



Rutere v Kirimi (Succession Cause 296 of 2001) [2022] KEHC 669 (KLR) (30 May 2022) (Ruling)

Neutral citation: [2022] KEHC 669 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 296 OF 2001**

EM MURIITHI, J

MAY 30, 2022

BETWEEN

HARRIET N'THIIRA RUTERE APPLICANT

AND

LUCY NKANDI KIRIMI RESPONDENT

RULING

1. By an application dated 24/6/2021, Lucy Nkandi Kirimi through her Advocate Ms. Christine Murithi of M/S Kiautha Arithi and Co Advocates seeks orders of the court to facilitate the distribution of the estate of the deceased by specific relief as follows:-
 - a. This Honourable Court to dispense with the production of the title deeds to land parcel numbers Kibirichia/Kibirichia/1703 and Kibirichia/Kibirichia/1704 and
 - b. This Honourable Court be pleased to lift the inhibition over land parcel No. Kibirichia/Kibirichia/1704 and any other encumbrances thereon.
2. The Applicant also seeks an order for costs to be paid by the respondent Harriet Nthiira Rutere.
3. By the Supporting Affidavit of Christine Murithi, the applicant sets up her locus standi way as the administratrix of the deceased's estate by Amended Grant of Letters of Administration issued on 6/9/2019. It is further deponed that an order of inhibition had been registered against tittle number Kibirichia/Kibirichia/1704 pending hearing and determination of this case, which is now concluded, and there was, therefore, need to lift the inhibition and permit the distribution of the estate. The deponent counsel further states that her attempt to trace the original title deeds on the land parcels Kibirichia/Kibirichia/1703 and Kibirichia/Kibirichia/1704 had been futile.
4. By her Replying Affidavit, Harriet Nthiira Rutere sworn on 22/9/2021 and drawn by her counsel Gikunda Anampiu and Co Advocates, Respondent herein states she is in possession of the two titles to the parcel of land Kibirichia/Kibirichia/1703 and 1704, and there is no occasion to dispense with



production of the titles to the land Registrar as she will produce them when required. She points out that the inhibition On Parcel No. 1704 was actually sought by the Applicant and she had no objection to its being removed and suggest that the applicant should pay the costs of the application for filing it without consulting her when she had possession of the title deed.

5. Significantly, the Respondent indicates by the Replying Affidavit at Paragraphs 3 and 4 of an error in the Confirmed Grant as follows:-
 3. "That indeed I am entitled to my property. LR. Kibirichia/Kibirichia/1704 which I use on the ground although the grant indicates number 1703 which is an error.
 4. That indeed the applicant also uses Kibirichia/Kibirichia/ 1703 on the ground although the grant indicates she is entitled to number 1704, which is an error."

The position is not disputed by the applicant.

6. In the interest of expedition administration and distribution of the estate, the Order that commands itself to the Court in view of the common ground as to the respective shares of the beneficiaries in the two parcels of land among other assets of the estate of the deceased as sworn in the Confirmed Grant of 14/2/2019 is to order the lifting of the inhibition placed on the parcel or parcels of land the assets of the estate as the suit is now concluded and to require the Respondent who has custody of the original title deed to produce them to the Applicant Administratrix for purposes of effecting distribution of the estate. There is no proper basis for the order for costs prayed for in the application as it has not been shown that the Respondent had been asked and she declined to produce the original titles deeds.
7. Additionally, to correct the anomaly as to the particulars of the parcel of land respectively occupied by the parties, the Court shall direct a rectification of the Grant so that the number of the parcel of land coincides with the portion of land on the ground occupied by the particular party.

Orders

8. Accordingly, for the reasons set out above, the Court makes orders on the application by the Administratrix dated 24/6/2019 as follows:
 1. The inhibition placed on parcel of land Kibirichia/Kibirichia/1704 and any other assets of the deceased pending determination of the Succession Cause is lifted to enable the final distribution of the estate in accordance with the Confirmed Grant of the Court.
 2. The Respondent shall produce to the Administratrix the original title deeds for the parcel of land Kibirichia/Kibirichia/1703 and Kibirichia/Kibirichia/1704 for purposes of registration of the transmission of the Estate assets to the beneficiaries.
 3. The Confirmed Grant made on 14th February 2019 is rectified to correctly identify the parcels registration numbers Kibirichia/Kibirichia/1703 and Kibirichia/Kibirichia/1704 as distributed and occupied by Lucy Nkandi Kirimi and Harriet Nthiira Rutere, respectively.
9. Each party shall bear its own costs.
10. With this final order, the matter of the succession in the Estate of the deceased here is closed.
11. Order Accordingly.

DATED AND DELIVERED ON 30TH DAY OF MAY, 2022

EDWARD M. MURIITHI



JUDGE

Appearances

M/S Kiautha Arithi & Co. Advocates for the Applicant.

M/S Gikunda Anampiu & Co. Advocates for the Respondent.

