



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.1229 OF 2012**

**IN THE MATTER OF THE ESTATE OF AGNES MUMBI WAWERU (DECEASED)**

SUSAN WAMBUI WERU.....1<sup>ST</sup> APPLICANT

STEPHEN KIMONDO WERU.....2<sup>ND</sup> APPLICANT

**-VERSUS-**

JAMES GITONGA WERU.....1<sup>ST</sup> RESPONDENT

MICHAEL GATHERU WERU.....2<sup>ND</sup> RESPONDENT

**RULING**

Before me is the summons general dated 5<sup>th</sup> April, 2018 filed by the administrators(applicants) herein. They seek orders that the Deputy Registrar to execute the transmission documents on behalf of the respondents and the Land Registrar to dispense with their documents.

The ground for the application is that the respondents have refused to cooperate with the applicants and hence making it impossible for the administrators to effect the court's ruling of 9th January, 2018. It is supported by their joint affidavit sworn on the 5<sup>th</sup> April 2018.

On 9<sup>th</sup> January 2018, I determined the summons for confirmation of grant with orders that the estate be shared equally among the beneficiaries.

The respondents in their replying affidavit sworn on the 27<sup>th</sup> April 2018, deny that they have refused to cooperate, their contention being that the administrators have broken up the estate into various pieces with each beneficiary getting several pieces of land within the same parcel, instead on one consolidated piece.

The administrators filed a supplementary affidavit to which they have annexed a sketch of the intended subdivision. The respondents on their part are opposed to the numerous pieces and filed their proposed subdivision where each party gets a consolidated parcel with access to both the main road and the river which border the whole parcel of land on opposite sides.

**The question is, –is this really an issue for this court to determine?**

My ruling of 9<sup>th</sup> January 2018 simply allowed the summons for confirmation of grant that the children of the deceased to share the estate equally as per law provided. While it is relevant to the final transmission of the estate and the conclusion of this matter, the issue of the specific pieces of land or spaces to be occupied by each one of the beneficiaries on the estate was not canvassed before me and I did not make any finding on that it.

Hence the basis for the Summons General and the annexed sketch map are not issues that I had determined to simply be wished away to the Deputy Registrar's signature. This court is not surveyor, it has no idea how the terrain of that land looks like, neither does it have the justification for the specific subdivisions as proposed by the administrators except the administrators expressed fear about the respondents denying the others access of the roads of access if the land is subdivided according to the respondents' proposals.

On the face of it the respondents have a point. The administrators' subdivision gives each beneficiary 3 pieces of land scattered throughout the parcel of land MWIYOGO/LABURA BLOCK 2(MUKOE) 50. There are numerous paths/roads of access ways within the subdivision and it is not clear whether they have been provided for, and that is an issue to be agreed on as the number of those paths and roads of access will also eat into each beneficiary's ultimate share.

To assist the court to determine this issue I really think that parties need to sit down with their respective surveyors and consider the specific spaces of each of their shares.

To that end I direct that: -

1. Each side provides the surveyor of choice.
2. The parties to hold a meeting at the site within 30 days from the date hereof not later than 12th July 2018 with their surveyors
3. All members of the family to be in attendance.
4. The Assistant chief Labura Sub location to ensure security.
5. The surveyors to each or jointly if they so wish to prepare their respective reports and file in this court within 60 days not later not later than 12<sup>th</sup> September 2018. Each report to provide a justification for the mode of subdivision of the land.
6. In the meantime, the status quo to be maintained.
7. The matter be mentioned on 18<sup>th</sup> September 2018 to confirm filing of the reports
8. Each party to bear its surveyor's fees
9. This order be served on the Assistant Chief Labura Sub Location for compliance.

**Dated delivered and signed at Nyeri this 12<sup>th</sup> June 2018**

**Mumbua T. Matheka**

**Judge**

In the presence of:

Court Assistant: Atelu

Parties:

Susan Wambui

Michael Gatheru