



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 152 B of 2001

IN THE MATTER OF THE ESATE OF MAGIRI MUGWIKI (DECEASED)

ZACHARIA CHABARI MAGIRI.....PETITIONER

VERSUS

KAWIRA FLORENCE JULIUS.....INTERESTED PARTY

RULING

1. The Application before me is dated 3<sup>rd</sup> May 2018 and is expressed to be brought under section 47 of the Law of Succession Act and Rules 44 (1) and 73 of the Probate and Administration Rules. The Applicant seeks the following Orders;

a. That this Honourable Court be pleased to Order the petitioner/ Respondent to transfer to the Applicant herein her entitlement in the Confirmed grant dated 3/3/2005, that is, subdivision No. Igoji/ Kianjogu/ 1934.

b. That the transfer of L.r. No Igoji/ Kianjogu/1934 absolutely to the petitioner and later to one Ngaku Koome Timothy be revoked and annulled.

2. The Application is supported by the affidavit of Kawira Florence Julius wherein she avers that she is a beneficiary of the estate of the deceased and entitled to 0.38 acres as per certificate of confirmation of grant dated 3/3/2018. Although the petitioner was in RL19 registered as the administrator, in RL 17 for transmission of beneficial interest to their rightful beneficiaries, he registered himself as the beneficiary of the 0.38 portion contrary to the grant. He also transferred the said portion of land to a 3<sup>rd</sup> party, Ngaku Koome Timothy who is not a beneficiary of the estate.

3. The matter came up for hearing on diverse dates when the Respondent sought to file a Replying affidavit and equally sought to show the interested party her entitlement but this was not meant to be.

Determination

4. The petitioner herein was appointed administrator of the estate on 2<sup>nd</sup> October 2001. As per the Certificate of confirmation of grant issued on 3<sup>rd</sup> March 2005 it is clear that the Applicant was entitled to 0.38 acres in L.R. No. IGOJI KIANJOGU/463.

5. The court is perturbed that administrators seem not to adhere to the obligations imposed on them by Section 83 of the Law of succession Act. The section provides;

**83. Personal representatives shall have the following duties -**

**(a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;**

**(b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;**

**(c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);**

**(d) to ascertain and pay, out of the estate of the deceased, all his debts;**

**(e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and**

liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

**(f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;**

**(g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.**

**(h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;**

**(i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration. [Emphasis mine]**

6. It bears repeating that the administrator should only transmit the share to the persons indicated in the grant to be the beneficial interest. There is no justification why the Administrator sought to transfer the estate to a 3<sup>rd</sup> party who lays no beneficial interest in the estate. I therefore find that the transfer was null and void.

7. I therefore also find merit in the interested parties application and hereby Order as follows;

a. That the transfer of L.r. No Igoji/ Kianjogu/1934 absolutely to the petitioner and later to one Ngaku Koome Timothy be and is hereby revoked and annulled.

b. That the petitioner/ Respondent to transfer to the Applicant herein her entitlement in the Confirmed grant dated 3/3/2005 being subdivision No. Igoji/ Kianjogu/ 1934.

8. I also hold that the Administrator herein shall within six (6) months of today’s Ruling present a full and accurate account of the completed administration.

Dated signed and delivered at Meru in open court this 19<sup>th</sup> day of February, 2019

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F. GIKONYO

JUDGE

In presence of

Kithinji for Interested party/applicant

Mwirigi for petitioner – absent

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F. GIKONYO

JUDGE