

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2641 OF 2015

IN THE MATTER OF THE ESTATE OF GEORGE THIGA NGAMATE (DECEASED)

RULING

1. The summons general dated 3rd October 2016 is brought at the instance of Joseph Njoroge Ngamate Thiga, who is also the administrator of the estate of the deceased. He would like David Mburu and Charles Macharia Thiga restrained from Escapement/Kinari/Block 1/10 pending confirmation. He claims that the deceased had told him that he should have that property, and that the respondents have established homes elsewhere within the estate.

2. Charles Macharia Thiga swore an affidavit on 1st November 2016 in response to the application. He complains that the administrator took out representation of the estate without consulting him. He also states that although the deceased had expressed his wishes on how he wanted the estate distributed, those wishes did not encompass Escapement/Kinari/Block 1/10. He avers that their homesteads are on the said parcel of land. He proposes that the said parcel ought to be shared out between the applicant and the respondents equally.

3. Joseph Njoroge Ngamate Thiga, on his part, swore his affidavit in response to the replying affidavit on 16th November 2016. He asserts that the respondents refused to attend a meeting at the Chief's office where the issue of representation was discussed, and agreed that he would be the sole administrator. He claims that the respondents only entered Escapement/Kinari/Block 1/10 after their mother died and proceeded to divide it amongst themselves.

4. Charles Macharia Thiga swore an affidavit on 16th November 2016 in response to the administrator's further affidavit of even date. He concedes the meetings at the Chief's office, but asserts that he did not fail to attend the meeting intentionally. He says he was unhappy with the resolution at that meeting and there were further meetings at the office of the Assistant County Commissioner, and the administrator had been advised to slow down to allow all to come on board. He asserts that he had been utilizing Escapement/Kinari/Block 1/10 before their mother's death.

5. It was directed on 23rd January 2016 that the application be disposed of by way of written submissions. There has been compliance with the directions, for both sides have filed their respective written submissions. I have perused both, and noted the arguments made therein.

6. The grant of letters of administration intestate was made in this matter on 24th January 2016. By the time the application herein was lodged herein on 3rd October 2016, the six months envisaged in section 71 of the Law of Succession Act, Cap 160, Laws of Kenya, after which a summons for confirmation of grant had expired. Ideally, the applicant ought to have mounted an application to have his grant confirmed instead of seeking injunctions.

7. I note that the application brings to the fore two issues, distribution of Escapement/Kinari/Block 1/10 and the manner in which the grant herein was obtained. Both issues are at the heart of confirmation of the grant, according to section 71. At confirmation the court considers whether a grant was properly made and whether the administrator has been administering the court in accordance with the law. It also deals with distribution of the estate. The respondents are unhappy with the process of the administrator's appointment as such, and no doubt the application centres around distribution of an asset of the estate.

8. As the estate has not been distributed, Escapement/Kinari/Block 1/10 is yet to be allotted to any of the

beneficiaries, so none of them is entitled to it. The deceased did not die testate, and therefore it cannot be said that he had gifted it to any of his children. The fact that the applicant holds the grant does not give him any superior claim to Escapement/Kinari/Block 1/10 over the respondents. Of course, I do note that it is possible that on the ground either or both parties are in occupation, but from what is before me it is the word of the applicant against that of the respondents.

9. The orders that I feel inclined to make are as follows:

(a) That I hereby direct the administrator to move with due dispatch and apply for confirmation of his grant, at any rate within thirty (30) days of the date herein;

(b) That the administrator shall serve the said application on the respondents, and any other survivors of the deceased, who shall be at liberty to file affidavits of protest should they be unhappy with the proposals contained therein;

(c) That both parties shall observe the *status quo* that prevailed in Escapement/Kinari/Block 1/10 as at 4th May 2008, the date of the deceased's death;

(d) That the matter shall be mentioned after thirty (30) days of the date herein for compliance as to (a) above; and

(e) That as the bulk of the estate is situated in the Naivasha area, with none of the assets being in Nairobi, I shall order that the cause herein be transferred to the High Court of Kenya at Naivasha for final disposal.

DATED, SIGNED and DELIVERED at NAIROBI this 12TH DAY OF MAY, 2017.

W. MUSYOKA

JUDGE