



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. CIVIL APPLICATION NO. 134 OF 2005

IN THE MATTER OF THE ESTATE OF MAGONDU KING'URU - DECEASED

JANE WANJIKU KINYUA.....ADMINISTRATOR/ APPLICANT

VERSUS

MARION WANGARI KINYUA.....RESPONDENT

R U L I N G

1. The applicant filed summons (General Form) dated 27/02/2018 seeking for the following prayers.

- (a) That the honourable court be pleased to order its deputy registrar to sign all the relevant documents on behalf of Marion Wangari Kinyua so as to execute the certificate of confirmation of grant issued on 16/08/2017.
- (b) There be partial execution of the grant in favour of the applicants and all the beneficiaries apart from Marion Wangari Kinyua.
- (c) That the applicant be authorized to pay the requisite fees in the execution of the grant which will be recoverable.
- (d) That the honourable court be pleased to rectify the names of Magdalene Wambui Mburi to read Magdalena Wambui Buri in the certificate of confirmation of grant issued on 16/08/2017.

2. During the hearing of the summons, the applicant made an oral application to amend the summons which was allowed. In effect, prayer 2 was abandoned and replaced with the following:-

That there be a partial execution of the grant in favour of the applicant and all the beneficiaries apart from Marion Wangari Kinyua.

3. The grounds supporting the application are that the respondent has been unco-operative by refusing/declining to ensure implementation of the grant.

4. The respondent has not given any reason for refusing to co-operate with the administrator. On her part, the applicant who is the administrator is ready and willing to move and implement the grant including payment of all the fees required thereof.

5. The respondent was served with the application at her home in Kiangai town as shown by the affidavit of service but did not file a replying affidavit on grounds of opposition.

6. The record shows that the grant in this cause was confirmed on 16/08/2017 whereas the only asset the deceased was distributed to the representatives of the two houses of the deceased namely Naomi Wairimu Magondu the applicant and Marion Wangari Kinyua the respondent. There were four (4) other beneficiaries who were to share a portion of 0.815 acres jointly. This is about one year ago and the grant is yet to be implemented.

7. I have perused the record and I do not find any summons for revocation of grant by the respondent or any other party. There is no good reason advanced by the respondent for failing to co-operate with the administrators and other beneficiaries for purposes of implementing the grant.

8. The allegation is that she has declined to sign the necessary papers and to pay the requisite fees in respect of her portion to facilitate subdivision of the land. The administrator/applicant is ready and willing to meet the fees required and other costs and later recover from the respondent or any other defaulting party.

9. The court takes judicial notice that for sub-division of the land in the transmission process and for registration and issue of new titles, the Lands Office requires that various levies/charges/fees be paid. There are also other costs incurred in the process of the implementation of the grant.

10. It is the duty of every beneficiary receiving a share from the estate to meet their financial and other obligations so as to facilitate the implementation of the grant. Their co-operation and unwavering support to the administrator is required for the smooth running of the whole process. The respondent in this application cannot therefore be an exception.

11. The execution of the transmission documents is key to the process and each beneficiary is required to execute the necessary papers regarding their shares in the grant. The respondent has refused to execute the necessary documents.

12. I find this application merited and I allow it as amended with costs to the respondent.

13. It is hereby so ordered.

DATED, DELIVERED AND SIGNED THIS 18TH DAY OF JUNE, 2018.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Kimotho for Applicant