



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 136 OF 2015

IN THE MATTER OF THE ESTATE OF HOSEA WANDAU KIANIA ALIAS H. WANDAU KIANIA (DECEASED)

PRISCILLA MWARA KIMANI

JAMES MUTHAMA HOSEA

ESTHER GATHONI GICIMUOBJECTORS

MONICA WAIRIMU NGUGI

MARY WANJIRU WANDAU

-VERUS-

NDERITTO MURUWA GITAU.....PETITIONER/RESPONDENT

R U L I N G

1. The summons subject of this ruling is dated 25th of July 2018. It seeks to have the Deputy Registrar to execute transfer forms for L.R. No. Ndumberi/Ting'ang'a/779 and Title No. Ndumberi/Ting'ang'a/T.10 in line with the confirmation of the grant dated 22nd November, 2017.
2. The reasons for requesting the above prayer is because the Respondent Nderitto Muruwa Gitau and one other have declined to sign transmission documents.
3. On his part the Respondent objects to the prayers on grounds that the issued confirmed grant did not conform with the ruling of Ougo J of the 22nd of November 2017, secondly there was no valuation, and no consensus that their property L.R. Ting'ang'a/Ndumberi/T.20 measuring 0.20 acres would go to Esther Gathoni further that the consent of one Rahab Waruguru Gitau a beneficiary was not obtained.
4. The issue in dispute in a nutshell is the interpretation of Ougo J's ruling of 22nd November 2017 and secondly whether the confirmed grant as issued is in line with the said ruling.
5. Ougo J in her ruling in part stated thus:

“..... therefore L.R. Ndumberi/Ting'ang'a/799 shall be shared amongst the 7 beneficiaries namely:

Priscilla Mwara Kimani

James Muthama Hosea

Monica Wairimu Ngugi

Mary Wanjiru Wandau

Esther Gathoni Gicimu

Rahab Waruguru Gitau, and

Nderitto Muruwa Gitau

L. R. No. Ndumberi/Ting'ang'a/T.20 shall go to Esther Gathoni Gicimu who will refund the other beneficiaries the value of the said property. The property shall be valued so that the parties know its current value and thereafter the parties shall agree on the sum to be paid to the beneficiaries. In the event they do not agree after valuation, then the said property shall be inherited by the two married sisters namely Pricilla Mwara Kimani and Monica Wairimu Ngugi and parcel No. Ndumberi/Ting'ang'a/799 shall be divided equally amongst the other five beneficiaries."

The effect of the ruling was twofold; firstly, property Ndumberi/Ting'ang'a/T.20 was to be valued, parties were then to agree on how much would be refunded to other 6, once this had been achieved the said property would go to Esther Gathoni and the 2nd property would go to the other 6. If the first option was not achieved, Ndumberi/Ting'ang'a/T.20 was to go to **Pricilla Mwara Kimani and Monica Wairimu Ngugi** and **Parcel No. Ndumberi/Ting'ang'a/79** be divided equally amongst the other five beneficiaries.

6. The confirmed grant was obtained prematurely as it covers the 1st option without, yet the option did not work and to that extend it did not conform with the ruling.

7. A valuation was done on the 25th of February 2019. The Respondent indicated that he did not agree with it. An opportunity was given to him to get his own valuation he has to-date failed to file one. Rahab Waruguru Gitau a widow of the beneficiaries' sibling has not been involved nor her was obtained. Since there is no agreement amongst the beneficiaries the 2nd of the ruling takes effect.

8. Consequently, the confirmed grant which is not in line with the ruling be and is hereby set aside in its place a grant will issue in line with the 2nd option as follows:

a. L.R. No. Ndumberi/Ting'ang'a/799; be shared equally between:

James Muthama Hosea

Mary Wanjiru Wandau

Esther Gathoni Gicimu

Rahab Waruguru Gitau and

Nderitto Muruwa Gitau

b. Title No. Ndamburi/Ting'ang'a/T.20 be shared equally between Priscilla Mwara Kimani and Monica Wairimu Ngugi.

9. Should the administrators fail to effect the transfers the Deputy Registrar be at liberty to sign all the transmission documents in line with the above order.

10. Each of the parties do meet their costs.

Dated and Delivered in Nairobi on this 5TH day of DECEMBER, 2019.

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ALI-ARONI

JUDGE