



REPUBLIC OF KENYA



**In re Estate of Benjamin Kibuka Michuki (Deceased) (Succession Cause 672 of 2013) [2022] KEHC 12401 (KLR) (17 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12401 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 672 OF 2013  
FN MUCHEMI, J  
AUGUST 17, 2022**

**BETWEEN**

**TERESA WAMBUI GITHINJI ..... APPLICANT**

**AND**

**GEORGE GITAH KIBUKA ..... 1<sup>ST</sup> RESPONDENT**

**PETER WACHIRA KIBUKA ..... 2<sup>ND</sup> RESPONDENT**

**GRACE WAMUCII KAROKI ..... 3<sup>RD</sup> RESPONDENT**

**MICHAEL KINYUA KIBUKA ..... 4<sup>TH</sup> RESPONDENT**

**JANE MUTHONI MUNYORI ..... 5<sup>TH</sup> RESPONDENT**

**MARGARET WANGARI NGATIA ..... 6<sup>TH</sup> RESPONDENT**

**KENNETHI KINGORI NGATIA ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

1. In the summons general dated September 14, 2021, the applicant seeks for orders that:-
  - a) That the deputy registrar be authorised to execute all the necessary transmission documents on behalf of the respondent who has refused to sign so as to give effect to the Certificate of Confirmation of grant dated July 24, 2022.
  - b) That the honourable court be pleased to issue an order directing the county land registrar Nyeri to dispense with the production of copies of National Identity Card, KRA PIN certificate and passport size photographs of the respondents when registering the necessary transmission documents.



- c) That the honourable court be pleased to issue an order directing the county land registrar, Nyeri to dispense with the production of the original title deed for land reference number Nyeri/Mweiga/1049 issued to the deceased on July 5, 1996.
2. The ground supporting the application are that the grant was confirmed on July 24, 2020 and that since then the respondents have refused to execute their part in regard to transmission of the shares to the beneficiaries. The summons is supported by the affidavit of Teresa Wambui Githinji who deposes that her advocate prepared all the necessary documents and forwarded them to the counsel for the respondents on June 22, 2021 but the respondents are not willing to execute them.
  3. The land registrar will require identification documents namely identity cards, KRA pin certificates and passport size photographs of the respondents in execution of the grant. The respondents having refused to cooperate in execution of the grant, the applicant prays that the land registrar be directed to dispense with the required documents. The original title deed of L R No Nyeri/Mweiga/1049 is not available and ought to be dispensed.
  4. It is further deposed that there is no appeal that is pending regarding this cause that would prevent the granting of the necessary orders.
  5. The 1<sup>st</sup> respondent in his sworn affidavit sworn on March 28, 2022 has denied the allegations that he has refused to execute the transmission documents. He deposes that the record reflects that an appeal has been filed against the judgement of the High court regarding the distribution of the deceased's estate. The record of appeal has been compiled and filed and the matter is awaiting directions in the Court of Appeal.
  6. Both parties filed submissions in support of their arguments which this court has considered in preparing this ruling.
  7. Although the 1<sup>st</sup> respondent denies that he refused to execute the transmission documents, it is noted that the grant was confirmed on July 24, 2020 and confirmed on July 24, 2020 and certificate issued accordingly. This application was filed on September 20, 2021 which was after a period of over one (1) year. The application was served on the respondents but no responses were filed by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents. The 1<sup>st</sup> respondent filed his replying affidavit on March 21, 2022 several months after the filing of the application. The 1<sup>st</sup> respondent did not indicate in his affidavit that it was sworn on behalf of the other respondents. As such, the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents have not opposed this application.
  8. As for the 1<sup>st</sup> respondent, he states that he has filed an appeal in the Court of Appeal. No Notice of Appeal or a Memorandum of appeal has been annexed to show that an appeal has been filed. In the court record, there is a certificate of delay allegedly issued by the deputy registrar of this court dated December 23, 2021. However, paragraph 4 of the certificate does not indicate the date the certificate was prepared and when it was ready for collection. This certificate though contained in the court record was not an attachment to this application and does not add value to the response of the 1<sup>st</sup> respondent. The replying affidavit makes no mention of the said certificate of delay.
  9. From the response of the 1<sup>st</sup> respondent he has not given any reasons why he has not executed the documents sent to his advocate about one year ago. His response is a mere denial that he has not refused to sign. If that was the case, the applicant would not have brought this application. The application was filed because the applicant faced a challenge in execution of the grant.
  10. The 1<sup>st</sup> respondent has failed to demonstrate that there is an appeal pending in the Court of Appeal. However, even assuming that such an appeal exists, it is trite law that an appeal does not operate as stay.



As such, the respondents are not justified to hold the applicant at ransom in a case especially where the grant has not been executed for over two years like it is the case here. The judgement of this court on distribution delivered on July 24, 2020 is still valid unless it is overturned by a higher court.

11. It is my finding that this application has merit and is hereby allowed in terms of prayers 1,2 and 3.

12. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 17<sup>TH</sup> DAY OF AUGUST, 2022.**

**F MUCHEMI**

**JUDGE**

**RULING DELIVERED THROUGH VIDEO LINK THIS 17<sup>TH</sup> DAY OF AUGUST, 2022**

