



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO. 30 OF 2008**

**IN THE MATTER OF THE ESTATE OF THE LATE NJOROGE MURAGU (DECEASED)**

**TERESIA NJOROGE.....APPLICANT**

**RULING**

The chamber summons dated 21/12/2011, was filed by Teresia Njoroge, one of the petitioners in the cause relating to the estate of the deceased, the later Njoroge Muragu. She prays that the court be pleased to waive the requirement that all beneficiaries sign the consent to the confirmation of grant to persons of equal or lesser authority. The application was based on grounds found on the face of the application and the affidavit of the applicant. The applicant is the wife of the deceased and letters of administration were issued to her and George Muragu (Co-administrator) on 19/6/2008; that the said George Muragu is one of the beneficiaries of the estate but has refused to sign the consent for confirmation of grant to enable them to proceed with administration of the estate. The applicant deponed that all the beneficiaries of the estate have duly signed the consent for confirmation except the said George Muragu and hence the necessity for this application to have the court waive the requirement of the beneficiaries signing the consent. Mr. Karu, counsel for the applicant submitted that George Muragu served them with a list of unascertained properties and that only two properties were identified as belonging to the deceased.

In his replying affidavit, George Muragu deponed that the deceased had other properties which were not listed in Form PA5 which are:-

- (1) Two shares of 2 acres each at Ngarua in Laikipia County;**
- (2) A Company called Ngao Consumers located at Njoro Town, Nakuru County;**
- (3) A commercial plot located at Kikapu Area in Njoro in Nakuru County.**

He urged that the said properties be included in the list of properties for distribution before he can agree to the distribution. An affidavit was sworn by James Njuguna Kinuthia, Chairman of Kikapu Farmers Co-operative Society Ltd, dated 28/10/2013, in which it was averred that the deceased was a member of Kikapu Co-operative Society and was allocated ballot No. 47 comprising of a commercial plot measuring (25 x 50)ft, Njoro/Njoro 60 measuring 3 Ha.

I have considered the appliciton and the reply thereto. No doubt the respondent George Muragu is a co-administrator of the deceased's estate with the applicant. The deceased was survived by the following beneficiaries:-

- 1. Teresia Mwendu Njoroge – applicant;**

**2. George Muragu Njoroge – respondent**

**3. Robert Kamau Njoroge;**

**4. Geoffrey Francis Njoroge;**

**5. Veronicah Wangari Njoroge;**

**6. Esther Njeri Njoroge;**

**7. Mary Wanjuhi Njoroge;**

**8. Mary Wambui Njoroge.**

The applicant exhibited a proposed consent for confirmation of grant signed by all the beneficiaries except the respondent.

In the Form P & A5, all those beneficiaries were listed and only two properties were identified as forming the deceased's estate i.e. Njoro/Njoro Block 1/60 Kikapu and Kenya Breweries Ltd shares. The respondent seemed to have been in agreement with the other beneficiaries because when the limited grant was issued on 19/6/08, that was the position. The respondent now alleges that there were other properties. As regard 2 shares of the land in Ngarua, James Njuguna Kinuthia swore an affidavit that the deceased owned the said properties at the Kikapu Co-operative Society. However, he did not disclose when the shares were bought, whether and when the land was ever registered in the deceased's name and what the status of the land is, is it still in the names of the deceased? The onus is on the respondent to establish all the above. As regards the allegation that the deceased had a commercial plot at Kikapu and Ngao Consumers Ltd, the respondent has failed to avail any evidence as regards the existence of the said properties. His allegation that the said plots are registered in his younger sister's names is not proven. He should have adduced evidence to that effect. Even if the plots are registered in the sister's names, the question is, when were they transferred to the sister? Is it during the deceased's lifetime? If the deceased transferred to his daughter the property during his lifetime, then may be that was his intention to give her the properties unless there was no other arrangement between them. Any other contrary insertion would need to be proved.

So far, the respondent has failed to demonstrate that there exists other properties belonging to the deceased's estate that should be subject to distribution. The respondent cannot hold all the other beneficiaries at ransom. If he discovers that indeed there exist other properties he can move the court. Otherwise, from 2008 when the limited grant was issued to date is 5 years. The beneficiaries must have been prejudiced by this delay.

In the end, I find that the prayer sought is merited and I hereby allow the application dated 21/12/2011. Let the matter be set down for confirmation of the grant. For avoidance of any doubt, all the beneficiaries should attend court on the said date. Each party to bear their own costs.

**DATED and DELIVERED this 7<sup>th</sup> day of March, 2014.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

Mr. Kairu for the applicant

George Muragu – respondent in person

Kennedy – Court Assistant