



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 637 OF 2009

IN THE MATTER OF THE ESTATE OF LATE ZABETH WANZA MUTUA – DECEASED

JACINTA WAYUA MUTUAAPPLICANT

VERSUS

ANN SYOKAU MUTUA.....RESPONDENT

RULING OF THE COURT

1. The Summons before the court is dated **18th August, 2016** pursuant to **Rule 49 and 73** of the **Probate and Administration Rules**. The Summons seeks as the main prayers an order that the restriction placed on land parcels No. **Masii/Mithini/384** and **Masii/Mithini/387** be lifted or removed.
2. The application is premised on the grounds set out therein and is supported by affidavit of **Jacinta Wayua Mutua** sworn on **18th August, 2016**.
3. The applicant's case is that on **4th October, 2001**, restrictions were placed on land parcel No. **Masii/Mithini/384** and land parcels No. **Masii/Mithini/387** on grounds that the registered proprietor was since deceased. Again on **18th January, 2011**, another restriction was placed on land parcel No. **Masii/Mithini/384** pending finalization of **Misc. application No. 97 of 2002** and **H.C. Succession Cause No. 637 of 2009**. The registered proprietor of the parcels of land in question one **Wanza Mutua** died on **23rd August, 1991** and vide **HC. Succession Cause No. 667 of 2009 (present cause)**, the applicant herein was appointed as the Administratrix of the estate of the deceased vide rectified Certificate of Confirmation of grant issued on **19th October, 2010**. The person or person(s) who were involved in lodging the restrictions pending the court proceedings have actively participated in the said proceedings and have been provided for in the succession proceedings as beneficiaries of the deceased. **Misc. Application No. 97 of 2002** has since been heard and determined vide decree issued on **29th October, 2009** and its findings have already been incorporated in **HC. Succ. Cause No. 637 of 2009**. The Appellant's case is that there is dire need to lift the said restrictions so that the Administratrix/Applicant may lodge the necessary forms with the Land's Registry, Machakos, and thereafter embark on the process of transferring the various portions to the intended beneficiaries as envisaged in the rectified Certificate of Confirmation of Grant issued on **19th October, 2010**. The orders sought herein are necessary to vest the portions of land to the rightful beneficiaries of the deceased. It is alleged that this application is necessary for the ends of justice to be met and it will not prejudice the respondent and other beneficiaries of the estate of the deceased.
4. The application was served upon the respondent together with a hearing Notice for **20th September, 2016**. However, the respondent did not attend the court.

5. I have considered the application. I have also noted that the issues which initially led to Protest have since been resolved, and that there is need to lift the said restrictions so that the estate can be distributed as proposed in the Confirmed Grant.

6. The upshot is that the application before the court is allowed as prayed.

Orders accordingly.

DATED AND DELIVERED AT MACHAKOS THIS 1ST DAY OF NOVEMBER, 2016.

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E. OGOLA

JUDGE

In the presence of;

Mr. Kamanda holding brief for M/s Mutinda Kimeu for applicant

Court Assistant – Mr. Munyao