



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 398 OF 2012

IN THE MATTER OF THE ESTATE OF EUTYCUS MUTHUI (DECEASED)

BETWEEN

MIRIAM KENDI MUTHUI.....1ST APPLICANT

CATHERINE KINYA MUTHUI.....2ND APPLICANT

AND

JAMES KIMATHI MUTHUI.....1ST RESPONDENT

LINCOLN MUTHUI MUITA.....2ND RESPONDENT

RULING

1. By a ruling dated 18th March, 2021, this court made the following orders:

a) The Administrator/1st Respondent is hereby granted 30 days from today's date to complete the administration of the deceased's estate in terms of Amended Certificate of Confirmation of Grant dated 27th April, 2020

b) In default of compliance with order (1) above, the Deputy Registrar of this court is hereby empowered to sign the transfer forms on behalf of the Administrator.

2. Having failed to comply with the court orders, the Applicants by chambers summons dated and filed on 20th May, 2021 seek orders THAT:

1) The court directs that the District Land Registrar Meru dispenses with production of the following original titles

(a) NYAKI/KITHOKA/1449

(b) NYAKI/KITHOKA/1450

(c) NYAKI/KITHOKA/1495

(d) NYAKI/KITHOKA/1842

(e) NYAKI/KITHOKA/2279

(f) NYAKI/IGOKI/949

(g) NYAKI/IGOKI/5454

(h) KIANJAI/MITUNTU/273

2) The orders be served upon District Land Registrar Meru for compliance

3) Costs be provided for

3. The Applicants contend that the 1st Petitioner/Respondent has refused to cooperate and surrender the titles which are in his possession to the Land Registrar thus rendering distribution unattainable.

4. The 1st Respondent by his replying affidavit sworn and filed on 02nd June, 2021 avers that no request to surrender the title deeds has been made and that this application is a ploy to deny him his costs incurred in the administration of the estate. He additionally states that **NYAKI/KITHOKA/1449** and **NYAKI/KITHOKA/1450** are charged in favour of Standard Chartered Bank, **NYAKI/KITHOKA/1573** is charge in favour of Kenya Commercial Bank and **NYAKI/IGOKI/1166** in favour of Consolidated Bank of Kenya.

5. JOEL KITHINJI MUTHUI, a beneficiary in his replying affidavit sworn on 14th June, 2021 avers that Standard Chartered Bank granted him and the deceased facilities over **NYAKI/KITHOKA/1449** and **NYAKI/KITHOKA/1450**. He states that the facilities were settled in full before deceased's demise and that titles were subsequently collected by the deceased's widow and the 1st Administrator. In support thereof, he has tendered annexures marked JKM2 which are a note from the bank and a bank slip by which the 1st Administrator paid Kshs. 1,000/- to Standard Chartered Bank on 01st December, 2018 for discharge of **NYAKI/KITHOKA/1449** and **NYAKI/KITHOKA/1450**.

6. Concerning **NYAKI/IGOKI/1166**, the 1st Applicant in her replying affidavit sworn on 14th June, 2021 has tendered annexure marked MKM 2 which is a discharge of charge by Consolidated Bank of Kenya over the said asset. A copy of official search for **NYAKI/KITHOKA/1448** marked MKM 2 confirms the asset was transferred to the 1st Administrator on 29.10.2020 and that the title is free from any encumbrances.

Analysis and determination

7. I have considered the application in the light of the supporting affidavit, the replying affidavits and submission on behalf of the parties.

8. In my ruling in this matter rendered on 18th March, 2021, I reiterated the provisions of Section 83 of the Law of Succession Act more particularly subsection (g) which requires the personal representative to complete the administration of the estate within six months from the date of confirmation of the grant, or such longer period as the court may allow.

9. It has been borne from affidavits evidence that the 1st Respondent is neither desirous nor prepared to comply with court orders requiring him to complete the administration of the estate.

10. The material presented before the court creates a doubt as to the 1st administrator's assertion that he has been unable to complete the administration for the reason that some assets are encumbered. This is clearly borne from the fact that **NYAKI/KITHOKA/1448** which he claims is encumbered has been transferred to him. He has similarly not controverted evidence in the form of discharge of charge and bank documents confirming the release of titles to him and this court therefore makes a finding that the 1st Administrator is being economical with the truth.

11. And even if the assets are encumbered as alleged, Section 83 (d) of the Law of Succession Act requires administrators to ascertain and pay, out of the estate of the deceased, all his debts. The 1st Administrator has not offered any explanation why he has failed in his duties and he should be warned that the court has powers to revoke the grant of representation on account of his failure to proceed diligently with the administration of the estate.

12. The orders of 18th March, 2021 empowering the Deputy Registrar of this court to sign the transfer forms on behalf of the 1st Administrator cannot be attained without the original title deeds whose whereabouts are in doubt

13. From the totality of the material presented before the court, I find that the 1st Respondent has by his actions and omissions made a mockery of this court orders thus exposing the court to ridicule and this court will not deliberately ignore such blatant contempt of its orders.

14. This court has a moral and constitutional duty to protect its integrity from abuse and will not shy away from making orders that ensure that realization. Having considered the chambers summons dated and filed on 20th May, 2021, I make orders that in distributing the deceased's estate as ordered by this court:

1) The District Land Registrar Meru shall dispense with production of the following original titles:

(a) NYAKI/KITHOKA/1450

(b) NYAKI/KITHOKA/1449

(c) NYAKI/KITHOKA/1495

(d) NYAKI/KITHOKA/1842

(e) NYAKI/KITHOKA/2279

(f) NYAKI/IGOKI/949

(g) NYAKI/IGOKI/5454

(h) KIANJAI/MITUNTU/273

2) The orders be served upon District Land Registrar Meru for compliance

3) Costs shall be borne by the 1st Administrator.

DATED AT MERU THIS 23RD DAY OF SEPTEMBER 2021

WAMAE. T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Applicants - M/s. Kevin Nyenyire & Co. Advocates

For 1st Respondent - N/A for M/s. Thangichia M.David Advocates

For 2nd Respondent - N/A