



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 2933 OF 2008

IN THE MATTER OF THE ESTATE OF EVANSON GICHURU

MUREITHI ALIAS EVANS GICHURU MURITHI (DECEASED)

MARY RUGURU GICHURU.....APPLICANT

VERSUS

PETER MURIITHI GICHURU.....RESPONDENT

RULING

1. Before me is a Summons dated 6th May 2020 filed by Mary Ruguru Njoroge nee Gichuru under Section 47 of the Law of Succession Act (*Cap. 160*) and Rule 63 and 73 of the Probate and Administration Rules.

2. The application seeks the following substantive orders –

1. That this Honourable Court be pleased to order the respondent to release the title documents for land numbers L.R. No. DAGORETTI/UTHIRU/2275, 2274, DAGORETTI/UTHIRU/2273, DAGORETTI/WAITHAKA/182, DAGORETTI/UTHIRU/287, and MAELA/NDABIBI/BLOCK 2/411 TARABETE to the court or as may be directed by the court within 7 days from the date hereof.

2. That in default of prayer (1) above, this Honourable Court be pleased to instruct the Land Registrar of Nairobi, and Naivasha to cancel the documents for titles for L.R. NO. DAGORETTI/UTHIRU/2275, 2274, DAGORETTI/UTHIRU/2273, DAGORETTI/WAITHAKA/182, DAGORETTI/UTHIRU/287, and MAELA/NDABIBI/BLOCK 2/411 TARABETE and issue new Title Documents in the applicant's and the respondent's names forthwith.

3. The application has grounds on the face of the summons mainly that the Grant herein has been confirmed and assets distributed by the court, but that the Respondent was bent on defrauding the applicant and that if he is not compelled to release the title documents for the land for the purposes of preparing new Title Documents in the applicant and the respondent names, the respondent will have succeeded in defrauding the applicant of the suit property and frustrating the distribution process.

4. The application was filed with a supporting affidavit sworn on 6th May 2020 by the applicant MARY RUGURU NJOROGE in which it was deposed that the applicant and the respondent were the sole beneficiaries of the estate of the deceased herein who was their father, that letters of administration were confirmed on 26th April 2019 and the assets in the estate were distributed equally among the applicant and the respondent that since the grant was issued and confirmed the respondent had refused to release the title documents for the land assets for the purposes of preparing new title documents in both their names, and that the prayers sought would facilitate the preparation of new Title Documents in compliance with the confirmed grant and the distribution of the assets would thus be finalized.

5. This application has not been opposed as the respondent has not filed any documents in response to it, though I was informed that it was served together with a hearing notice.

6. I have perused the file herein and noted that the last formal court order is an amended certificate of confirmed grant issued on 26th April 2019 in which the estate of the deceased herein was distributed equally among the applicant herein MARY RUGURU and the respondent PETER MURIITHI GICHURU. The amended certificate of confirmed grant was issued by Justice Ongeri.

7. On the same date 26th April 2019, the court dismissed an application dated 23rd February 2018 and allowed an application dated 18th April 2018 seeking to have the Registrar of this court to sign all relevant documents, and ordering that the Deputy Registrar do sign all documents

in terms that the deceased's assets shall be distributed in equal shares to MARY RUGURU NJOROGE, and PETER MURIITHI GICHURU.

8. The applicant herein has come to this court in the present application under Section 47 of the Law of Succession Act (Cap. 160), which provides as follows –

“47. 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 the resident magistrates appointed by the Chief Justice.”

9. Thus this court has powers to make orders that serve the interests of justice in any particular matter. In my considered view, this application merely seeks orders that facilitate the implementation of the orders of this court already issued regarding the distribution of the assets of the deceased's estate equally among the applicant and the respondent. It is clear to me from the facts disclosed in the documents the respondent has been impeding the execution of the orders of the court, and thus this application has merits and will be allowed by this court in the interests of justice.

10. I thus allow the application and grant prayers 1 and 2 therein which I have highlighted earlier in this ruling. Prayer 1 to be complied with within 7 days from today. Orders accordingly.

Dated and delivered at Nairobi this 29th day of July, 2020.

George Dulu

JUDGE

Due to the COVID-19 pandemic and the Government regulations made by the Minister for Health, this ruling has been delivered virtually.