



In re Estate of Ruth Wairimu Thairu Linsley (Deceased) (Succession Cause 2688 of 2015) [2023] KEHC 18372 (KLR) (Family) (28 April 2023) (Ruling)

Neutral citation: [2023] KEHC 18372 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2688 OF 2015
PM NYAUNDI, J
APRIL 28, 2023
IN THE MATTER OF THE ESTATE OF RUTH WAIRIMU
THAIRU LINSLEY (DECEASED)**

BETWEEN

HILDA WANJIKU WAIRIMU APPLICANT

AND

PATRICK THAIRU MOSES KOOM 1ST RESPONDENT

BENSON KAMOTHO THAIRU 2ND RESPONDENT

RULING

1. The Application dated 28th March is presented under Sections 82, 83 and 84 of the [Law of Succession Act](#) and Rules 49 and 73 of the [Probate and Administration Rules](#). The Applicant seeks the following orders
 1. Spent
 2. Spent
 3. That any property that has been disposed or transferred to third parties revert back to form the estate of the deceased for fresh and fare (sic) distribution.
 4. That the Respondents present before Court an Account of how they have managed the Estate following the issuance of the certificate f the Confirmation of grant
 5. That he respondents be compelled to transfer the property known as PLOT No 237; being a subdivision of LR 8469/4 (Nairobi /block 152) With Mutirithia Wa Andu Co Ltd held in trust for the Applicant to the Applicant.



6. That the Respondents be compelled to give vacant possession of PLOT No 237; being a subdivision of LR 8469/4 (Nairobi /block 152) With Mutirithia Wa Andu Co Ltd To The Applicant.
7. That the costs of the Summons be borne by the Respondents.
2. The Applicant submits that the Respondents petitioned and were granted letters of administration on February 24, 2016, which were subsequently confirmed on December 14, 2016.
3. The deceased was the mother of the Applicant, whilst the Respondents are the grandfather and uncle of the Applicant respectively. At the time of the making of the grant the Applicant was a minor having been born on December 19, 1999.
4. The Applicant is now an Adult and holder of Kenyan ID No 3710XXXX and her appeal to the respondents to have the land transmitted to her has fallen on deaf ears.
5. The Respondents did not respond to the Application despite being served and neither did they attend court on the date it came up for hearing notwithstanding that they had been served as evidenced by the Affidavit of service filed in Court and dated April 20, 2023.
6. The application was canvassed by Oral submissions on the virtual platform on April 25, 2023.

Analysis And Determination

7. The Certificate of Confirmation of Grant dated 14th December 2016 shows that the Respondents, Patrick Thairu and Moses Koomu were to hold the Property PLOT No 237; being a subdivision of LR 8469/4 (Nairobi /block 152) With Mutirithia Wa Andu Co Ltd in trust for Hilda Wanjiku Wairimu then a minor.
8. Contrary to Section 83 of the *Law of Succession Act* the Administrators have failed to complete the Administration of the estate by transmitting to the Applicant the subject parcel of land.
9. *In re Estate of George Gikundi (Deceased)* [2021] eKLR the Court restated the well-established principle that an administrator has a duty to complete the administration by executing the documents which are necessary to conclude the administration.
10. There is a twist in the tale as the Applicant in paragraph 11 of the supporting affidavit indicates that the Respondents may have disposed of the property to the 3rd parties. If this is true, then the Administrators would have contravened Section 82 (d) provides in part;
 - i. No appropriation shall be made so as to affect adversely any specific legacy;
 - ii. No appropriation shall be made for the benefit of a person absolutely and beneficially entitled in possession without his consent, nor for the purpose of a continuing trust without the consent of either the trustees thereof (not being the personal representatives themselves) or the person for the time being entitled to the income thereof, unless the person whose consent is so required is a minor or of unsound mind, in which case consent on his behalf by his parent or guardian (if any) or by the man manager of his estate (if any) or by the court shall be required (emphasis supplied)
11. *In Re Estate of Mutugi Mbutii (Deceased)* [2018] eKLR, the Court asserted that where it is established that the property of the estate was transferred contrary to the law as in the instant case, the Court so as to ensure the ends of justice are met and to preserve the estate had the power to cancel title and order the property revert to the names of a deceased person. The Court cited with approval the decision in



Santuzza Bilioti alias Mei Santuzza (deceased) v Giancarlo Falasconi (2014) eKLR where it was alleged that a succession court cannot cancel a title, the Court stated

“This cannot be the case as the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancellation of the title deed. Further, a succession court can order a cancellation of a title deed if a deceased’s property is being fraudulently taken away by non-beneficiaries such as where the property is being sold before a grant is confirmed.”

12. In the instant case any action to deprive the Applicant of her legacy without the express approval of the Court is fraudulent and a nullity.
13. Accordingly, the Court considers it in the interests of justice to make the following orders
 1. The 1st and 2nd Respondents to transfer the property known as PLOT No 237; being a subdivision of LR 8469/4 (Nairobi /block 152) With Mutirithia Wa Andu Co Ltd to Hilda Wanjiku Wairimu within 45 days from the date hereof
 2. In the alternative any transfer of ownership with respect to PLOT No 237; being a subdivision of LR 8469/4 (Nairobi /block 152) With Mutirithia Wa Andu Co Ltd is hereby cancelled and the property to revert to the deceased.
 3. The 1st and 2nd Respondents to present before Court an Account of how they have managed the estate of the deceased following the issuance of the certificate of confirmation of grant within 45 days from the date hereof.
 4. In exercise of inherent powers of the Court, it is directed that failure to comply with orders 1 and 3 above the grant issued to the 1st and 2nd Respondent shall be revoked and the Applicant shall be at liberty to apply.
 5. The matter be mentioned on June 28, 2023 to confirm compliance.
 6. The Respondents to bear the cost of this Application.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF APRIL 2023.

P M NYAUNDI

JUDGE

In the presence of:

...Ms Ndichu... Advocates for the Applicant

.....Advocates for the Respondent

Karani Court Assistant

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