



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 2255 OF 2002**

**IN THE MATTER OF THE ESTATE OF KIMANI KAGUORA (DECEASED)**

**RULING**

1. The application before Court is a Notice of Motion dated 3<sup>rd</sup> August, 2013 and taken out under Sections 83 (f), (g) and (i) of the Laws of Succession Act, Cap 160 of the Laws of Kenya. The Applicant thereby seeks orders that:

1. **The Administrators of the estate herein, Henry Njenga Kimani and Monica Wambui Njenga be ordered to distribute the assets of the estate in terms of the distribution and complete the administration of the estate as per the schedule agreed upon by all the beneficiaries at the confirmation of the grant issued herein.**

2. **That the costs of this application be awarded to the Administrator/Respondent.**

2. The application is predicated on the grounds that:-

1. **The grant herein was confirmed on 25<sup>th</sup> May 2005 with a schedule of distribution of the assets of the deceased amongst his beneficiaries.**

2. **There is no dispute as to the mode of distribution and everyone is satisfied with his/her share as per the schedule.**

3. **A number of assets of the estate have to be sub-divided so that the beneficiaries can have their shares but the administrators have not done so and are unwilling and uncooperative about it.**

4. **The beneficiaries have reported the administrators and their unwillingness to distribute the estate and complete administration of the estate to the local District Officer who has attempted to intervene and assist in vain.**

5. **The beneficiaries of the estate are all aged each with grown up children and it is in the interest of justice that distribution be done and the administration completed.**

3. The application is supported by the affidavit of **Peter Nyutu Kimani**, the Applicant herein, sworn on 3<sup>rd</sup> August, 2013. Salient among the averments in the supporting affidavit are that the administrators have custody of the title documents and they do not have any plausible reasons to fail to carry out the distribution exercise as ordered by the court; that the Applicant is prejudiced by the failure by the Administrators to transfer his portions of land to him and is being held together with all the beneficiaries at “ransom” for no justifiable cause.

4. In his supplementary affidavit sworn on 11<sup>th</sup> June 2014, the Applicant avers that the Administrators have refused/neglected to provide for the estate of Alice Njeri Kimani (deceased), as one of the beneficiaries; that since she had children and therefore the Estate of Kimani Kaguora should be re-distributed to include those surviving Alice Njeri Kimani; that the administrators are unwilling to distribute the proceeds of Limuru/Upper Rongai No. 27 which is a rental premises and no account has been given to the beneficiaries to date; that the administrators have distributed 7 acres of Kamirithu/Limuru/10 which consists of 7.2 acres and they have not explained the whereabouts of the remaining 0.2 acres.

5. Opposing the application, Henry Njenga Kimani one of the co-Administrators of the Estate swore a Replying Affidavit on his behalf and on behalf of his co-Administrator Monica Wambui Njenga dated 31<sup>st</sup> March 2014. In the said affidavit he states that the application is frivolous and vexatious, as the Administrators have diligently dealt with the Estate as prudently as possible in making sure that each beneficiary gets his or her portion of the estate in accordance with the confirmed Grant.

6. The Respondent avers that any pending issue is not as a result of any want of action on their part as Administrators. That it is their sincere hope that they shall resolve all issues outside their control shortly so that they can finalize, before the close of 2014, all issues relating to the distribution of the Estate. In the Respondent's view the Administrators, have accomplished most of what they set out to do in the succession schedule and the Applicant ought not to have made the application now before court. That he should therefore bear the costs of the application.

7. I note from the Replying affidavit that two of the beneficiaries namely Alice Njeri Kimani, one of the widows of the deceased and Jeremia Munyaka Kimani have since passed away. I also note that the Respondent is in the process of obtaining Letters of Administration to enable the distribution of their portions to their beneficiaries.

8. It would appear from the distribution report before me that the Administrators have been diligent in carrying out their duties to facilitate the distribution of the Estate of the deceased. It also appears that failure to distribute some of the remaining assets was not due to any ill-will on the part of the Administrators, but may be attributable to factors beyond their control. The Respondent/Administrator has annexed a distribution report which indicates the current status of each asset as follows:

- 1) **L.R. Kamirithu/Limuru/10:** whose distribution has been completed.
- 2) **Limuru Upper Rongai Plots:** The beneficiaries had agreed that the proceeds received from the house on this plot be utilized in meeting the expenses of processing the distribution of the state. The beneficiaries have however since proposed the sale of the said property and distribution of the proceeds of sale among them. They are all yet to agree.
- 3) **Tigoni Mambrouk Plot Block 1/610:** The widow Rahab Wambui Kimani had been allowed to rent it out for cultivation but the beneficiaries have since proposed its sale and distribution. One beneficiary is yet to be consulted.
- 4) **Subukia Block 891:** This land being under the management of the pyrethrum society Limuru, and being one of those targeted for sale, feedback is awaited from the said society.
- 5) **National bank of Kenya:** Distribution of the funds therein has already been completed.
- 6) **Shares:** Shares in Limuru Dairy, Kenya Tea Development Authority, Pyrethrum Growers Society have been distributed and any funds received from the said societies is always shared out to the beneficiaries.

9. From the foregoing it is not evident that it is the Administrators who have been unwilling and un-cooperative to distribute the Estate. Since the Administrators have set the close of the year 2014 as the target for the resolution of all the issues relating to the distribution of the Estate, the court shall give them

a mutually agreed mention date on the date of the ruling, when they shall appear before the court, with the surviving beneficiaries to render an account of the distribution of the Estate.

There shall be no orders as to costs.

**SIGNED DATED** and **DELIVERED** in open court this **9<sup>th</sup> day** of **February 2015**.

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**L. A. ACHODE**

**JUDGE**