



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE 1485 OF 2011**  
**SUCCESSION CAUSE 795 OF 2009**  
**IN THE MATTER OF THE ESTATE OF JOHN TOMPO MPAAYEI (DECEASED)**

**RULING**

The deceased died on 3<sup>rd</sup> April, 2001.

The widow filed Petition on 20<sup>th</sup> July, 2011 in **Succession Cause 1485 of 2011**.

In **Succession Cause 795 of 2009** over the same deceased's estate; the Petitioner/Creditor to the estate; Alice Wanjiku Lengete widow of the/her late husband Geoffrey M'epukori Parpai who bought 10 acres as per the annexed herein in **L.R. Loitokitok/Enkariak-Rongena/259**.

The Creditor Alice Wanjiku Lengete obtained grant on 30<sup>th</sup> January, 2012 after the eldest son of the son (deceased) Timothy Taki Mpaayei filed Replying Affidavit on 30<sup>th</sup> April, 2009 and stated that he would not apply for grant of letters of administration of his father's estate as some of the beneficiaries resided in Canada and United Kingdom (UK).

Alice Wanjiku Lengete attached Sale Agreement of her late husband's purchase of 10 acres of the suit property that is deceased's estate and receipt to acknowledge payment of further Kshs.290,000/= to Timothy Taki Mpaayei on 28<sup>th</sup> November, 2003 for purchase of the said portion.

The deceased's eldest son Timothy Taki Mpaayei received the balance of purchase price.

Alice Wanjiku Lengete filed summons for confirmation of grant on 30<sup>th</sup> July, 2012 and filed summons to excise 10 acres from suit property L.R. Loitokitok/Enkariak-Rongena/259 on 5<sup>th</sup> November, 2012 which remain pending todate.

Meanwhile, in **Succession Cause 795/2009**, Timothy Taki Mpaayei cited the beneficiaries of the deceased's estate. In Response to the citation; by an affidavit filed on 19<sup>th</sup> November, 2014, Elizabeth Mpaayei daughter of deceased confirmed their mother Martha Wangui Mpaayei died in 2010. She is resident in Ontario Canada and her sister Sylvia Mpaayei is resident in England.

Their other sister Lorna Mpaayei died in 2012 and left her children Sophia Wambaire, Naseiya Murage and Edmund Matu Murage. Timothy Taki Mpaayei their brother suffers ill health. Therefore, they proposed administrators of the estate shall be the children of Lorna Mpaayei and Timothy Taki Mpaayei.

The written consent was done in Court on 3<sup>rd</sup> February, 2015.

Since then the grant has not been issued to date. Despite several letters from the Counsel to Court as evidenced by the following correspondences;

**a. Letter dated 3<sup>rd</sup> February, 2015.**

**b. Letter dated 12<sup>th</sup> July, 2017.**

**c. Letter dated 2<sup>nd</sup> March, 2017.**

all pursuing grant of letters of administration for the deceased's estate have been futile.

The parties have appeared before Court through Counsel on 9<sup>th</sup> June, 2017 and 27<sup>th</sup> June, 2017 where both Court files were presented to Court for the first time.

### **Determination**

1. In light of the foregoing, the consent of 3<sup>rd</sup> February, 2015 remains valid under order of this Court. The proposed administrators namely;

**a. Sophia Wambaire Murage**

**b. Edmund Matu Murage**

**c. Timothy Taki Mpaayei**

**d. Nonkita Wangeci Mpaayei**

shall jointly or any of those who are in agreement with notice to the others file Petition for grant of letters of administration and any objector may file objection to making of grant.

2. The two (2) Court files that relate to the same estate of the deceased are hereby consolidated and shall operate with the Court file 795 of 2009 and take into account the proprietary interest of Alice Wanjiku Lengete a Creditor to the estate of the deceased to the extent of 10 acres to be hived off from LR Loitokitok/Enkariak-Rongena/259 and leaves a balance of 60 acres of the suit property.

3. At the point of confirmation of grant and/or distribution of the estate the administrators shall distribute 10 acres to Alice Wanjiku Lengete of the suit property.

4. The grant issued to Alice Wanjiku Lengete of 30<sup>th</sup> January, 2012 as Creditor to the estate of the deceased is valid only to the extent of her interest and credit from the estate of the deceased which is 10 acres. The balance of 60 acres should be to administrators as it is going to waste.

5. Under **Section 66 of Law of Succession Act Cap 160** the children of the deceased rank higher to be appointed as administrators compared to the Creditor. Although the Court record in the formerly parallel Court file shows that she duly cited and served the children of the deceased, they have reasonable grounds why they could not apply for grant, they resided and continue to reside outside the Country and those who reside in Kenya are deceased and the only surviving son of the deceased is Timothy Mpaayei who is not enjoying good health.

6. Alternatively, the proposed administrators may include the Creditor of the estate as joint administrator so as to allow her administer the 10 acres of the suit property and they shall jointly administer 60 acres remaining of **L.R. Loitokitok/Enkariak-Rongena/259**.

**DELIVERED DATED & SIGNED IN OPEN COURT IN NAIROBI ON 13TH JULY 2017.**

**M.W.MUIGAI**

**JUDGE**