



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MERU

SUCCESSION NO. 316 OF 2007

IN THE MATTER OF THE ESTATE OF M'KIUNGA KATHEMEURA – DECEASED

MARICELLA MUKIIRI M'KIUNGA.....PETITIONER/RESPONDENT

VERSUS

MARGRET KURI MUNORU.....PROTESTOR/APPLICANT

RULING

1. The application dated 11/3/2019 is brought under section 47 of the Law of Succession Act cap 160 of the Laws of Kenya and Rule 73 of the Probate and Administration Rules. The application seeks orders for the removal and replacement of Margaret Kiri Munoru as an administrator and that the Land Registrar Meru be directed to dispense with the production of the Original title to LR NYAKI/MULATHANKARI/492 as the Administrator had declined to diligently implement the grant confirmed on 27th June 2018.
2. The application was based on the grounds on the face of it and on the supporting affidavit of Margret Kuri Munoru sworn on 1st March 2019. In her Replying Affidavit sworn on 1st June 2019, Maricella Mukiri M'Kiunga averred that the application was filed with falsehoods and that she had not refused to implement the grant but that there is an appeal pending determination. She averred that the orders being sought for are unfair and should not be granted as it has not been proved that she acted in contempt of court order.
3. In submissions applicant said the matter was heard by way of viva voce evidence and the court delivered its ruling dated 27.6.2018 distributing the estate to the dependants and the applicant who is daughter of the deceased. It was submitted that applicant decided to seek the prayers herein as Petitioner/Administratrix had declined to implement the grant more than one year after court issued the same.
4. It was submitted that the Administratrix had breached section 76 of the Law of Succession and should be removed as Administrator.
5. The Respondent in her submissions said that she only obtained copies of proceedings in October. She submitted further that delay in implementing the grant was no inadvertent, intentional and deliberate. She said the application was meant to distract process of appeal. She submitted the applicant was not fit to be an Administrator. She said there was no proof of any threat or intimidation or any violence to warrant the prayer that the OCS be ordered to oversee implementation of grant and that the applicant is making a case out of blues.
6. The Respondent prayed that the application be dismissed.
7. I have considered the application by Margaret Kiiri Munoru and find that same has not been controverted. The Respondent has not sworn that she obtained orders staying the implementation of the grant that was confirmed on 27th June 2018. The Respondent claimed she had filed an appeal against the determination of this court but she didn't exhibit the same. I do find that the application is merited.
8. The Deputy Registrar is hereby ordered to execute documents to facilitate transmission of the estate instead and of Maricella Mukiri M'Kiunga.
9. The Land Registrar Meru is directed dispense with the production of the original title to LR NYAKI/MULATHAKARI/492.
10. The O.C.S Meru Police station to provide security during the survey to subdivide the estate of the deceased.
11. Each party to bear its own cost.

HON A. ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 20TH DAY OF FEBRUARY 2020.

In the presence of :

CA:

PETITIONER/RESPONDENT: Mr Kirimi holding brief for Thangicia for Petitioner

PROTESTER/APPLICANT:- Mr Gikunda for Applicant.

HON A. ONG'INJO

JUDGE