



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 372 OF 2012

TABITHA WANGITHI MURIUKI PETITIONER/APPLICANT

V E R S U S

WATHIBA KIMOO.....PROTESTOR/RESPONDENT

RULING

1. The applicant Tabitha Wangithi Muriuki has filed a summons (General Form) under **Rules 49 and 73 of the Probate and Administration Rules** seeking orders that the Deputy Registrar be ordered to execute all the relevant documents on behalf of the respondent so as to execute the judgment of this court made on 19/12/2018.

2. It also seeks an order that the applicants be authorized by this court to pay the requisite fees for the transfer of the suit land to the beneficiaries and for partition of the same on behalf of the respondents and allow them recover the costs in this cause.

3. That the court be pleased to authorize the Officer Commanding Station Kianyaga Police Station to provide security during the partition of the suit land.

The application is based on two grounds:-

- **That the respondents have refused to co-operate in the execution of the judgment of the court.**
- **That it is in the interest of justice that the order be executed.**

4. The respondent did not file a replying affidavit but adopts submissions in support of summons General which the court had ruled on. The counsel for the applicant further submits that the application lacks merits and is an abuse of court process. That the applicants want court to execute judgment which amounts to asking the court to descend into the arena of conflict. That there is no evidence tendered to warrant the court to make the order. That the order will prejudice the appeal and render it nugatory.

5. In response counsel for the appellant submits that there is no order of stay and appeal does not operate as a stay. That there are averments on oath which have not been rebutted. That the party must sign the documents to facilitate transmission.

6. I have considered the application. **Section 47 of the Law of Succession Act** provides:-

“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 the court jurisdiction to entertain any application and make any orders as it may deem expedient. This application has been brought under **Rule 49 of the Probate and Administration Rules**. The rule allows the filing of an application which is not otherwise prescribed in the rules. It provides:-

“A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary by affidavit.”

7. It is therefore not true for the counsel to submit that the application is an abuse of the court process. The court has jurisdiction to entertain the application and issue orders. Finally **Rule 73 of the Probate and Administration Rules** provides that the court has inherent powers to

make orders that would be necessary for the ends of justice and to prevent abuse of the process of the court. The rule 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.”

8. The applicant has submitted that the respondents have refused to co-operate to have the grant executed. This has not been denied and the respondents have not sworn affidavit. They have not stated that they are willing to comply. As well submitted, an appeal does operate as a stay. There is nothing to prevent this court from making such orders that will be necessary to effect the judgment of the court. Execution of judgment is a lawful process and cannot be stopped unless for good reasons. By ordering the Deputy Registrar to sign, the court will only be ensuring that the judgment is complied with and will not be descending into the arena of conflict. The orders are necessary for the ends of justice and to ensure that a party reaps the fruits of judgment and prevent abuse of the court process. I therefore find that the application has merits. I allow the application and order that:-

1. The Deputy Registrar is authorized to sign the relevant documents on behalf of the respondents in order to facilitate the execution of the judgment of this court.

2. The applicant to pay the requisite fees and be at liberty to recover any fees which the respondents will be required to pay and which they will not have paid.

3. The Officer Commanding Station Kianyaga Police Station is ordered to provide security during the partition.

4. Each party to bear its own costs.

Dated at Kerugoya this 12th Day of March 2020.

L. W. GITARI

JUDGE