



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2885 OF 1999

IN THE MATTER OF THE ESTATE OF JESSE KIMANI (DECEASED)

TITUS NDUNGU KIMANI.....APPLICANT

VERSUS

STANLEY MURIGI KIMANI

alias STANLEY MURIGI MURAYA KIMANI.....RESPONDENT

MWANGI MUIRURI KIMANI.....INTERESTED PARTY

RULING

1. Before court is the Summons dated **24th November 2020** by which **TITUS NDUNGU KIMANI** (the Applicant) seeks the following orders:-

a. SPENT

b. SPENT

c. THAT an order do issue compelling the Respondent to immediately release the original Deed Plan No. 368446, 368453 and 410343 to the Applicant within 7 days latest from the date of service of this application.

d. THAT an order do issue compelling the Respondent to surrender the original Certificate of Title in respect of LR. No. 5979/4 to the Applicant within 7 days from the date of service of this application for endorsement of the subdivisions herein.

e. THAT the Deputy Register be authorized to sign the relevant transfer documents / Assent any other legal document on behalf of Titus Ndungu Kimani in respect to the estate of Jesse Kimani (Deceased) for purposes of distribution of the deceased Estate.

The Summons was supported by the Affidavit of even date sworn by the Applicant herein.

2. The Respondent **STANLEY MURIGI KIMANI** alias **STANLEY MURIGI MURAYA KIMANI** opposed the application through his Replying Affidavit dated **8th December 2020**. The Interested Party **MWANGI MUIRURI KIMANI** also filed an “**Affidavit in Support**” dated **10th December 2020**. The application was canvassed before the Court on **11th December 2020** by way of oral submissions.

BACKGROUND

3. This matter involves the Estate of **JESSE KIMANI** (hereinafter the Deceased) who died on **29th November 1999**, leaving the following dependants:-

i. Elizabeth Nyambura Kimani – widow

ii. **Kabura Anne Naomi Mukasa – daughter**

iii. **Mwangi Muiruri Kimani – son**

iv. **Stanley Murigi Kimani – son**

v. **Ndungu Titus Kimani – son**

4. Following the demise of the deceased, his widow **Elizabeth Nyambura Kimani** petitioned for **Letters of Administration Ad Colligenda Bona** for purposes of paying out the liabilities of the estate. Thereafter on **8th April 2000**, the widow of the Deceased also passed away. The children of the Deceased then swore an affidavit seeking to substitute the name of their mother with those of **Mwangi Muiruri Kimani, Stanley Murigi Kimani** and **Ndungu Titus Kimani** as the Administrators of the estate. A Confirmation of Grant for the estate of the deceased was issued on **20th June 2003** and was later rectified on **14th June 2017**.

5. The Applicant avers that as per the Confirmed Grant the following parcels of land were allocated to him:-

- **L.R No. 5979/9 Deed Plan No. 368446**
- **L.R No. 5979/14 Deed Plan No. 368453**
- **L.R. No. 12057 Deed Plan No. 410343**

6. That the Respondent as co-administrator collected all the Deed Plans as well as the mother title to **L.R 5979/4** for purposes of safe-keeping awaiting distribution of the estate. However todate distribution has not been completed. The Applicant complains that, despite repeated demands the Respondent has deliberately failed and/or declined to sign transfer instruments in respect of the parcels of land allocated to the Applicant and that the Respondent has declined to release the respective Deed Plans for the said properties to enable the Applicant register the said parcels in his own name. That these actions of the Respondent are aimed at frustrating the Applicants efforts to sell of a portion of his inheritance for which he has secured a ready buyer for an amount of **Kshs. 90 million**. That said Sale Agreement had a completion dated of **13th December 2020**. That all efforts to resolve this matter amicably have failed and as such the Applicant was left with no option but to approach the Court for orders. The Applicant urges that if the orders sought are not granted he stands to suffer great prejudice and that it is in the best interest of justice for the Court to grant the orders being sought.

7. In reply the Respondent confirms that he is a co-administrator of the estate of the deceased. The Respondent claims that the firm of **Mwaura Waihiga Advocates** who initially represented their late mother as administrator took the family round in circles for two years before they finally realized that the application for Letters of Administration had not even been lodged in the High Court.

8. The Respondent further averred that his enquiries at Land Office revealed that the lease for **L.R No. 5979/4** had expired and the Deed Plans were missing. That the file went missing for about five (5) years, and that he only caught sight of the mother title (**LR 142691**) at the Advocates office after conclusion of the sale in the year **2014**. The Respondent confirms that the mother title which was rectified in the year **2017** is in his custody and he avers that he has conscientiously worked towards giving full effect to the distribution of the estate as per the Confirmed Grant.

9. The Respondent confirmed that he has indeed processed title for **Titus Ndungu Kimani** being **Title IR No. 189813** for **LR No. 597919** and that the same were handed over to the Advocates on **October 2017**. He further confirms that in **January, 2018** he handed over the **Title LR No. 12057/5** for **LR No. 192797**.

10. The Respondent accuses **Mwaura Advocates** and the Interested Party of illegally intermeddling with the property of the deceased. He states that the Applicant has chosen to rebel by going ahead to dispose of his share of the inheritance through a sale agreement, as opposed to giving full effects to the terms of the Confirmed Grant. The Respondent declares that it is his desire to have the entire estate disposed of wholistically rather than in a piecemeal manner. Lastly the Respondent asserts that all the beneficiaries ought to contribute towards the development of public utilities in the Estate.

11. The Interested Party **Mwangi Muiruri Kimani** also a co-administrator of the Estate had sworn an Affidavit dated **10th December 2020** in support of the Respondent. However on **11th December 2020** the Interested Party addressed the Court in person and disowned his Affidavit in support. He explained that he signed the said Affidavit whilst under the influence of alcohol. The Interested Party asked the Court to rely instead on his Affidavit of **11th December 2020** and indicated that he fully supports the Applicants prayer to have the Deed Plan released to him.

ANALYSIS AND DETERMINATION

12. I have considered the facts of this case, the submissions made by Counsel as well as the relevant law. It is not in dispute that the Applicant, the Respondent and the Interested Parties are all the co-administrators of the estate of the deceased. Neither is it in dispute that the parties are all the children and legal beneficiaries of the estate of the deceased.

13. The Applicant told the Court that he has entered into a Sale Agreement with a third party for the sale of a portion of his inheritance for **Kshs. 90 million** and that the refusal of the Respondent to release the relevant documentation puts the entire sale transaction in jeopardy. **Mr. Mwaura** who acts for the parties in the sale transaction gave submissions in support of the application to enable the said transaction to be completed. It is however trite that a Probate Court is only mandated to deal with issues of Succession and does not involve itself in issues involving 3rd parties who are not beneficiaries of the estate. In the case of **PRICILLA NDUBI & ZIIPORAH MUTIDA – VS- GERISHON GATOBU MBIU, MERU SUCCESSION CAUSE No. 720 of 2013**, it was held that:-

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues on the ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why Rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation.” [own emphasis]

14. Therefore the question of the Sale agreement entered into by the Applicant and its illegality as alleged by Respondent is not central to the decision of this Court. The duty of an Administrator or Administrators is to distribute the estate of the deceased to the named beneficiaries. It is well established that no landed property may be sold to a third party before a Grant has been confirmed. In this case the Grant was confirmed on **20th June 2003** and said Confirmed Grant was rectified on **14th June 2017**. The Certificate of Grant clearly lists the properties which are to devolve to the Applicant herein. These ought to be transferred to him as soon as possible.

15. The bone of contention appears to be the mother title which the Applicant requires to enable him deal with his inheritance as he wishes. I do not buy the Respondents argument that he is holding on to the mother title to enable the estate be distributed in a wholesome manner. The Respondent has admitted in this Replying Affidavit that he has already processed other titles for other beneficiaries, why then does he now balk at processing titles for the Applicant.

16. The Respondent is a co-administrator **together** with the Applicant and the Interested Party. He is neither their prefect nor their superior. The Respondent has no basis upon which to deny any beneficiary his portion of the inheritance no matter how much he may disagree with the manner in which said beneficiary intends to dispose of his said inheritance. The Respondent has an obligation to release the mother title as well as the Deed Plans to enable all the beneficiaries access what is due to them. The Applicant does not have the right or the power to supervise and/or approve or the manner in which a legal beneficiary decides to deal with his/her bequest. All the beneficiaries including the Applicant have the right to deal with their inheritance as they wish and the Respondent cannot purport to withhold the mother Title and Deed Plans to the detriment of the other beneficiaries by denying them full enjoyment and use of the properties due to them.

17. Accordingly I find merit in this application and I hereby make the following orders:-

- i. The Respondent is hereby ordered to immediately release the original **Deed Plan Nos. 368446, 368453 and 410343** to the Applicant.
- ii. In default of compliance of (i) an order do issue to the Director of Survey to re-issue **Deed Plan No. 368446, 368453 and 410343**.
- iii. The Respondent is hereby ordered to immediately surrender to the Applicant the Original Certificate of Title in respect of **LR No. 5979/4** for endorsement of the requisite subdivisions.
- iv. Costs of this application to be borne by the Respondent.

It is so ordered.

Dated in Nairobi this 17TH day of December, 2020.

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MAUREEN A. ODERO

JUDGE