

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO.747 OF 1997

**IN THE MATTER OF THE ESTATE OF THAIRU MUKIRAI alias PAUL THAIRU MUKIRAI
(DECEASED)**

MARY NJERI NJAU.....APPLICANT

VERSUS

GEORGE NJUNGE THAIRU.....RESPONDENT

RULING

1. Thairu Mukirai alias Paul Thairu Mukirai died on 25th July 1987. He was survived by a wife Serah Wanjira and five children who included the respondent. James Kariuki Thairu, George Njunge Thairu and Loise Wanjiku Thairu, three of the other children of the deceased, petitioned this court for a grant of letters of administration intestate with the consent of the other beneficiaries. The grant was issued to them jointly on 2nd June 1997 and subsequently confirmed on 17th February 1998. In the schedule of distribution the only property of the estate of the deceased L.R No. Ngong/Ngong/905 was shared equally amongst the 6 beneficiaries.
2. The applicant Mary Njeri Njau is the widow of the late Benson Njau who died in March 1988 and who was a son of the deceased. She applied for the revocation of the grant issued to the respondent herein and his two co-administrators on the ground that she as well as her children with the late Benson Njau were entitled to benefit from his share of the estate of the deceased but were left out as beneficiaries. In a ruling dated 30th June 1999 Justice Etyang ordered that instead of the revocation of the grant there be rectification by the inclusion of Mary Njeri Njau as a beneficiary and that she gets an equal share out of L.R. No. Ngong/Ngong/905. It was categorically stated in the ruling that there would be seven heirs or beneficiaries who were to share the estate equally.
3. The respondent appealed this ruling but later on withdrew the same on 27th January 2012. The applicant filed the current application dated 17th June 2014 seeking orders for cancellation of all the six titles issued as a result of sub-division of L.R. No. Ngong/Ngong/905, and that the Deputy Registrar of this Court be allowed to sign all necessary forms to cause the land to be sub-divided afresh into seven equal portions as per this court's order dated 30th June 1999. The application was premised on the grounds that the respondent, after the withdrawal of his appeal, caused the subdivision of L.R. No. Ngong/Ngong/905 into 6 portions instead of 7 as ordered by this court, leaving the applicant out. Further, that the respondent had completely refused to sign transfer forms so as to effect the applicant's share to her despite several requests. It is for these reasons that she prayed that the titles effected as a result of the transfer be cancelled and the Deputy Registrar be allowed to sign the necessary transfer forms.
4. The respondent in his replying affidavit dated 17th March 2015 agreed that he indeed withdrew his appeal against this court's ruling directing that the estate be shared into 7 equal portions to include the applicant as a beneficiary. He blamed his co-administrators, James Kariuki Thairu and Loise Wanjiku Thairu, for contravening the said ruling and instead sharing the estate among only 6

beneficiaries and leaving out the applicant.

5. The Court's ruling of 30th June 1999 was clear and stated that:-

“The proper thing to do is not to revoke the confirmed grant but to rectify it so that the applicant is listed as one of the beneficiaries in equal shares, as she is entitled to Benson Njau's share.

The grant confirmed on 17th February, 1998 is hereby rectified by the inclusion of MARY NJERI NJAU as beneficiary who is to get an equal share out of L.R. No. Ngong/Ngong/905. There will now be seven heirs or beneficiaries who are to share that estate equally.”

6. It was thus blatant disregard of this Court's ruling to distribute the estate among 6 beneficiaries to the exclusion of the applicant herein. I therefore allow this application and order the cancellation of all title deeds issued as a result of this unlawful subdivision of L.R No. Ngong/Ngong/905. These are:- Ngong/Ngong/58392, 58393, 58394, 58395, 58396 and 58397. The land shall revert to the name of the deceased. The respondent and his co-administrators are hereby given 60 days to effect a fresh sub-division in accordance with the court order of 30th June 1999, failing which the Deputy Registrar Family Division shall be at liberty to sign all the necessary forms to cause a fresh sub-division of the land as per the said court order. The applicant shall have the costs of this application.

DATED and DELIVERED at NAIROBI this 9TH day of FEBRUARY 2016

A.O. MUCHELULE

JUDGE