



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 2071 OF 2011**  
**IN THE MATTER OF THE ESTATE OF PAUL MBUGUA KIBE (DECEASED)**

CATHERINE NJERI NDUATI.....APPLICANT

VERSUS

ROSE NYAWIRA KIBE.....RESPONDENT

**RULING**

1. The application dated 29<sup>th</sup> April 2016, and filed on the same date, by the applicant Catherine Njeri Nduati seeks the confirmation of the grant in respect of the deceased Paul Mbugua Kibe issued jointly to her and to the respondent Rose Nyawira Kibe on 13<sup>th</sup> December 2012 be confirmed. The properties sought to be distributed in the confirmation are in respect of the estate of the deceased's father, the late David Kibe Waweru, in High Court of Kenya at Nairobi **Succession Cause No. 2521 of 2009**. In the certificate of confirmation in this later cause certain property were allocated to the estate of Paul Mbugua Kibe.

2. Some background to this dispute is necessary. The deceased Paul Mbugua Kibe died intestate on 30<sup>th</sup> November 2009. He was survived by his widow (the applicant) with whom he had two children, Cynthia Mumbi Mbugua and Philip Kibe Mbugua. He had previously married the respondent, and the marriage had been dissolved on 22<sup>nd</sup> June 1994. This marriage had been blessed with children, David Allan Kibe Mbugua and Brian Joel Gatungo Mbugua. The deceased's estate comprised money (Kshs. 47,374,183/=) that he left in the bank when he died. A joint grant was issued to the applicant and the respondent. There was a dispute regarding how the estate was to be shared. On 21<sup>st</sup> March 2014 Justice Musyoka delivered a ruling distributing the estate (the money). The respondent was dissatisfied with the distribution. She appealed to the Court of Appeal. The Court of Appeal decided the matter on 22<sup>nd</sup> September 2017. It redistributed the estate as follows:-

- a) the applicant – Kshs. 3,110,697/-
- b) Cynthia – Kshs. 3,110,697/-
- c) Philip – Kshs. 3,110,697/-
- d) Brian – Kshs. 11,828,545.25 and
- e) David – Kshs. 11,828,545.25

3. The applicant is seeking that the property allocated to the deceased in the estate of his father (David Kibe Waweru in **Succession Cause No. 2521 of 2009**) be equally distributed to the five beneficiaries herein (the applicant, Cynthia, Philip, David and Brian) so that each gets 1/5<sup>th</sup> of each property.

4. My considered view is this. Now that the beneficiaries of the estate of the deceased are known, the applicant should move to the court in **Succession Cause No 2521 of 2009** for each of these beneficiaries to be allocated his/her share from what is due to the estate of the deceased. The reason is that the administrators and the beneficiaries of the estate of the deceased David Kibe Waweru would have a right to be heard on such an application. They are not parties to the present application, and orders cannot issue against the estate without reference to them.

5. It is for this reason that I decline the invitation to deal with the application dated 29<sup>th</sup> April 2016, and make no orders as to costs.

6. For the avoidance of doubt, however, the joint grant issued to the applicant and the respondent in the instant estate on 13<sup>th</sup> December 2012 is hereby confirmed in terms of the Court of Appeal distribution which is contained in paragraph 2 above. A certificate of confirmation shall issue.

**DATED AND DELIVERED AT NAIROBI THIS 8TH OCTOBER 2019.**

**A.O. MUCHELULE**

**JUDGE**