURT ON 13<sup>TH</sup> DAY OF JUNE 2019.**

**In the presence of :**

C/A: Kinoti

Mr Ngugi advocate for Kiautha Arithi for Applicants

Mr Gikunda Anampiu Advocate for Respondents – No appearance

1<sup>st</sup> petitioner – present in person

2<sup>nd</sup> Petitioner – present in person

Respondent – present in person

**HON A. ONG'INJO**

**JUDGE**

**Court**

Copy of the ruling to be supplied to the parties advocates upon payment of copying charges.

**HON A. ONG'INJO**

**JUDGE**