

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 339 OF 2012

IN THE MATTER OF THE ESTATE OF MBIYUKI M'KIRAITHE

alias JACKSON MBIUKI KIRAITHE

PHINEAS GICHOB I.....APPLICANT

VERSUS

JENNIFER KANYIRI.....RESPONDENT

R U L I N G

1. By a Summons dated 7th March, 2017, the applicant has applied under *section 47 of the Law of Succession Act, Rules 47 and 73 of the Probate and Administration Rules* for an order that the Executive Officer of this court be empowered to sign and execute all the requisite documents to effect the Certificate of Confirmation of grant dated 29th April, 2015.

2. The grounds upon which the application was made were set out in the body of the Summons as well as the Supporting Affidavit of Phineas Gichobi sworn on 7th March, 2017. These were that; the respondent as the administratrix has failed to fully discharge her duties under the law; that she had failed to execute documents in relation to LR No. Timau/Timau/Block 6 (Antu-ba-Mwitu/28) and devolve the parcel due to the applicant to him. That she has executed all documents relating to all the other parcels but she has refused to execute those relating to the applicant's parcel.

3. The application was served upon the Law Firm of Ms. D. J. Mbaya & Co Advocates on 5th May, 2017. Despite such service, there was no replying affidavit or grounds of opposition that was filed in opposition to the said application. Mr. Mutura Mwenda Advocate appeared on behalf of the respondent at the hearing of the application on 12th February, 2018. He asked for more time to file a response. For reasons on record, the court declined to grant an adjournment.

4. I have seen a Certificate of Confirmation of grant on record. The same was issued to the respondent on 29th April, 2015. Nearly three years later, she is said to be refusing to effect the said certificate. That is not only dereliction of duty, but extreme abuse of the duties and obligations of the respondent as the administratrix duly appointed by court.

5. Since the application was not opposed and having considered the entire record, I see nothing to bar this court from granting the orders sought. Accordingly, the Deputy Registrar of this Court is hereby empowered and directed to sign and execute all documents that shall be necessary to effect the transfer of *Timau/Timau/Block 6 (Antu-ba-Mwitu/28)* in favour of the applicant.

6. Since the present application was occasioned by the unbecoming conduct of the respondent, she shall personally bear the costs of the application which shall be taxed by the Taxing Officer of this court and be paid by her from her own resources and not the estate.

It is so ordered.

DATED and DELIVERED at Meru this 15th day of February, 2018.

A.MABEYA

JUDGE