



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 315 OF 1994

IN THE MATTER OF THE ESTATE OF M'MAKINYA M'IMANYARA (DECEASED)

COSMAS MWITI MAKINYA.....PETITIONER

VERSUS

FLORENCE KANANU M'MAKINYA.....APPLICANT

RULING

1. Before the Court is an application dated 26th August 2019 by which the Applicant seeks to have the executive officer of the Court be empowered to execute the necessary documents for the transfer of land parcel numbers KIIRUA/RUIRI/6152 and 5051 to the respective beneficiaries.

Applicant's Case

2. The Applicant filed submissions dated 7th April 2021. He submits that himself and John Rajii are entitled to their respective shares of the estate of the deceased captured in the certificate of confirmation of grant dated 12th June 2017; That the Petitioner had a duty to diligently have the said shares transferred to the respective beneficiaries; That his replying affidavit clearly indicates that he is unwilling to discharge his duties; That the court record shows that parties agreed that survey fees owing was Ksh 30,000/= and the same was paid to the Petitioner; That the other beneficiaries including the Petitioner were also obliged to contribute to the fees incurred in subdividing the estate of the deceased; That despite this payment, the Petitioner has remained adamant asking for payment of legal fees he allegedly incurred when there was no court order for payment of such fees by any of the beneficiaries; They urge that in view of the Petitioner's reluctance, the Court should allow the application; That the Court has immense power to ensure distribution of the estate of the deceased as ordered. She relied on the case of Re Estate of Evanson Mwangi Murang'u (Deceased) (2013) eKLR.

Petitioner's/Respondent's Case

3. The Petitioner opposed the application through his replying affidavit sworn on 6th November 2019. He also filed submissions dated 16th April 2021. He states that the Court already resolved issues in the matter and marked the file closed and that what would follow is fast tracking an elaborate transfer by transmission to the beneficiaries of the deceased; That unfortunately, the nature of such an exercise requires pooling of resources from the beneficiaries to actualize the distribution process; That the Applicant and another beneficiary called John Rajii have failed to factor in resources to enable the Petitioner distribute their estate to them having heavily depended on the Petitioner since the initiation of the matter; That from the record, it is the case that every time they went to Court, they would request the Court to order these two beneficiaries to remit a sum of Ksh 30,000 but this was never done to date; That the Petitioner is therefore shouldering all the financial burden and that it is not true that he has failed to transfer the two beneficiaries' shares to them but it is them who have failed to fulfill their part of the bargain. He claims to have remitted a total of Ksh 91,200/= to the surveyor for surveying, registration and conveyancing and he requires compensation from the beneficiaries and that after effecting transfer to one of the beneficiaries namely Gituma, he reneged. He urges that the Applicant and the other beneficiary, John Rajii be ordered to remit Ksh 30,000/= to him.

Determination

4. The application before the Court does not exhibit any legal issues for determination in the matter. What seems to be at the core of the dispute is the financial obligations of the parties towards concluding the transfer processes with respect to the Applicant's shares. Whilst the Petitioner/Respondent claims that the Applicants owe him Ksh 30,000/=-, the Applicants claim that they already paid survey fees of Ksh 30,000/= to the Petitioner and that the Petitioner is demanding for alleged legal fees for which the Court never ordered.

5. The Petitioner has annexed receipts worth Ksh 91,200/=-. The authenticity of these receipts have not been challenged. Although he claims

that he spent Ksh 50,000/= as legal fees, this has not been proven. The Applicants on the other hand, despite stating so in their submissions have not proven by way of affidavit evidence that they indeed paid any money towards the transfer process.

6. This Court observes that there are 5 beneficiaries in total. It is not clear why the other beneficiaries did not participate in the instant application so as to prove whether they contributed their respective shares for the survey and conveyancing fees. This Court finds that despite their absence, the costs of the transfer ought to be borne by all the beneficiaries. Their interests, to the extent that some of them may have already paid their respective shares to the transfer costs will be taken into account as the Court gives its orders.

7. In the end, this Court makes the following orders: -

i) The costs of Ksh 91,200/= incurred by the Petitioner/Respondent for the survey and transfer process of the suit properties is to be borne equally by all the beneficiaries.

ii) The amount of Ksh 91,200/= should be divided amongst the 5 beneficiaries and each should pay to the Petitioner/Respondent their respective amounts.

iii) Order ii) above will not affect those beneficiaries who have already paid their respective amounts.

iv) The matter to be mentioned after 30 days to confirm the status of the payments and transfer process.

v) Each party shall bear its own costs.

Order accordingly.

DATED AND DELIVERED ON THIS 24TH DAY OF JUNE, 2021.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S Gatari Ringera & Co. Advocates for the Applicant

M/S Otieno & Co. Advocates for the Petitioner/Respondent.