



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. NO. 113 OF 2012 (OS)

**IN THE MATTER OF DISSOLVED TRUST OF SALOME MUKAMI KARIUKI AND IN THE
MATTER OF SUBDIVISION OF MUGUGA/KANYARIRI/196**

HILTON KARIUKI.....APPLICANT

JOB WAWERU KARIUKI.....APPLICANT

VERSUS

MARY WANJIRA KARIUKI.....INTERESTED PARTY

JOHN KARANJA KARIUKI.....INTERESTED PARTY

WINNIE ELIZABETH WANJIRU KARIUKI...INTERESTED PARTY

CHARITY MUTHONI KARIUKI.....INTERESTED PARTY

ANNE WAMBUI KARIUKI.....INTERESTED PARTY

JOSEPH KUBAI KARIUKI.....INTERESTED PARTY

HUMPHREY KINYANJUI KARIUKI.....INTERESTED PARTY

JAMES NJOROGE KARIUKI.....INTERESTED PARTY

RULING

1. I delivered a ruling herein on 3rd October 2014, where I ruled that the trust that had been created over Muguga/Kanyariri/196 and held by Salome Mukami Kariuki terminated upon her demise in 2012. I delivered another ruling in HCSC No. 2299 of 2012 in the estate of Salome Mukami Kariuki, where I held that Muguga/Kanyariri/196 did not form part of her estate and directed that the same be shared out equally amongst her children without recourse to succession proceedings.

2. The application that I am now invited to determine, the Motion dated 4th April 2017, seeks orders to facilitate implementation of the orders that I made in HCSC No. 2299 of 2012 regarding the said property. The applicant, James Njoroge Kariuki, one of the children of the deceased, would like the property subdivided into nine (9) equal portions less access roads if required and that the resultant nine portions be allocated by way of random balloting by each party selecting a portion. He would also like Humphrey Kinyanjui Kariuki to account for the proceeds from the said property from 2012 to the date of the subdivision, and that he should pay a ninth thereof to the applicant. In his affidavit in support of the

application, sworn on 4th April 2017, the applicant avers that the nine children of the deceased have been unable to agree on the mode of subdivision of the property between them. He is therefore inviting the court to guide the same. He also complains that Humphrey Kinyanjui Kariuki had denied the rest of the family access to the said property and has been utilizing the same exclusively.

3. The application was served for there is an affidavit of service on record.

4. Only one of the eight children responded to the application, Humphrey Kinyanjui Kariuki, through his affidavit of 23rd July 2017. He says that the rest of the family is not opposed to subdivision; provided that the same takes into account the features of the property which have a bearing on the value. He points out the house on the land, grave and road frontage. He also mentions costs, relating to the subdivision, being legal costs. He mentions too the issue of salaries, water and electricity. He proposes that the portion with the house be sold and the proceeds ploughed to cater for survey cost and legal fees concomitant upon the subdivision, and thereafter the rest be subdivided taking into account the comparable values as opposed to size. He proposes that the applicant and Job Waweru Kariuki be given portions on one side, while the rest of the family be allocated portions on the opposite side given the history of differences within the family. He states that he has been taking care of the property and not utilizing it for his own benefit.

5. Skeletal submissions in the matter were filed on 18th August 2017 on behalf of the applicant.

6. The application was argued orally on 18th September 2017. Mr. Kariuki urged the application for the applicant, while Mrs. Thongori stated the case for the respondents. Both breathed life to the averments made in the documents filed on behalf of the parties that they represented.

7. I have carefully considered the averments and the submissions. I have not been persuaded that an equal subdivision would disadvantage any of the parties. The subdivision and sharing out should take into account any of the developments on the land by any of the children of the deceased. None of the parties appears to have any particular use for the house of the deceased which stands on the land, and regarding the grave, the same can be maintained by whoever gets the portion with it. There is no evidence that Humphrey Kinyanjui Kariuki has overly benefited from the property to require him to render accounts. However, if there is material upon which such account can be justified, there would still be liberty to any of the children to place the material before court and to have him called to account. On survey and legal costs, I am not satisfied that any portion of the land should be sold to raise money therefor. Each beneficiary ought to contribute to those costs.

8. That in the end I shall order as follows-

(a) That I allow the application in terms of prayers 1 and 2, prayer 3 is disallowed;

(b) That the costs of the subdivision shall be met by the children equally;

(c) That to cut down on costs, the exercise of subdivision shall be undertaken by government officers through the Kiambu County Survey Office;

(d) That the matter shall be mentioned after three (3) months to monitor progress;

(e) That as the property the subject of these proceedings is situate within Kiambu County I hereby direct that the file be transferred to the High Court of Kenya, at Kiambu for final disposal; and

(f) That each party shall bear their own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 2ND DAY OF FEBRUARY, 2018.

W. MUSYOKA

JUDGE