



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION

SUCCESSION CAUSE NO. 164 'A' OF 1983

IN THE MATTER OF THE ESTATE OF MESHACK MICHEKE (DECEASED)

NICHOLAS WANDUNGA MICHEKE.....1ST APPLICANT

JANET WAMBUI KIOI.....2ND APPLICANT

JESII MUNGAI KIOI.....3RD APPLICANT

VERSUS

JAMES NGANGA MICHEKE.....1ST RESPONDENT

DAMARIS WAMBUI CHECHE.....2ND RESPONDENT

JULIUS MOSES MUNGAI.....3RD RESPONDENT

RULING

1. The deceased Meshack Micheke died intestate on 1st January 1978. He was survived by one widow Eva Nyambura (deceased) and the following children:

- a. James Nganga Micheke – son (administrator/1st respondent);
- b. Moses Mungai Micheke – son (administrator/3rd respondent);
- c. John Kioi Micheke – son (deceased - survived by his widow) Janet Wambui Koi (2nd applicant);
- d. Nicholas Wandunga Micheke – son (1st applicant);
- e. Damaris Wambui Cheche – daughter (administrator/2nd respondent); and
- f. Sarah Njeri – daughter (deceased - survived by Elizabeth Wanjiku) His estate comprised of a single property referred to as land parcel No. Karai/Karai/332.

2. A grant of letters of administration was issued to the deceased's widow on 4th April 1984 and confirmed on 20th March 1987. Following the death of the deceased's widow on 21st January 2003, the family met on 8th April 2016 and 11th April 2016 and decided to appoint the 1st, 2nd and 3rd respondents as administrators of the estate of the deceased to replace the deceased administrator. The 2nd respondent filed an application dated 17th March 2017 seeking rectification of grant to replace the deceased's widow with the new administrators appointed by the family. The grant was rectified on 4th April 2017. The certificate of confirmation of grant was also rectified on 4th April 2017. The

divisions for distribution remained the same.

3. On 18th July 2017, the respondents filed an application for rectification of certificate of confirmation of grant so as to redistribute the estate of the deceased to have the share initially allocated to Eva Nyambura divided between the 2nd applicant, 2nd respondents and Elizabeth Wanjiku. The application further sought rectification for the share originally attributed to John Kioi Micheke shared out among his family. The court in its ruling delivered on 29th November 2017 directed the parties to apply for letters of administration for the estates of Eva Nyambura and John Kioi Micheke so that the files are heard together with this estate.

4. The applicants brought the present summons dated 22nd February 2018 under certificate of urgency seeking orders that the court do compel the administrators to obey or comply with the court order of 29th November 2017 and to administer the deceased's estate in the right way. The application was supported by the joint affidavit of the applicants dated 22nd February 2018 in which they stated that a ruling had been delivered on 29th November 2017 by Hon. Lady Justice Farah S. Amin advising the respondents to file petitions in respect of the deceased administrator Eva Nyambura and a beneficiary John Kioi Micheke; that since that time the administrators had refused to comply with the said order and instead decided to do surveying of the land with the aim of selling and that some had even sold to third parties; that the respondents had received a letter from the area chief on 24th January 2018 to take to the county surveyor, Kiambu County for him to do the subdivision without the consent of all the beneficiaries; that they were not in agreement with the respondents subdividing the property and even selling portions of it and were of the view that the orders of the court issued on 29th November 2017 ought to be complied with first; that land parcel no. Karai/Karai/332 cannot be sub-divided yet because the certificate of confirmation still reflects the name of the original administrator Eva Nyambura and one beneficiary John Kioi Micheke, both deceased, yet it needs to be rectified to include all the rightful heirs and beneficiaries of the estate of the deceased; and that the respondents may sell portions of land belonging to the other beneficiaries if they are not stopped from selling the property.

5. The application was opposed by the respondents through their joint affidavit dated 22nd March 2018. They stated that the applicants were just over suspicious on the issue of subdivision of property and complaining about nothing since no administrator or person had encroached or taken away their land. They further stated that the administrators and all the other beneficiaries clearly knew their rightful shares and that the 2nd respondent was only selling her rightful portion from her 1 acre portion out of Eva Nyambura's share of 3 acres in the estate of the deceased. They contended that this was a purely family matter which had been agreed upon by all and that the applicants had not availed any financial resources to enable the administrators file the succession papers for Eva Nyambura as ordered by the court.

6. After reading the record of this dispute, the ruling delivered on the 29th November 2017 by the court and the present application, it is clear that, following the death the deceased's widow Eva Nyambura (who was the person to whom a grant was issued and certificate of confirmation issued) and her son John Kioi Micheke, some members of the family seek to have the benefit of the two to go to those they left whereas the other members want something different done.

7. Before the court can rule on the matter, where such ruling may produce winners and losers, and considering that the Family Division has the services of mediation as a recognized mode of alternative dispute resolution, I forward this matter to the deputy registrar to cause the mediation.

8. In the meantime, this matter is adjourned. Any further dealing in the estate is restrained.

DATED and SIGNED at NAIROBI this 12TH day of JULY 2018

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 16TH day of JULY 2018

J. N. ONYIEGO

JUDGE