

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2647 OF 1997

IN THE MATTER OF THE ESTATE OF JAMES WAINAINA

NG'ANG'A ALIAS WAINAINA NG'ANG'A (DECEASED)

R U L I N G

1. Before court is an application dated 3rd August 2018 by the administrator of the Estate seeking to have a restriction against **Title No. Gilgil/Karunga Block 2 Nuthu A 37** removed.
2. The grounds and the supporting affidavit state that the grant was confirmed, the beneficiaries having agreed on mode of distribution. There is no dispute on the property subject matter, and there is need to have the caution removed in order to enable the exercise of distribution of the Estate be concluded.
3. In a replying affidavit by Francis Kahuho he states that the application was not filed by the administrator, secondly he was not involved in a family meeting where the schedule of distribution dated 3rd October 2016 was discussed, further that he had initially filed the restriction since the previous administrators had left out the share of Joseph Wainaina Kimani (deceased) who was survived by his wife Monica Waringa Kimani and five children and since he did so in good faith, he seeks a refund of Kshs 62,000/- he incurred. Further he challenges the inclusion of the Estate of Njoroge Nyambura in the alleged agreed schedule as the said Njoroge Nyambura was not part of the deceased family. He referred to the confirmed grant dated 18th October, 1999, rectified grant dated 12th October, 2004 and a further rectified grant dated 23rd October 2007.
4. From the record the 1st confirmed grant had included the family of Njoroge Nyambura (deceased). The subsequent rectified grants did not. However, Achode J in her ruling of 7th October 2015 alluded to the fact that the Estate of Njoroge Nyambura had been catered for in the confirmed grant of 18th October 1999.
5. My reading of the proceedings indicate that no explanation was given for the inclusion of the Estate of Njoroge Nyambura when this estate was being distributed. I have also taken note of the fact that not all beneficiaries had consented to the mode of distribution annexed to the confirmed grant dated 18th October 1999.
6. The Respondent has raised valid questions to wit; why is the family of Njoroge Nyambura being included in the distribution of this Estate, and secondly why was his consent and that of others not obtained.
7. The above questions must be answered in order to move the matter towards a logical conclusion and to the satisfaction of all beneficiaries.
8. In order for the court to address the matter before it conclusively the administrator is hereby directed to file and serve an affidavit explaining the interest of the Estate of Njoroge Nyambura and how it accrued on **L.R. No. Dagoretti/Ruthimitu/21** within the next 14 days.
9. Upon receipt of the above the court will give further directions and/orders.

DATED, SIGNED and DELIVERED at NAIROBI this 11th DAY OF October, 2018.

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ALI-ARONI

JUDGE