



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

MISC.SUCCESSION CAUSE NO. 15 OF 2018

IN THE MATTER OF THE ESTATE OF GEORGE GIKUNDI (DECEASED)

DAVID KITHINJI JOSPHAT.....APPLICANT

VERSUS

STELLA KAARI.....RESPONDENT

RULING

1. The Application that is under consideration in this ruling is the summons dated 6th September 2021 and filed on 20th September 2021. It is expressed to brought pursuant to the provisions of **Rules 49** and **73** of the **Probate and Administration Rules (Cap 160 of the Laws of Kenya)** and seeks for the following orders:

i. Spent.

ii. THAT the Respondent be compelled by this honourable court to sign and/or execute all the requisite documents for transmission of LR. MWIMBI/KIRARO/1275 and in default this honourable court authorize the Deputy Registrar to sign and/or execute the requisite documents for such transmission for the Applicant's share pursuant to the Certificate of Confirmation of grant issued on 6th July 2020.

iii. THAT the costs of the application be provided for.

2. The Application is based on the grounds on the face of it and is supported by the Affidavit of David Kithinji Josphat that was sworn on 6th September 2021.

3. It is the Applicant's contention that the Respondent has, without any reasonable or lawful excuse, declined to sign and/or execute the requisite transmission documents in compliance with the Certificate of Confirmation of Grant that was issued in this cause on 6th July 2020. The Applicant further contends that by declining to sign, the Respondent has been frustrating all efforts by the Applicant to process the requisite documents for the certificate of title.

4. The Application is unopposed despite the Respondent being duly served with the same. Therefore, the only issue for determination by this court is whether the Application is merited.

Analysis

5. The Applicant and the Respondent are the joint Administrator and Administratrix of the Estate of the late George Gikundi. As per the Certificate of Confirmation of Grant issued on 6th July 2020, the Applicant is entitled to LR. MWIMBI/KIRARO/1275 wholly while the Respondent is entitled to LR. MWIMBI/KIRARO/1276 to hold for her own benefit and in trust of one Kelvin Murimi George.

6. The law requires that the properties be distributed within 6 months after the confirmation of the grant. In **Re Estate of Gitere Kahura (deceased) [2020]eKLR** the court stated that the primary mandate of the probate court is distribution of the estate and once an order is made distributing the estate, the Administrators must comply or the Court would be compelled to remove them as Administrators. The court further stated that administrators have a duty to the beneficiaries to ensure distribution of the estate within the stipulated time.

7. The consequences of an administrator's failure to sign completion documents were well elaborated in **Kerugoya Succession Cause No. 36 of 2013, 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...”

8. The court in **Re Estate of Wilfred Munene Ngumi (deceased)**(supra) while allowing the application for the Deputy Registrar of the court to execute completion documents thus held as follows:

“...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...”

9. This position was further reiterated in **Re Estate of the Late Kubuta Kamara Nguuro alias Pharis Njegegu (Deceased) [2021] eKLR**, where the court faced with a similar situation expressed itself as follows:

“24. This state of affairs is not healthy and should not be countenanced by the court. The applicants prayed that the Executive Officer/Deputy Registrar do sign all the documents on behalf of the respondent. In **Rose Wanjiku Kuria -vs- Nganga Mugwe [2003] eKLR** and which decision I agree with, the court held that by virtue of Section 79 of the Law of Succession Act, the administrator gets all the property of the deceased vested in him/her and the court further stated that *the Court’s Registrar or his deputy or any other officer of the court not having been granted Probate or letters of administration and therefore having had no property of the deceased vest in him and no powers and duties in accordance with provisions of the Law of succession Act, cannot become an executor or administrator and as such cannot administer the estate of the deceased person and the court to order him or authorize him to administer by signing any of those documents as requested in this summons, is to make an order which is not supportable under the Law of Succession Act.*

25. However, this court being a succession court has ample powers donated to it by Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules to resort to, in order to meet the ends of justice. The task of administering the estate is still on the shoulders of the respondent (administrator). As I have already noted, despite the grant having been confirmed in the year 2007 and even after the subsequent amendment by Muchemi J (which included the Wang’uru Plot in the certificate), the respondent has nonetheless failed to administer the estate. I believe that court orders ought not to be issued in vain but must be complied with. Further, the office of administrator of estate of a deceased person is an office which is built on the foundation of trust and goodwill. Where such is seen to be lacking, then the court ought to invoke its powers to ensure that justice is done to the beneficiaries more so where the administrator puts the beneficiaries in an unenviable position.”

10. I am persuaded by the above decisions. Court orders are not made in vain. The **Law of Succession Act** envisages the matter be concluded within six months from the date of the confirmation of grant. It places a duty on personal representatives to complete the administration of the estate. **Section 83(i) of the Law of Succession Act** provides;

“ To complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate accountof the completed administration.”

The respondent has a duty to complete the administration by executing the documents which are necessary to conclude the administration. **Section 47 of the Law of Succession Act** provides that:

“The 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:

Provided that the High Court may for the purpose of this section be represented by resident magistrates appointed by the Chief Justice.”

It gives this court powers to make such orders and may be expedient.

It is my view that the Respondent has no basis for refusing to sign the requisite documents to effect Grant issued on 6th July 2020 and complete the administration of the estate of the deceased as provided under the law.

11. Rule 73 of the Probate and Administration Rules gives this court inherent powers to make such orders as may be necessary to meet the ends of justice, or to prevent abuse of the court process. I find that the Application is merited.

The respondent has duty as an administratrix of the estate of the deceased to sign/execute all the requisite documents for transmission of LR Mwimbi/Kiraro/1275 pursuant to the certificate of confirmation of grant issue on 6/7/2020.

I therefore order as follows: -

1) The summons dated 6/9/2021 has merits and is allowed.

2) The respondent shall sign all the necessary documents for transmission of L.R. Mwimbi/Kiraro/1275 within 21 days from the date hereof.

3) If the respondent fails to comply with this order, the Deputy Registrar of this court is authorized to sign/execute all the necessary documents to effect the transmission of L.R. Mwimbi/Kiraro/1275 to the applicant.

4) I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 25TH DAY OF NOVEMBER 2021.

L.W. GITARI

JUDGE