



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 352 OF 2004**

**IN THE MATTER OF ESTATE OF MITHIKA M'ARACHI - (DECEASED)**

**MITHIKA KIMATHI LAWL.....PETITIONER**

**VS**

**CHARITY MUKOKI THAKA**

**STEPHEN MARURI.....APPLICANTS**

**AND**

**LUCY KANINI MITHIKA**

**JESICA KAIMURI MITHIKA.....PROTESTERS**

**RULING**

Application dated 18.9.2017 seeks orders made on 2<sup>nd</sup> August 2017 by renewed, varied and/or set aside and evidence of 2<sup>nd</sup> applicant on distribution be taken into consideration.

The application was based on the ground that 2<sup>nd</sup> applicants proposed mode of distribution had been given to advocate on record but that the advocate didn't file and failure by an advocate to bring proposal to the attention of the court should not be visited on the 2<sup>nd</sup> applicant.

The 2<sup>nd</sup> applicant in supporting affidavit averred that some heirs except for the married sister had settled on the parcels of land in question and have developed the same by planting Miraa trees and building houses as per SM (b). 2<sup>nd</sup> Applicant claimed his proposed mode of distribution was agreed upon by the clan and he annexed minutes of clan meeting. 2<sup>nd</sup> applicant said the dispute is over land shared by 1<sup>st</sup> and 2<sup>nd</sup> house and that land for 3<sup>rd</sup> house is not in dispute.

The applicant annexed SM(b) and SMC to his supporting affidavit to show that the beneficiaries are settled on different portions of the estate which should be considered and that the clan had agreed on mode of distribution as per annexure SMC. The document indicates the ten sons of the deceased were present but the 10 daughters failed to attend the sittings on 30<sup>th</sup> September 2016 and it was resolved that the sons get different portions of L.R. No. 1327 A Athiru/Rujuune together with Miriam Kaari, Purity Nkirote, Macy Kanana, Jesca Kaimuri and Lucy Kanini who are to get 0.20, 0.20, 0.20, 0.50 and 0.50 acres each.

For plot No. 79(i) Athiru Rujune it is proposed that:-

- Jane Muthomi gets – 0.50
- Joyce Ciorui – 0.50
- Prisca Kurui – 0.50
- Agnes Kalwilo -0.30
- Miriam Kaari –0.30
- Purity Nkirote – 0.30
- Stephen Kiruru–0.60

- Richard Murithi–0.50
- Elias Kirimi – 0.50
- Lawi Kimathi – 0.50

For plot no. 4572 (B) Athiru Rujune the 2<sup>nd</sup> applicant proposes that it goes to Janet Wanjoi. The proposal is not signed either by the 2<sup>nd</sup> applicant or any beneficiary and there is no evidence that any elder presided over the meeting that deliberately on the proposed mode of distribution. By this court determining that the estate is to be shared equally it has not sanctioned the unsettling of the beneficiaries from the portions particularly where they have their homes. The equal shares should consider land they have settled on and if the equal share is more than where they are settled the extra land should be adjacent to the house to avoid unnecessary conflicts. If the 2<sup>nd</sup> applicant sat down with all beneficiaries and agreed on alternative mode of distribution this court would have no problem reviewing and/or varying its order. As it stands now there is no such consensus. The photographs annexed are meant to show that different beneficiaries have settled on different portions of the land but there is no evidence that the house in the 1<sup>st</sup>, 2<sup>nd</sup> or any other picture belongs either to the 2<sup>nd</sup> applicant or any other beneficiary. Looking at the proposal it appears 2<sup>nd</sup> applicant Stephen Mururu is just out to enrich himself. After allocating himself lions share in L.R. 1327 A Athiru Rujune 1.20 he goes ahead to allocate himself another big portion 0.60 in L.R. 791 (c) Athiru Rujune. This court finds no basis established by the 2<sup>nd</sup> applicant for review and/or variation of this courts judgements delivered on 2<sup>nd</sup> August 2017. The application is dismissed with costs.

**HON. A.ONG'INJO**

**JUDGE**

**17.7.2018**

**Before Adwera - J**

C/A:- Penina

Mr Muchiri Advocate for 2<sup>nd</sup> Applicant

Mr Omari Advocate for Protesters.

Protesters Present in person

2<sup>nd</sup> Applicant – Present in person

**Court**

**RULING DELIVERED, DATED SIGNED AND THIS 27<sup>th</sup> DAY OF JULY 2018**

**HON. A.ONG'INJO**

**JUDGE**

**Mr Muchiri**

We seek leave to do a further affidavit in response to application dated 26.6.2018.

**Order**

Leave granted to 2<sup>nd</sup> applicant to respond to application dated 26.6.2018.

**HON. A.ONG'INJO**

**JUDGE**