



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 205 OF 2011

In the matter of the Estate of JOSHUA NDWIGA KAGIO (Deceased)

NTHIGA JOSHUA.....1ST PETITIONER/APPLICANT

ANTHONY KARIUKI KAGIO.....2ND PETITIONER/APPLICANT

VERSUS

EUSTACE NJIRU JOSHUA.....PROTESTER/ RESPONDENT

R U L I N G

1. This is the application dated 27/8/2015 seeking for orders that the respondent be ordered to render full accounts for the rent collected in deceased 2/5 share in plot No. Embu/Township/59 and Stall 5Y 106 Embu Municipality from 19/3/2015; that the respondent be ordered to surrender the original documents for both parcels of land and that the respondent be ordered to deposit the proceeds of both parcels of land in a joint account managed by Nthiga Joshua, Serah Kirimari and Anthony Kariuki Kagio.
2. The application also seeks for orders that the Deputy Registrar Embu High Court be ordered to execute transfer documents and land control documents for both parcels of land and that the District Land Registrar Embu be ordered to dispense with the requirement for attendance of the respondent during the Land Control Board meetings.
3. The application is supported by the affidavit of Nthiga Joshua who has authority from the 2nd applicant. In the affidavit it is stated that the respondent has been in occupation of both parcels of land and has refused to render accounts to the rest of the family in respect of the said parcels.
4. It is further stated that the respondent refused to execute documents to implement the grant and to surrender original documents in respect to both parcels of land for execution of the grant. The respondent has made it impossible for the sickly widows of the deceased to benefit from the estate and has denied beneficiaries of the estate access to both parcels of land.
5. The respondent in a replying affidavit stated that he is not in custody of the certificate of lease for Embu/Township/59 as it was surrendered to the District Land office to facilitate the subdivision of the said plot according to the court order issued in civil appeal no 170 of 1990.
6. The said plot was owned by the family of the deceased and that of Stephen Mbogo Gikono. The applicants have not attached the documents which they purport the respondent has refused to sign and have never forwarded Form 19 and 7 to the respondent for execution. He is not aware of plot stall 5Y 106 Embu but is aware of Embu /Municipality/1112/82/E22.

7. Both parties filed submissions. The applicant in their submissions basically argued that the respondent has refused to co-operate with the applicants in the execution of the confirmed grant.

8. The respondent in his submissions stated that the applicants have not demonstrated that they have forwarded transfer by transmission forms RL7 and RL19 for execution. The applicants who are co-administrators have the same right as the respondent to visit the two plots and to make inquiries from the tenants but they have chosen not to take the annexure ENJ1 to prove that the certificate of lease was requested for by the registrar.

9. The P&A.5 form shows that the assets of the deceased comprise of Plot No. Embu/Township/59, L.R. Ngandori/ Kirigi/564 and Stall No 5Y 106 Embu Municipality. The green cards attached in the application for letters of grant indicate that Ngandori/Kirigi/564 is owned by the deceased, Embu Township 59 is owned by the deceased who has a share of 2/5 while Stephen Mbogo 3/5. Embu/Township/106 is registered in the name of Trust Land Board. The certificate of confirmation of grant dated 19/3/2015 contains the mode of distribution of the three properties.

10. The applicants and the respondent are joint administrators of the estate. The applicants are not justified to blame the respondent for failure to distribute the estate according to the confirmed grant. The grant was confirmed about one year ago and has not been executed. All the administrators should have joined hands in exercising their duties. Their duty is to ensure that the grant is implemented without delay so that transmission of the beneficiaries shares may be done.

11. However, the applicant accuses the respondent of being unco-operative in their attempts to execute the grant. The defence of the respondent is that no one has taken to him the necessary forms for signature. He overlooks that he has an equal responsibility to ensure transmission to the beneficiaries is done. The respondent has not given any good reason why the application should not be allowed.

12. It is not in dispute that the rental income from the properties namely 2/5 share of plot number Embu/Township/59 and stall 5Y 106 is being collected by the respondent and is not being accounted for. This is income of the deceased's estate which belongs to the beneficiaries and it is only fair and just that it benefits them. But most important thing is to have the grant executed so that the succession proceedings are closed.

13. It is my considered opinion that the applicant has satisfied the court that there is delay in executing the grant and that the respondent is not accounting for rental income. As an administrator, he has a duty to account for the income of the deceased's assets.

14. I find the application merited and grant is as prayed.

DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF APRIL, 2016.

F. MUCHEMI

J U D G E

In the presence of:-

The petitioners