

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 185 OF 2016

IN THE MATTER OF THE ESTATE OF GITHAIGA KOIGU

BETWEEN

WANGECI MWAI.....PETITIONER/APPLICANT

AND

PAUL MAINA GITHAIGA.....PROTESTOR

RULING

The deceased Githaiga Koigu, died intestate on the 10th October, 2002; he was then domiciled in Kenya and his last known place of residence was Gitundu village in Nyeri County. Amongst the deceased's survivors were his two widows Wangechi Mwai, the petitioner in this cause and Mary Wagaki Githaiga.

By a summons for confirmation of grant dated 21st June, 2008, the petitioner sought to have the grant confirmed and the deceased's estate comprising **Title No. Othaya/Kihugiru/1322** shared out equally between herself and her co-wife.

For some reason, the co-wife was not satisfied with the scheme of distribution as proposed by the petitioner; she therefore filed an affidavit in protest against the confirmation of grant. By a judgment delivered by this Honourable Court on 23rd day of August, 2013 the protest was dismissed and, by the same token, the grant confirmed.

It would appear that even after the protest was dismissed, the petitioner's co-wife was still not willing to co-operate with petitioner in her bid to share out the estate in terms of the confirmed grant and complete the administration. Inevitably, the administratrix filed a summons under rules 59,60,63 and 73 of the Probate and Administration Rules seeking the intervention of the Deputy Registrar in transmission of the deceased's estate as ordered by the Court; this summons dated 20th December, 2015 is the subject of this ruling.

The administratrix's co-wife died on 25th June, 2016, obviously before the disposal of the present application; as of that date she had not filed any response to the applicant's summons. However, she was substituted by her son, now named as the protestor, who on 24th May, 2017 filed a replying affidavit to oppose the summons.

A quick perusal of that affidavit shows that he is somehow mistaken to the application he has responded to; he has targeted his response to the application by the applicant for interlocutory orders dated 30th June, 2016 which, as far as I can gather from the record, was withdrawn on 13th July, 2016. Be that as it may, he has also stated that he is in the process of filing an application to stay the execution of the judgment delivered in this court in August, 2013. He also states that he intends to file an appeal against the judgment.

With due respect to the protestor and his learned counsel, I do not find the intention to file an appeal or an application to stay of execution of a judgment delivered five years ago a good or sufficient reason for failure to execute the documents necessary for distribution and transfer of the deceased's estate. If neither an appeal against the judgment of this honourable court nor an application for stay of execution its execution has been filed five years after it was delivered, there is no reason why the estate should not be distributed as ordered by the court and the administration of the estate concluded. Even if the appeal and the application are finally filed the respondent will be hard put to explain the obvious inordinate delay.

For these reasons, I am inclined to allow the applicant's application dated 20th December, 2015. I make no orders as to costs.

Dated, signed and delivered in open court this 30th November, 2018

Ngaah Jairus

JUDGE