

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2051 OF 2007

AND

IN THE MATTER OF THE ESTATE OF LAWRENCE REGERU WAMBAA (DECEASED).

RULING

1. Before this court for determination is a Summons dated 15th May 2014 and brought under Sections 47 and 82 of the Law of Succession Act, and Rule 73 of the Probate and Administration Rules.
2. The applicants seek orders that the Deputy Registrar of the Family Division of the High Court, be directed to execute the transfer documents vesting the assets of the estate to the respective beneficiaries on behalf of Edwin Wambaa Regeru, that the title documents held by M/s Kamau Kuria & Kiraitu & Co. Advocates in respect of the properties meant to be vested in the beneficiaries be released forthwith, save for Edwin Wambaa Regeru, and that costs of this application be provided for.
3. The application is premised on the grounds that: that the estate of the deceased has been distributed on paper, that the beneficiaries are desirous to have this matter finalized in line with the distribution by the court, that a request to the respondent for the release of the title documents to facilitate the preparation of the requisite transfers has not been heeded to, that one of the administrators of the estate, Edwin Wambaa Regeru has also refused or declined to execute the transfers, that Edwin Wambaa Regeru is not interested in having this matter finalized as he has commenced two other suits thereby frustrating the completion of administration of this estate.
4. The application is founded on the facts deposed in the affidavit of Wingfield Ng'ang'a Regeru one of the beneficiaries, sworn on 15th May, 2014. In that affidavit, the deponent has reiterated the grounds above.
5. Opposing the application, the Respondent, Edwin Wambaa Regeru, filed in a replying affidavit sworn on 30th June 2014, where he has made several averments, salient among them being that; Mr. Wingfield Ng'ang'a, a beneficiary, has no role to play in the execution and protection of the estate documents as he is not an administrator; that the estate documents are properties of the deceased and ownership vests in the administrators by virtue of Section 79 of the Law of Succession Act; and that Mr. Wingfield Ng'ang'a is only entitled to photocopies of the estate documents and not the originals; that the administrators of the deceased have the custody of the documents which are the subject matter of the application; that it is only where one administrator has refused to execute documents that an application can be made for an order that the Deputy Registrar executes documents as prayed. It is further averred that the certificate of confirmation which Mr. Wingfield Ng'ang'a is relying on is inaccurate and the distribution, therefore, cannot take place unless and until the errors are corrected.
6. I note that the application dated 15th May 2014 is brought at the instance of a beneficiary, and not the administrators of the estate. The administrators of the estate are Edwin Wambaa Regeru and Emma Muthoni Wambaa. It is in these two that the estate property vests by virtue of section 79 of the Law of Succession Act. It is only them, in their capacity as administrators, who can cause the vesting of the estate property in the beneficiaries.

7. In view of the above I do not find any legal basis upon which the beneficiary applicant in the application before me can seek the orders that he has sought in the said application. Of course, he does have remedies in law against administrators who have failed in their duties, but such remedies no doubt do not include the orders that he seeks in the present application.
8. My conclusion is that the application dated 15th May 2014 is misconceived and bad in law, and I hereby dismiss the same with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 26th DAY OF September 2014.

W. MUSYOKA

JUDGE

In the presence of Mrs. Thongori for Mrs. Wambugu for the applicants.

Mr. Ndungu for Dr. Kuria for the administrator