



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 236 OF 1994

IN THE MATTER OF THE ESTATE OF THE LATE PETRO KARIUKI WACHIRA (DECEASED)

AND

GEOFFREY MBURU alias LAWRENCE KARIUKI KARANJA.... APPLICANT

VERSUS

LAWRENCE KAGAI KARIUKI (as the executor of the will of the estate of PETRO

KARIUKI WACHIRARESPONDENT

AND

JAMES KARIUKI KARANJA..... INTERESTED PARTY

RULING

1. This ruling is in respect of the application by Lawrence Kariuki Karanja alias Geoffrey Mburu (hereinafter the applicant) dated the 3/7/2018.

2. The same is brought by way of Notice of Motion and seeks orders;

1. Spent

2. THAT the court do issue a vesting order vesting the following properties to the applicant in the names of Lawrence Kariuki Karanja

a. KISUMU/MANYATTA/A/4397

b. KARAI/KARAI/3042

3. THAT the court be pleased to direct the Deputy Registrar and relevant land registrars to execute all the relevant documents necessary to affect transfer of afore stated properties in the names of LAWRENCE KARIUKI KARANJA with;

- The sub county land registrar, Kisumu East Sub-County.**
- The County Land Registrar, Kiambu County.**

3. The application is premised on the annexed affidavit of the applicant and on grounds;

1. THAT the Honourable Court vide its judgment dated 17/9/2015 gave the following orders;

a. All shares bequeathed to the Applicant in the will in the name of GEOFFREY MBURU shall reflect as being bequeathed to LAWRENCE KARIUKI KARANJA.

b. That the respondent is hereby directed to execute the transmission documents of the applicants shares bearing the names Lawrence Kariuki Karanja within sixty (60) days.

c. In default the applicant be at liberty to apply to court for further orders directing the deputy registrar to effect execution of the relevant document.

2. THAT the respondent has refused to comply with the stated Court orders, and to date has not transferred the applicant's share of inheritance.

4. In a nutshell, the applicant's case is that the respondent is the executor of the will of Petro Kariuki Wachira (deceased).

5. The executor has refused to transfer the applicant's share in the estate in the names of Lawrence Kariuki Karanja which are the official names of the applicant and has insisted that the applicant must go by his name Geoffrey Mburu which name the testator used when bequeathing the property to the applicant.

6. The applicant avers that other beneficiaries already got their shares registered in their names and are in possession of title deeds to the applicant's exclusion.

7. The application is opposed and in a replying affidavit Lawrence Kagai Kariuki, the executor of the will of the late Petro Kariuki Wachira (deceased), avers that an error arose during the subdivision of land known as Kisumu/Manyatta (A 4397) being a portion of the property known as Manyatta A 1286 that forms part of the estate of the deceased whereby the said portion ended up receiving a larger share than the rest of the subdivisions.

8. By an order of court dated 19/4/2013, (*Emukule J, retired*) the parties herein were directed to appoint a licensed surveyor to conduct a resurvey or in the alternative undertake valuation of the plots and file a report within 90 days.

9. The executor avers that the applicant has failed to comply with the same thus frustrating efforts of the respondent to resolve the dispute occasioned by the said error. The executor has moved the court several times to try and give effect to the order of court.

10. It is urged that on 25/6/2016, this court (*Ndung'u J*) directed the parties to instruct the County Surveyor Kisumu to re-survey the said parcels in compliance with the court order of 19/4/2013. In default of one party complying, the other party was at liberty to conduct a unilateral survey.

11. The applicant did not co-operate and the executor proceeded to instruct the county surveyor who filed a report which report was served on the applicant.

12. The applicant rejects this report and had earlier rejected another on the basis that it was done by a private surveyor.

13. The applicant is blamed squarely for the delay in the finalization of the distribution of parcel of land known as Kisumu/Manyatta (A 4397).

14. As regards parcel of land known as Kijabe/Kijabe 1/296 (Mai Mahiu), it is urged that 2½ acres out of this land was bequeathed to Ruth Nduta following a meeting held on 1/11/2008 in which the applicant attended, consented to and confirmed the minutes. Indeed, the applicant used these minutes in his application before court dated 20/3/2014. This land has since been transferred to Ruth Nduta and duly registered in her name.

15. The applicant is accused of indolence in so far as the transfer of parcel of land known as Karai/Karai 3042 is concerned as the executor duly executed all the necessary documents for the applications for consent of the Land Control Board which consents were issued on 2/4/2019 but the applicant has failed to effect the transfer in his favour.

16. The respondent has filed written submissions. The other parties chose not to submit.

17. I have considered the application dated 3/7/2018, the supporting affidavit, the replying affidavit and the submissions on record.

18. To begin with, the record of court lays it bare that there has been persistent non-compliance with court orders on the part of the applicant specifically the orders of court (*Emukule J*) dated 19th April, 2013 and order of court by *Ndung'u J* dated 25th June, 2016.

19. There is also evidence from the record of a proliferation of multiple applications seeking same or similar orders and which border on *res judicata*.

20. The effect of this has been that what is a straight forward matter of distribution of the estate of the deceased herein in accordance with a clear will has been convoluted into a maze of a never ending litigation.

21. Without ascertaining the equality of the sub-division of land known as Manyatta A 1286, there is no way this court can issue a vesting order in favour of any of the beneficiaries and neither can the court order the registrar of this court to execute any documents in favour of any party.

22. The applicant has demonstrated throughout the record a reluctance to cooperate to have the resurveying exercise concluded. Even where the respondent has undertaken to implement the court orders singularly, the applicant has ended up rejecting the resultant reports.

23. This court has already settled the issue of whether the applicant's rightful share of the estate should transmit in his acquired name of Lawrence Kariuki Karanja. Why the applicant finds it necessary to revive this issue is beyond this courts comprehension.

24. As evidence of the applicant's actions against the smooth administration of the estate herein, we now have on record an applicant by the name James Kariuki Karanja who claims to be the owner of L.R. No. Manyatta A/4397 which he states to have acquired from Geoffrey Mburu alias Lawrence Kariuki Karanja (the applicant!).

25. This intended interested party states that the applicant has told the administrator to transfer the property to him (interested party) but the administrator is yet to comply with those instructions.

26. Curiously, the applicant herein has not found it fit to comment on the application by the interested party. How is the executor expected to transfer property to a 3rd party not named in the confirmed grant of probate? Doesn't this speak volumes about the bona fides of the applicant herein?

27. The interested party proceeds to state that he has erected a commercial building on the said property which houses several commercial tenants. One wonders how this was made possible on property that is yet to transmit to the appropriate beneficiaries.

28. It is incumbent upon all beneficiaries to cooperate with an executor of an estate for a smooth transmission of the estate. Where a beneficiary(ies) exhibit confrontational and uncooperative tendencies, the finalization of the administration of the estate becomes a pipe dream leading to a lot of delay and waste which ultimately affects the beneficiaries adversely.

29. The application before me is completely without merit. The remaining bottlenecks in the finalization of the administration of the estate herein can be resolved by;

1. Obedience of court orders already on record.
2. Co-operation between the executor and the applicant.

30. I proceed to dismiss the application dated 3/7/2018.

31. Each party is to bear its own costs.

Dated and Signed at Nakuru this 23rd day of May, 2019.

A. K. NDUNG'U

JUDGE