



**In re Estate of Gakunyua Ndegwa alias Gakinyua Ndegwa (Deceased) (Succession Cause 73 of 2015) [2022] KEHC 12463 (KLR) (17 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12463 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 73 OF 2015  
FN MUCHEMI, J  
AUGUST 17, 2022  
IN THE MATTER OF THE ESTATE OF GAKUNYUA  
NDEGWA ALIAS GAKINYUA NDEGWA(DECEASED)**

**BETWEEN**

**MARGARET WANGARI MWANIKI ..... APPLICANT**

**AND**

**JACKSON MAINA NDERITU ..... RESPONDENT**

**RULING**

**Brief facts**

1. The application for determination dated July 28, 2021 seeks for orders to authorize the Deputy Registrar do sign the transmission documents on behalf of the respondent who is said to have refused to execute the same. This is for the purpose of giving effect to the certificate of confirmation of grant issued on July 22, 2020. The applicant also seeks for an order directing the County Land Registrar Nyeri to dispense with the production of copies on national identity cards, KRA PIN certificate and passport size photographs of the respondent for purpose of executing transmission documents in relation to the respondent. An order directing the County Land Registrar Nyeri to dispense with the production of the original title deed for land reference number Tetu/Kiriti/576 issued to the deceased on November 25, 1974 has been sought.
2. The respondent opposed the application through his replying affidavit dated August 10, 2021.

**The Applicant's Case**

3. The applicant states that the grant of letters of administration was issued to the respondent and herself on May 24, 2017 which grant was confirmed on July 22, 2020. Further that on July 22, 2020, the court distributed LR No Tetu/Kiriti/576 to the applicant, John Magu and Elizabeth Kagure Karanja



in equal shares. The applicant contends that her advocate prepared the transmission forms for all the administrators and beneficiaries to execute. The said forms were forwarded to the respondent on April 30, 2021 but he declined to sign and also failed to return them to her advocates. As such, the applicant urges the court to authorize the Deputy registrar to execute the said documents on the respondent's behalf. Additionally, the applicant urges the court to issue an order to dispense with the original title deed in respect of land parcel Tetu/Kiriti/576 and also to dispense with the respondent's identification documents during transmission.

### **The Respondent's Case**

4. The respondent contends that the application is incompetent and that the court has no power and authority to grant the orders the applicant is seeking because neither the *Law of Succession Act* nor the Probate & Administration Rules do not give power to the court to authorize the Deputy Registrar to execute documents on behalf of parties to proceedings. Furthermore, section 98 of the *Civil Procedure Act* and order 49 of the Civil Procedure Rules under which a court is empowered to issue the orders sought in normal civil suits are not applicable in the *Law of succession Act* or the Probate & Administration Rules. Additionally, the respondent contends that the orders sought relate to transactions and processes in land under the *Land Registration Act* and the *Land Act* and it is only the Environment and Land Court which has jurisdiction and authority to deal with such proceedings.
5. In any event, the respondent claims that he did not refuse to sign the documents but in a letter dated May 17, 2021, his advocates returned the said documents as they were wrongly drafted. As such, the respondent urges the court to dismiss the application.
6. Parties disposed of the application by way of written submissions.

### **The Applicant's Submissions**

7. The applicant submits that she seeks for orders of execution if the transmission documents to give effect to the confirmed grant issued on July 22, 2022 for the reason that court orders are not made in vain. She relies on section 83 of the *Law of Succession Act* and submits that the estate ought to be administered within six months from the date of confirmation of the grant and further relies on section 47 of the *Act* submitting that the respondent has a duty to complete his duties as a co-administrator of the estate which includes executing the transmission documents. The applicant relies on rule 73 of the *Probate & Administration Rules* and the decision in *Re Estate of the late Kubuta Kamara Nguuro alias Pharis Njegegu* [2021] eKLR and submits that rule 73 of the Probate & Administration Rules gives the court powers to make orders the applicant is seeking.
8. The applicant further submits that the respondent has not given any reasonable explanation for refusing to sign the requisite documents to give effect to the confirmed grant. Furthermore, the applicant contends that it has been over two years since the grant was confirmed and it is proving impossible to transmit the estate to the respective beneficiaries because the respondent has refused to execute the necessary documents.

### **The Respondent's Submissions**

9. The respondent submits that the court can only be called upon by parties to execute documents on behalf of either of them when there is sufficient reason to do so and demonstrate that the other party has been given an opportunity to sign the documents and failed. The respondent contends that the applicant did not demonstrate any efforts to correct the documents but instead she approached the court seeking the orders in her application. To support his contention, the respondent relies on the case of *Muchanga Investments Limited v Safaris Unlimited (Africa) Ltd & 2 others* Civil Appeal No



25 of 2002 [2009] eKLR and submits that the application is an abuse of the court process. As such, the respondent urges the court to dismiss the application.

### **Issue For Determination**

10. The main issues for determination are:-
  - a. Whether this court has jurisdiction to grant the orders sought.
  - b. Whether the applicant is entitled to the orders sought.

### **The Law Applicable**

#### **Whether To Authorize The Deputy Registrar To Execute The Requisite Transfer Documents**

11. Section 47 of the *Law of Succession Act* provides:-

High court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.

12. Rule 73 of the *Probate & Administration Rules* provides:-

Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

13. Section 47 of the Act and rules 73 of the *Probate & Administration Rules* give the court powers to entertain any application and make orders as may be necessary for the ends of justice such as the instant application. The grant in the instant succession cause was confirmed on July 22, 2020 which was one (1) year down the line up to the time of filing this application. This is delay that could lead to a grant being revoked under Section 76 of the act. Therefore section 47 of the Act and rule 73 of the *Probate & Administration Rules* empowers the court to enforce its orders and give effect to the administration of the instant estate.

14. The duties of personal representatives are fiduciary in nature as explained in section 83 of the *Law of Succession Act*. The administrator(s) of the deceased's estate has a duty to distribute the estate to the beneficiaries under section 83(f) while section 83(g) provides for administrators' duty to render the accounts. This was elaborated in the case of Ngumi Kerugoya Succession Cause No 36 of 2013 *Re Estate of Wilfred Munene (deceased)* [2020] eKLR where the learned judge stated:-

“Section 83(g) of the Act mandates administrators of an estate to, within six months of the 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 completed transaction.”

15. The respondent alleges that the documents sent to him for execution through his advocate were not in compliance with the law. If this was the position, the respondent ought to have instructed his advocate to return them to the applicant's advocate. The respondent's advocate was also in a position to prepare the correct documents and send over to the applicant's advocate because his client was a co-administrator. The excuse by the respondent is not justifiable in the delay of over one year.



16. It is my considered view that the application has merit and it is hereby allowed in terms of prayers 1, 2 and 3.
17. Each party will meet their own costs.
18. 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.**

