



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 468 OF 2004

IN THE MATTER OF THE ESTATE OF THE LATE HEZEKIAH THUKU KIARA-DECEASED

CHARLES GITONGA THUKU.....1<sup>ST</sup>RESPONDENT

MARY WAMBUI THEURI.....2<sup>ND</sup>RESPONDENT

VS

BENARD NGATIA THUKU.....APPLICANT

**RULING**

**Benard Ngatia Thuku** the applicant herein seek orders that:-

- a. **That** this honourable court be pleased to authorize the Deputy Registrar to sign all the relevant documents necessary on behalf of the Respondent in order to give effect to the certificate of confirmation of the grant issued herein on 15<sup>th</sup> May 2013.
- b. **That** the Nyeri District Land Registrar be directed to dispense with the production of the Title Deed No. L.R. Thengenge/Karangia/217 and the Respondents passport size photograph, PIN Certificate or their identity cards while registering the transfer.
- c. **That** the shares Registrar be directed to dispense with the production of shares certificates, the Respondents Passport size photographs, PIN certificates or their identity cards while registering the transfer form.
- d. **That** the costs of this application be provided for.

The main ground in support thereof is that the first Respondent who is the administrator of the estate has refused to execute such documents as may be necessary to facilitate the distribution of the properties to the beneficiaries in the grant among them the applicant herein. Even though the grant was confirmed on 16<sup>th</sup> May 2013, the estate has not been distributed.

The first Respondent in his replying affidavit filed on 14<sup>th</sup> June 2014 avers that he was aggrieved by the judgement rendered on 16<sup>th</sup> May 2014 and promptly filed a notice of appeal and asked to be supplied with copies of the proceedings and judgement and has not been supplied with the said documents and accused the applicant of rushing to have the estate distributed before the appeal is heard hence the application in his view is brought in bad faith.

Both advocates adopted the contents of their respective affidavits and left it to the court to determine the application.

I have evaluated the affidavit evidence filed by both parties. It is not disputed that the grant was confirmed in 2013 and since then the estate has not been distributed. It is also admitted that a notice of appeal was filed on 22<sup>nd</sup> May 2010 and proceedings applied for by the first Respondent. The first Respondent insists he has not received the proceedings, hence he was unable to file the appeal. Unfortunately, that position cannot be true. The court record shows that the proceedings were typed and certified on 5<sup>th</sup> July 2013 and on 28<sup>th</sup> August 2013 the Deputy Registrar wrote to the first Respondent care of his address P. O. Box 165 Nyeri and notified him that the proceedings were ready for collection upon payment of **Ksh. 160/=**. Curiously, the first Respondent in his above mentioned Replying affidavit gives box 165, Nyeri as his address, the same address the court addressed the above letter.

Other than the first letter applying for the proceedings, there is nothing on record to show that the first Respondent ever made any other attempt to follow up the proceedings. Clearly, his excuse that he has not received the proceedings cannot be taken seriously and confirms that he has never been serious in pursuing the alleged appeal.

Further, he has never applied for stay of the judgement pending appeal. Notice of appeal is not a bar to execution of a court decree. There is nothing to justify his refusal to sign such papers as may be necessary to enforce the grant and give each beneficiary his/her share.

The second Respondent has not filed any response to the application and there is nothing on records to show that she is opposing the application.

Accordingly, I find that the application dated 21<sup>st</sup> March 2014 has merits and is well founded, hence I allow the said application and order as follows:-

***a. That the administrator to the deceased's estate Charles Gitonga Thuku and all the beneficiaries to the deceased's' estate be and are hereby ordered to within 14 days from the date of this order, to execute all the requisite documents including forms RL 7 and RL 19 and mutation forms or such documents as may be necessary to facilitate the sub-division of Thegenge/Karangia/217, into three portions as follows, Bernard Ngatia Thuku--1.9 acres, Charles Gitonga Thuku--0.95 acres and Mary Wambui Thuku--0.95 acres and transfer the said portions to the respective beneficiaries in conformity with the grant of letters of administration issued on 24<sup>th</sup> May 2011 and confirmed on 16<sup>th</sup> May 2013.***

***AND further the administrator Charles Gitonga Thuku or Mary Wambui Thuku or any of the beneficiaries having custody of the original title is ordered to avail the said original title for Thegenge/Karangia/217, certified copies of their national Identity cards and income tax pin and pass port size photos or such other documents as may be necessary to facilitate the aforesaid process.***

***b. That in default of executing the requisite documents as herein above ordered, the Deputy Registrar of this Honourable court be and is hereby authorized to execute all the necessary documents to facilitate the implementation of the grant of letters of administration issued in this cause dated 24<sup>th</sup> May 2011 and confirmed on the 16<sup>th</sup> May 2013.***

***c. That in the event of the administrator Charles Gitonga Thuku or Mary Wambui Thuku or any of the beneficiaries failing to produce the original title or any of the documents as herein above ordered, the Land Registrar Nyeri County be and is hereby directed to dispense with the said original title/documents for purposes of effecting the aforesaid sub-division and registration/transfer as herein above ordered.***

***d. That the administrator Charles Gitonga Thuku or Mary Wambui Theuri or any of the***

beneficiaries having custody of original share certificates for shares for **Tetu Housing Sacco Shares and Nyeri Farmers Sacco Shares** is hereby ordered to produce the said documents **within 14 days** from the date of this order and to execute such documents as may be necessary to facilitate the transfer of the said shares to the respective beneficiaries as ordered in the grant of letters of administration confirmed on 16<sup>th</sup> May 2013.

**e. That** in the event of failing to comply with paragraph (d) above **within 14 days** from the date of this order, the Deputy registrar of this court is hereby authorized to sign such documents as may be necessary to effect the transfer of Tetu Housing Shares and Nyeri Farmers Sacco Shares to the respective beneficiaries as ordered in the certificate of confirmation of grant dated 16 My 2013.

**f. Further** for the purposes of transfer of the aforesaid shares, production of the original share certificates, copies of national identity cards, income tax pin and passport size photos shall be dispensed with in the event the respondent or any beneficiary fails to avail them with the said period of **14 days** stated above.

**g. That Charles Gitonga Thuku** be and is hereby ordered to pay the costs of this application.

Right of appeal **30** days

Signed, Delivered and Dated at Nyeri this **26<sup>th</sup>** day of **September** 2016

**John M. Mativo**

**Judge**