

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 619 OF 2008

IN THE MATTER OF THE ESTATE OF PETER KARIUKI THANDE (DECEASED)

RULING

1. In an application dated 3rd May 2016, Ruth Waruiru Rionge asks the court to compel the administrators to execute transfer documents to facilitate transfer of LR No. 11359 Limuru and Plot No. 7304 Limuru Town to her name. She asks in the alternative that the said documents be executed by the Deputy Registrar of the Family Division. There is a further prayer that the Land Registrar dispenses with the production of the original title for LR No. 11359 Limuru. In the affidavit in support of her application, she avers that the two assets were given to her at the confirmation of the grant. She accuses the administrators of failing to sign the relevant documents to facilitate the transfer.

2. The response to the application is through an affidavit sworn on 7th July 2016 by Aggrey Peter Thande, one of the administrators. He accuses the applicant of being litigious, of encroaching on property allocated to other beneficiaries and of procuring deed plans without authority. He goes on to explain the steps that need to be taken to facilitate transfer.

3. The applicant replied to the allegations of the administrator, through an affidavit she swore on 20th June 2016. She avers that the subdivision in question had been undertaken by surveyors instructed by the administrators, and the deeds she had in her possession were based on the said subdivision.

4. The application was argued orally on 27th July 2016. Mrs. Muhuhu stated the case for the applicant, while Mr. Malinzi prosecuted the case for the respondent. Both gave vent to the averments made by the parties in their respective affidavits.

5. I have perused the record. I have noted that the grant herein was confirmed on 9th June 2014, and a certificate of confirmation of grant of even date was issued. Ruth Waruiru Rionge was allotted ten (10) acres out of LR No. 11359 Limuru and Plot No. 7304 Limuru Town. It would appear that the applicant is getting agitated that two years after confirmation of the grant the administrators are yet to have the two assets the subject of the application before me transmitted to her name.

6. I have noted from the affidavit filed by the administrators in reply to the application that the administrators have not sought to explain why they have not, two years after the grant was confirmed, transmitted the subject assets to the applicant. They have not sought to give details of any challenges that they may be facing in having the transmission done. The applicant is clearly within her rights to ask questions and make demands so long as the transmissions have not been done, and no plausible explanations are being given for the default therein. I believe she is entitled to seek the orders that she has prayed for.

7. She is in fact calling upon the administrators to account, in terms of indicating how far they have gone with the implementation of the confirmation orders. Rendering accounts by administrators is a statutory duty, and therefore being furnished with such accounts is a right that accrues to beneficiaries. Accounts should therefore be rendered by administrators as and when beneficiaries call for them.

8. However, apart from the delay on the part of the administrators to complete administration within one (1) year after their grant was confirmed, as required by section 83(g) of the Law of Succession Act, Cap 160, Laws of Kenya, there is no evidence that the administrators are involved in any sort of misfeasance, or that they have been recalcitrant in any manner. I do not consider the delay unreasonable. I feel that I

should allow the administrators time to complete the exercise of transmitting the ten (10) acres of LR No. 11359 Limuru that the applicant is entitled to; together with Plot No. 7304 Limuru Town.

9. The orders that I make in the end are as follows:-

a. That that the administrators are hereby given ninety (90) days from date hereof to complete the exercise of transmitting Plot No. 7304 Limuru Town and ten acres out of LR No. 11359 Limuru to the applicant;

b. That the administrators should also prepare and place before the court within forty-five (45) days a true and accurate account of their dealings with the estate from the date of the confirmation of the grant to date;

c. That the matter shall be mentioned after ninety (90) days for compliance; and

d. That there shall be no order as to costs.

10. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 26TH DAY OF OCTOBER, 2016.

W. MUSYOKA

JUDGE