



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSES NOS. 265 OF 2009 AND 373 OF 2016**

**IN THE MATTERS OF THE ESTATES OF GITERE KAHURA (DECEASED) AND MARY NYOKABI (DECEASED)**

**RULING**

1. On 18<sup>th</sup> May 2018 I delivered a ruling in which I found that the administrators had sought to have the court order distribution of assets belonging to a registered company in which the deceased person herein had interest as if the said assets belonged to the deceased persons. I directed the administrators to undertake an audit of the assets to determine which ones were registered in the names of the deceased person and which ones were registered in the name of Gitere Kahura Investments Limited, and to thereafter file report in court of their findings, complete with copies of the title documents.

2. The administrators have complied with the directions and have placed before me three documents, two are bundles of copies of title documents in the names of Gitere Kahura Investments Limited and Gitere Kahura, and an affidavit by Anne Wanjiru Gitere commenting on the two bundles of titles.

3. The bundle of titles of the assets in the name of Gitere Kahura Investments Limited reveal that the said company owned the following properties -

- (a) LR No. 21070;
- (b) LR No. 4872/1;
- (c) LR No. 8943/7;
- (d) LR No. 9946;
- (e) LR No. 5980/4;
- (f) Plot No. 918 Second Number One;
- (g) LR No. 209/2729/1; and
- (h) ½ share of LR No. 209/80/24.

4. The bundles have copies of the following title documents that are in the names of Gitere Kahura -

- (a) LR No. 7097/4;
- (b) LR No. 150/25;
- (c) Githunguri/Ikinu/203;
- (d) Mbeti/Kiamuringa/570;
- (e) Mbeti/Kiamuringa/573;
- (f) LR No. 209/64/29;
- (g) LR No. 209/63/30; and

(h) LR No. 209/2729/2.

5. From some of the title documents the properties in question do not appear to belong to either of the deceased persons or Gitere Kahura Investments Limited. These are -.

(a) LR No. 4872/2 – which is in the name of Kenya Box Body Builders (1974) Limited;

(b) LR No. 24161/4 – which appears to be in the name of Njeneni Estates Ltd, and there are documents dating to 1999 when the Land Control Board consented to transfer of the property to David Gitere and Lucas Waithira Gitere; and

(c) Nairobi/Block 77/303 – was transferred from the name of Gitere Kahura to that of Anne Wanjiru Gitere.

6. As I stated in my ruling of 30<sup>th</sup> May 2018, the assets that are registered in the name of Gitere Kahura Investments Limited are not available for distribution as assets in the estates of the two deceased persons the subject of these two causes. What is available for distribution are the shares in Gitere Kahura Investments Limited and orders on their distribution were made on 18<sup>th</sup> May 2018.

7. The documents placed before me indicate that the assets listed in paragraph 4 here above are registered in the name of Gitere Kahura. I shall presume that they are the only assets available, apart from the interest in Gitere Kahura Investments Limited, in the said estate. I shall direct that they be distributed equally between all twelve (12) children of the deceased in accord with section 38 of the Law of Succession Act.

8. No documents have been placed before me as evidence of the property owned by Mary Nyokabi. I shall presume that she had no other property in her name apart from the shares in Gitere Kahura Investments Limited. I have already made orders on the distribution of the said shares.

9. For the assets that are not registered in the names of either Gitere Kahura Investments Limited, Gitere Kahura or Mary Nyokabi, no orders on distribution are available. The titles ought to be perfected first before the said assets are placed before the court for distribution.

10. In the end I hereby direct that the grants in the two causes be confirmed in the following terms –

(a) That the shares in Gitere Kahura Investments Limited be shared out in accordance with the orders made on 18<sup>th</sup> May 2018;

(b) That the assets listed in paragraph 4 here above shall be shared equally amongst all the twelve children of the deceased;

(c) That certificates of confirmation of grant in those terms shall issues accordingly out of the two causes;

(d) That costs shall be in the causes; and

(e) That any party aggrieved by the orders made herein shall be at liberty to challenge the same on appeal at the Court of Appeal within twenty-eight (28) days of date of this ruling.

**DATED, SIGNED and DELIVERED at NAIROBI THIS 20TH DAY OF SEPTEMBER, 2018**

**W. MUSYOKA**

**JUDGE**