



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Coram: D. K. Kemei - J

P&A CAUSE NO. 151 OF 2006

IN THE MATTER OF THE ESTATE OF THE LATE JONATHAN MUIA MUMO (DCD)

PIUS KATEETI MUIA.....PETITIONER/RESPONDENT

VERSUS

DAVID MUTUKU MUIA.....1ST OBJECTOR/APPLICANT

PAULINE MUMBUA.....2ND OBJECTOR/APPLICANT

RULING

1. The Objectors have filed an application dated 10/03/2020 pursuant to section 74, 47 of the Law of Succession Act as well as Rules 49 and 73 of the Probate and Administration Rules seeking the following reliefs:-

(1) Spent

(2) That the court do order the Administrator to hand over the original titles for **L.R. Nos Machakos/Matuu/1103, Machakos/Matuu/472, Machakos/Matuu/491 and Machakos/Matuu/656** to the court so that they can be handed over to the Surveyor for purposes of sub-division of the four parcels of land.

(3) That the court do issue an order to the effect that the Deputy Registrar do sign all the relevant documents to effect sub-divisions, transfer and transmission of the properties of the estate.

(4) The costs of the application be in the cause.

2. The application is supported by the grounds set out on the face thereof and the affidavit of the 1st Objector/Applicant's sworn on even date. The Objectors/Applicants case is that due to the past acrimony between them and the Administrator, the said Administrator has refused to carry out the subdivision of the parcels of land so that the beneficiaries can get their entitlement under the estate. It is further the Applicants case that the Administrator has become law unto himself by claiming that he would carry out the duties as to how and when he deems fit without consulting the family members. It was also averred that the Administrator has refused to hand over the titles to the Surveyor so as to enable the sub-division exercise to be carried out successfully. Finally, it was the Applicant's case that the Administrator should be compelled to hand over the title deeds to the court for onward transmission to the surveyor for purposes of sub-division of the four parcels of land and further that the Deputy Registrar of this court be authorized to sign all the necessary documents to effect the sub-division and transfer of the properties.

3. The application was opposed by the administrator whose learned counsel filed grounds of opposition dated 20/05/2020 *inter alia*; that the application is misconceived, incompetent and an abuse of the court process; that it is the Objectors/Applicants who have made it impossible for the administrator to distribute the estate; that the administrator has expressly demonstrated his willingness to distribute the estate but has been frustrated by the applicants who are holding onto the original certificates of confirmation of grant; that this court is already functus officio and there must be an end to litigation.

4. When the matter came up for hearing on the 21/09/2020 Mr. Muumbi learned counsel for the Objectors indicated that he will be relying on the supporting affidavit and that he will not be filing submissions. He urged the court to reserve the matter for ruling. Mrs Nzei learned counsel for the administrator indicated that she had already filed her grounds of opposition. She also pointed out that the administrator has been willing to proceed with the task of administration of the estate but has been hampered by the conduct of the Objectors in collecting the original certificate of confirmation of grant from the registry and withholding it and refusing to hand it over to the administrator. She urged the court to check the record and direct that the person who picked up the certificate to ensure the same is handed over to the administrator to

enable him execute his mandate. She finally indicated to the court that the administrator has already commenced the exercise and has filled and signed the requisite transfer forms which she showed to the court.

5. I have considered the application together with the affidavit in support as well as the grounds of opposition. I have also noted the sentiments of learned counsels. It is not in dispute that all the issues in controversy have since been thrashed out pursuant to the ruling of this court dated 6/11/2019 and the consent entered on 23/01/2020 in which the grant issued to the Administrator on 13/07/2006 was confirmed. It is also not in dispute that on the 21/05/2020 the parties agreed that a copy of the certificate of confirmation of grant be issued to the administrator who was to proceed with the task of administration of the estate and to conclude the same within 21 days and that on 16/06/2020 it was reported that the survey exercise had been completed and transfer forms on some properties had been duly prepared and that the administrator was granted another 45 days to finalize the exercise.

It is also not in dispute that the Objectors Advocates Mr. Douglas Muumbi collected the original copy of the certificate of confirmation of grant on the 31/01/2020 from the Machakos probate registry. Finally, it is not in dispute that the Objectors application dated 10/03/2020 was to be set down for hearing upon the lack of progress on the part of the administrator to carry out the land subdivision exercise to completion. That being the position, I find the issues for determination are firstly, whether the Administrator has failed to execute his mandate and secondly what orders can the court grant.

6. As it has been noted above, the finalization of this cause appears to be at the tail end as what is remaining is the sub-division and transfer of the properties and/or assets to the beneficiaries. However, what has been observed by this court is that the objectors and administrator have not yet climbed down from their opposite pedestals. It seems to me that the hangover of their acrimonious past is still lingering and hence the continued shadow boxing. This in my view is not helpful at all since the issue of distribution has already been resolved. It is in their interest to co-operate with each other so that the exercise is concluded and thereafter they will be at liberty to go their separate ways even though they belong to one family. That is the tragedy which is always brought about by fights relating to land rights. The stalemate is palpable in that whereas the administrator is ready to execute his mandate, he insists that the original certificate of confirmation of grant be restored to him and on the other hand the objectors are of the view that he could do with just a certified copy thereof. One can hardly fail to notice the mind games being played by the parties. This state of affairs is not healthy and should not be countenanced by the court. 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 irony in the conduct of the parties herein is out for all to see. The administrator had earlier on agreed through his counsel to use a copy of the certificate of confirmation in the sub-division and transfer exercise and sought for a period of 45 days to do so but now turns around and claims that he cannot execute his mandate unless the original copy of the certificate is availed. On the other hand the Objectors counsel is confirmed to have collected the original certificate of the confirmation of grant and who appears not willing to hand it over to the other side insisting that the administrator should make do with only a copy. It is now imperative that this court must bring the parties to heel so as to ensure that the matter is fasttracked and brought to conclusion. The task of administering the estate is still on the shoulders of the Administrator whose counsel has clearly indicated that he is ready to finalize the exercise once given the original certificate of confirmation of grant. Indeed, all administrators once a grant has been confirmed are entitled to be issued with the original copy of the certificate of confirmation of grant for their records and for further administration of the estate. It is my view that the administrator who has not finalized the process should be given another chance by being given the original copy of the certificate to enable him finalize the sub-division and transfer of the assets within a certain time frame failing which the court will direct the Deputy Registrar to do the needful. To that extent the Objectors application succeeds.

7. In view of the foregoing observations, the application dated 10.3.2020 succeeds. The following orders are hereby made:

(a) The Objectors learned counsel Mr. Douglas Muumbi is hereby directed to hand over the original copy of the certificate of confirmation of grant to the Administrator's Advocates within seven (7) days from the date hereof.

(b) The Administrator is granted forty-five (45) days from the date hereof within which to finalize the exercise of sub-division and transfer of the properties and in default, to hand over the titles to land parcels Machakos/Matuu/1103, 491, 472 and 456 to the court for onward transmission to the surveyor for purposes of sub-division and further in default the Deputy Registrar of this court shall sign all the relevant documents to effect the transfer of the properties to the beneficiaries.

(c) Each party to bear their own costs.

It is so ordered.

Dated and Delivered at Machakos in open court this 24th day of September, 2020.

D. K. Kemei

Judge