



REPUBLIC OF KENYA



In re Estate of Stephen Mungori Anampiu (Deceased) (Succession Cause 69 of 2015) [2022] KEHC 477 (KLR) (26 May 2022) (Ruling)

Neutral citation: [2022] KEHC 477 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 69 OF 2015**

TW CHERERE, J

MAY 26, 2022

IN THE MATTER OF THE ESTATE OF STEPHEN MUNGORI ANAMPIU (DECEASED)

BETWEEN

RUTH GAKII ANAMPIU ADMINISTRATRIX

AND

PENINAH KINYA MUNGANIA ADMINISTRATRIX

RULING

1. Deceased herein died sometimes on 04th August, 2014. Letters of administration were on 16th June, 2015 granted to the parties herein in their capacity as widows of the deceased.
2. The Certificate of Confirmation of Grant was issued on 24th February, 2020 albeit erroneously to the 1st Administratrix/Respondent alone.
3. By summons dated 5th April 2022 brought pursuant to Section 74 of the *Law of Succession Act*, Rule 49 of the *Probate and Administration Rules* and Order 45 rule (1) of the *Civil Procedure Rules*, 2nd Administratrix/Applicant seeks orders That;
 - 1) The Honorable Court be pleased to rectify the grant and insert the name of the Protestor in the further amended certificate of grant.
 - 2) Tthe Honorable Court be pleased to issue an order directing the Deputy Registrar to execute the relevant transfer document and to dispense with the execution of the Petitioner/ Administrator.
 - 3) That the costs of this Application be borne by the Petitioner.
4. The Application is based on the grounds on its face and on the Supporting Affidavit sworn by the 2nd Administratrix/Applicant who stated prays that her name be included in the Certificate of



Confirmation of Grant and the Deputy Registrar of this court be authorise to sign transmission documents on behalf of the 1st Administratrix/Respondent who has refused/ignored and failed to sign transmission them thereby frustrating the distribution of deceased's estate. She further accused the 1st Administratrix/Respondent of withdrawing dividends from Maua Methodist Sacco account which were meant for her son. She contends that there being no order staying distribution, the 1st Administratrix/Respondent has no justifiable cause for not executing the transmission documents.

5. The 1st Administratrix/Respondent opposed the application vide a Replying Affidavit dated 23rd May 2022, averring that she was dissatisfied with the judgment of this court and has already filed Nyeri Court of Appeal Civil Application No. 15 of 2022 seeking leave to file an appeal against the said judgment only over land parcel Ntima/igoki/6925. She prays that the application be dismissed to enable her to proceed with her intended appeal.

Determination

6. I have carefully perused the application and the issue for determination is whether the application is merited.
7. The court record reveals that the Certificate of Confirmation Grant was issued on 23rd October 2018 vide a ruling of the same date and was subsequently amended on 24th February 2020. The 1st Administratrix/Respondent does not oppose the amendment of the said certificate to include the name of the 2nd Administratrix/Applicant.
8. As much as I have no jurisdiction to determine the application pending at the Court of Appeal, I notice that the said application was filed on 23rd February 2022 which is almost four years since the first Certificate of Confirmation of Grant was issued and two years after it was amended,
9. I do agree with the Protestors sentiments that there is no stay of execution in this matter and that the 1st Administratrix/Respondent has neither sought an order for stay nor does her application to the Court of Appeal contain an order of stay of execution.
10. The procedural law relating to stay of execution is clearly spelt out in Order 42 Rule 6(2) of the [Civil Procedure Rules](#) that: -

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.”
11. In this matter, no appeal has been preferred and even if there was, it would not per se operate as a stay of execution or proceedings unless an explicit order of stay of execution has been granted. The filing of an application for leave to appeal filed by the 1st Administratrix/Respondent cannot therefore operate as a stay of execution in this cause.



12. The provisions of Section 83 of the *Law of Succession Act* Cap 160 concerning the duties of administrators was enunciated in *Re Estate of Wilfred Munene Ngumi (deceased)* [2020] eKLR where the court stated:

“Section 83(g) of the Act mandates administrators of an estate to, within six months of confirmation of grant or longer period as the court may allow, complete the administration of the estate, and to produce to the court a full and accurate account of the complete administration.

This undertaking cannot be done unless the necessary documents are executed by the parties...

...It is evident from the Applicant’s affidavit in support of the application and oral arguments by her Advocate, Mr. Kahiga, that the Respondents have refused to sign the necessary documents to facilitate execution of the court’s judgment/decree. To prevent abuse of the court process, by the above legal provisions, this court has inherent powers to prevent such abuse. I therefore find and hold that the petitioner’s summons dated 23/9/2019 and filed on 25/9/2019 to be merited...”

13. No doubt the orders of this court cannot be executed unless the transmission documents have been duly signed. The 1st Administratrix/Respondent has for no reasonable cause declined to sign the said documents.
14. It must be remembered that Court orders are not made in vain and are meant to be complied with and once a Court order is made in a suit the same is valid unless set aside on review or on appeal. (See *B vs. Attorney General* [2004] 1 KLR 431).
15. I therefore find merit in the 1st Administratrix” application dated 5th April 2022 and order as follows: -
- 1) Certificate of Confirmation of Grant was issued on 24th February, 2020 is further amended by inserting the name of Peninah Kinya Mungania the 2nd Administratrix/Applicant
 - 2) The Deputy Registrar of this court is authorized to sign/execute all the necessary documents on behalf of Ruth Gakii Anampiu (1st Administratrix/Respondent) to effect the transmission of deceased’s estate
 - 3) 1st Administratrix/Respondent is condemned to pay costs of this summons.

DATED AT MERU THIS 26TH DAY OF MAY 2022

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For 1st Administratrix/Applicant - Ms. Kiyuki for Kithome L. Mutinda & Co. Advocates

For 2nd Administratrix/Respondent - Mr. Gichunge for Gichunge Muthuri & Co. Advocates

