



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA

SUCCESSION CAUSE NO. 46 OF 2015

(FORMERLY SPM'S CHUKA SUCC. CAUSE NO.148 OF 2014

**IN MATTER OF THE ESTATE OF NGAINE M'THIRIKA alias NGAINE
THIRIKA.....DECEASED**

JULIUS MUTEGI NYAMU.....1ST APPLICANT

VERSUS

PETER MUTWIRI NKARI.....RESPONDENT

RULING

1. This is a ruling on a Notice of Motion dated 19th February, 2016 by Julius Mutegi Nyamu. He has not indicated the provisions under which the same is brought but he prays that this court compels the Respondent to cause the sub-division and subsequent transfer of LR Karingani/Gitarene/212 in terms of the confirmation of the grant issued on 24th September, 2015. In default, the Deputy Registrar of this court do execute the relevant documents to give effect to the said certificate of confirmation.

2. The grounds on which the Motion is predicated was set out on the body of the Motion and in the Supporting Affidavit of Julius Mutegi Nyamu sworn on 19th February, 2016. These grounds were that; since the grant was confirmed on 24th September 2015, the Respondent has not taken any steps to effect the same; that the Respondent has been threatening the Applicant with a sub-division plan aimed at evicting the Applicant from where he was settled by the deceased; that the Applicant has a permanent building erected on the property which he did after the deceased had allocated the same to him. The Applicant produced a copy of the certificate of grant and the sketch plan in support of his application. He urged that unless the prayers he sought were granted, he stood to suffer loss of his home.

3. The application was opposed through the Replying Affidavit of Peter Mutwiri Nkari sworn on 5th April, 2016. The Respondent refuted the allegation that he had refused to effect the Certificate of Confirmation of Grant and contended that; the Applicant had failed to contribute part of the money for the subdivision of the subject property; that the Applicant is settled on Karingani/Gitarene/361 which borders the subject property and he cannot therefore be evicted; that in the premises, the application had been brought in bad faith and was an abuse of the process of the court. The Respondent further contended that the Deputy Registrar should not be involved as prayed since the Respondent was willing to effect the grant as confirmed. The Respondent therefore urged that the application be dismissed.

4. At the hearing of the application, the Applicant entirely relied on his Supporting Affidavit. Ms Kaari

Learned Counsel for the Respondent submitted that the grant was confirmed barely six (6) months before the making of the application; that the Respondent required sufficient time to execute the mandate given to him by the court. That since the Applicant had failed to contribute to the subdivision costs, he should not be heard to blame the Respondent for the delay. In reply, the Applicant stated from the bar that he had actually paid a sum of Kshs.60,000/- to the Respondent for the sub-division and that it was the Respondent who had refused the surveyor to come to the property to carry out the survey and subdivision.

5. I have considered the Affidavits on record and the submissions of the respective parties. Without apportioning any blame in the current matter, this court's opinion is that an administrator of an estate of the deceased is court appointed. He acts on behalf of the court in effecting the administration of the estates of deceased persons. In this regard, an administrator cannot use his position to impose his will upon the beneficiaries or hold them at ransom. He cannot administer or effect the grant at his own pace and convenience. He has to move with speed upon confirmation to effect the grant without delay. If he fails to do so, he can be removed and be replaced without much ado. The position of an administrator is that of a trustee. He has to act for the best interest and benefit of the beneficiaries not his own. It is only then that friction among beneficiaries can be kept at the minimum and social cohesion be maintained.

6. In the present case, the grant was confirmed on 24th September, 2015. The current application was made on 19th February 2016, four (4) months later. In his Replying Affidavit, the Respondent does not disclose any steps he has taken so far to effect the grant. Stating that he needs time to execute his mandate without disclosing what he has done so far, and or giving a road map on what he intends to do, is not enough. He is a trustee and he is enjoined to account for that fiduciary position that has been bestowed on him. In this case, he has failed to account for it.

7. The Applicant blames the Respondent for the delay in effecting the grant. The Respondent has likewise blamed the Applicant for the delay. The Respondent has stated that the Applicant has failed to pay his share of the subdivision costs thereby leading to the delay. The questions that arises are; how much is this subdivision costs? Who was to be paid these costs? Has the Respondent paid his share of these costs? If so, when, to whom and how much? If the Respondent was honest, this court would have expected him to lay everything bare and disclose all these to court. This however, he failed. On his part, the Applicant made unsubstantiated allegations that he had already paid Kshs.60,000/- to the Respondent. This was however not contained in the Affidavit for the Respondent to respond.

8. The administration of the estate of deceased persons requires to be concluded as soon as practically possible to avoid costs and unnecessary squabbles. The umbilical cord that binds the beneficiaries being the property of the estate, should be severed at the earliest so as each beneficiary charts out his life independently. It is only then that unnecessary tension and disputes within families in our society can be avoided. In the present case, I see nothing to stop the severance of that cord. I have seen the sketch plan produced by the Applicant. He may have constructed in property No.361 which however abutts the estate property. It makes practical and economical sence that his share of 0.20 Ha as contained in the certificate of confirmation be excised on that portion that will merge with where he has a permanent home.

9. In the premises, I allow the application. The Respondent is to comply with the order within 60 days of today in default the Deputy Registrar of this court is to effect the same.

Orders accordingly.

DATED and Delivered at Chuka this 28th day of April, 2016.

A.MABEYA

JUDGE