



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 94 OF 2009

IN THE MATTER OF THE ESTATE OF SILAS NGOTHO NGIRI (DECEASED)

JOHN GATIMU NGOTHO.....1ST APPLICANT

SOLOMON MURIITHI NGOTHO.....2ND APPLICANT

V E R S U S

STEPHEN GITHINJI NGOTHO.....PETITIONER/RESPONDENT

R U L I N G

1. This is a ruling on an application dated 7/02/2018 seeking for orders that this court authorizes the Deputy Registrar to sign all the necessary documents for implementation of the of grant issued on 22/11/2012.
2. The application is supported by the grounds on the face of the application and the affidavit of John Gatimu Ngotho and Solomon Muriithi Ngotho.
3. The applicants state that they are beneficiaries of the estate of the deceased while the respondent is the administrator. The grant was confirmed on 22/11/2012 and has not been implemented todate due to the lack of cooperation by the respondent. It is deposed that the applicants have approached the respondent on several occasions to sign the necessary papers for implementation of the grant in favour of all the beneficiaries. For no apparent reason the respondent has refused to cooperate.
4. The respondent was served with this application on 1/03/2018 and filed a replying affidavit sworn on 7/03/2017. He states that the reason for failing to implement the grant was because the family agreed to consolidate the assets namely L.R. Mwerua/Gitaku/524, 525, 526, 527, 528 and 529 to facilitate distribution from one parcel of land. He further that some beneficiaries have refused to pay the required dues for registration of the new parcels of land.
5. The applicants' response was that sub -division has already been done and beacons fixed. It is denied that there was any agreement by the family to consolidate the two parcels of land. It is not true that the beneficiaries have refused to pay the required charges.
6. The record shows that the grant was confirmed 22/11/2012 and amended on 3/05/2017. A period of one year has lapsed without the administrator taking any action towards the implementation of the grant. The applicants appeared in court together with the other beneficiaries and were all aggrieved by the lack of cooperation by the respondent. The respondent applied for rectification of grant 5 years after confirmation. If there were any proposals to consolidate all the parcels of land, this was the right time to do it.
7. The administrator was the leader of the team and did not bring up the said issue. The respondent has not filed any application in court in an attempt to implement his proposals. The rest of the beneficiaries have denied that the family had any such agreement for consolidation. Moreover, the grant is the document that should guide distribution of the assets of the deceased.
8. The grant herein as amended on 3/05/2017 is still valid and it is important that it be implemented for the benefit of all the beneficiaries. It is uncalled for for the administrator who has a legal duty to implement the grant to hold the beneficiaries at ransom. The court must intervene in cases where the administrator does not perform his legal duties.
9. I find the application merited and allow it as prayed.

DELIVERED, DATED AND SIGNED AT EMBU THIS 26TH DAY OF JUNE, 2018.

F. MUCHEMI

J U D G E

In the presence of:-

Both Applicants

Respondent present