



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 327 OF 2002

IN THE MATTER OF THE ESTATE OF DANSON KIHOYO MUCHANO (DECEASED)

JANE NYAMBURA MUNGAI..... APPLICANT

VERSUS

AGNES WAMBUI KINYANJUI.....RESPONDENT

RULING

1. The deceased Danson Kihoyo Muchano died intestate on 26th January 1993. On 16th April 2002 a grant of letters of administration intestate was issued to the applicant Jane Nyambura Mungai and the respondent Agnes Wambui Kinyanjui. The same was amended on 29th September 2003. It has been found by this court that the deceased left only Kiambaa/Ruaka/527 measuring 1.12Ha. The same was subsequently subdivided into Kiambaa/Ruaka/913 and 914. It was directed that the applicant be given Kiambaa/Ruaka/913, and that Kiambaa/Ruaka/914 be divided equally to the three houses left by the deceased. The grant was confirmed on 16th May 2014 in those terms.

2. The applicant brought the present summons dated 3rd June 2016 seeking rectification of the certificate of confirmation to indicate the names from the houses to which the particular portions would go, and the acreage of each recipient. She proposed as follows:

- a) the applicant to receive 0.584Ha of Kiambaa/ Ruaka/913;
- b) Grace Wanjiru Kihuyu to get 0.127Ha of Kiambaa/ Ruaka/914;
- c) the respondent to get 0.127Ha of Kiambaa/ Ruaka/914; and
- d) Danson Kinyanjui Mungai and Simon Waweru Mungai to equally share 0.127Ha of Kiambaa/Ruaka/914.

3. The applicant's case was that the certificate of confirmation had not indicated the names of the beneficiaries, and had not indicated how much land each was going to get. This information, she deponed, was crucial for the implementation of the certificate of confirmation.

4. The respondent opposed the application through her replying affidavit dated 4th November 2016. Her case was that she had been aggrieved by the distribution that the court had ordered through the ruling dated 16th May 2014, and that she had instructed her advocates to challenge the same by appealing to the Court of Appeal.

5. The respondent is entitled to appeal, if she is not satisfied with the ruling that was rendered on 16th May 2014 regarding how the estate of the deceased should be distributed. Presently, however, there is no appeal. If there is, she has not sought or obtained stay of execution. On the other hand, the applicant has a decision which she is entitled to execute. She asks that, in accordance with **section 71** of the **Law of Succession Act (Cap. 160)**, the court does indicate the respective identities and shares of all persons beneficially entitled; that this should be in accordance with the decision that the court has earlier issued.

6. I allow the application dated 3rd June 2016 in terms that Jane Nyambura Mungai shall get Kiambaa/Ruaka/913; Grace Wanjiru Kihuyu will get 0.127Ha of Kiambaa/Ruaka/914; Agnes Wambui Kinyanjui will get 0.127Ha of Kiambaa/Ruaka/914; and Danson Kinyanjui and Simon Waweru Mungai will equally share 0.127Ha of Kiambaa/Ruaka/914.

7. This is a family dispute. I ask that each side shall bear own costs.

DATED and SIGNED at NAIROBI 11TH OCTOBER 2018

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI 17TH OCTOBER 2018

J.N. ONYIEGO

JUDGE