



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**SUCCESSION CAUSE NO. 315 OF 2002**

***In the matter of the Estate of NYAGA RUNDIA (Deceased)***

PIOUS NJIRU.....APPLICANT

VERSUS

TERESIA KARANJA.....PETITIONER/RESPONDENT

**R U L I N G**

The applicant Pious Njiru in his application dated 8/9/2014 seeks for orders that:-

1. *The honourable court be pleased to authorize the Deputy Registrar/Executive officer to sign all the necessary documents to facilitate the Applicant acquire his share of the estate as per the confirmed certificate of grant herein.*
2. *The honourable court to be pleased to order the land Registrar Embu to dispense with the original title deeds.*
3. *The costs of this application be in the cause.*

The application is grounded on the supporting affidavit sworn by the applicant on the 8th September 2014. He depones that the grant was confirmed on 29/7/2013 and he was given a share in the estate of the deceased. The petitioner is required to facilitate the transfer and registration of the portion of land to the name of the applicant. However the applicant has failed or neglected to sign the relevant documents for the applicant to facilitate him in getting his share. He therefore seeks for orders to have the Deputy Registrar High Court to sign the said documents in his favour.

The respondent did not file a replying affidavit but opposed the application orally in court. She said that the applicant is a purchaser in the estate of deceased. It is contended that is the mother of the petitioner who sold a share of the estate to the applicant when she was a co-administrator.

On the strength of the sale of the portion of  $\frac{1}{2}$  an acre out of GATURI/NEMBURE/4684, the co-administrator included the applicant as a beneficiary in the estate. The respondent took over the administration of the estate in 1997 after the death of the original petitioners. The grant was then confirmed on 29/7/2013 and the certificate issued to the respondent. She says she is not willing to execute the documents in favour of the applicant because she does not know how her late mother brought in the applicant in the estate of the deceased. The Respondent admits signing the sale agreement as a witness between the applicant and her mother in the office of an advocate. However, she says she did not read the contents of the agreement and that the advocate failed to explain to her the contents.

There are two other beneficiaries, one Janerose Muthanje and Elizabeth Wamugo whose documents have not been executed in respect of a parcel of land in Meru County LR No. AGOTHOGOCHI/KINJA/571. However, the respondent says that as soon as funds are available she will execute the documents in their favour but she is adamant that she will not execute those of the Applicant.

On perusal of the record, I note that this succession cause was filed in November 1997 by Luciana Mutitu Nyaga who is the mother of the respondent. One Angelina Warunji Nyaga filed an objection in her capacity as the co-widow of the deceased. Subsequently the court appointed the objector and the petitioner who were both widows of the deceased as joint administrators and confirmed the grant on 6/10/2003. In that grant the applicant was given half an acre out of LR. GATURI/NEMBURE/4684. Another 9 beneficiaries got their shares in the same instrument.

The co-administrators passed on and the respondent herein was substituted as the administrator and a fresh grant issued to her with all the original beneficiaries included and with the most of the original shares remaining intact. The applicant retained his half share.

After the grant was confirmed most of the beneficiaries have inherited their shares with the facilitation of the respondent leaving out only three out of six among them the applicant. The court record shows that the grant as confirmed has not been revoked and the applicant's share of half acre out of GATURI/NEMBURE/4684 is still rightfully his.

Unless the respondent applies for revocation of grant and gets the relevant orders, she cannot take away from applicant what rightfully belongs to him. She admitted signing the sale agreement in favour of the applicant in the year 2002. I did not believe her that she signed it without knowing the contents. This was a show of dishonesty on the part of the respondent. At the time the applicant bought half an acre of the land from the co-administrator, the respondent was not an administrator. She consented to the sale as a witness by signing the agreement just to change her mind a bit too late. An administrator is under a legal duty to distribute the estate to the beneficiaries. The law does not allow her to discriminate against some beneficiaries as she had done in this case.

I find that the refusal by the respondent to execute the documents in favour of the Applicant has no legal or factual basis. It is a breach of her duty as the administrator. The applicant requires to be facilitated to get his ½ acre out of GATURI/NEMBURE/4684.

I hereby allow the application dated 8th September, 2014 as prayed.

No orders as to costs.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 27TH DAY OF NOVEMBER, 2014.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**The Applicant**

**The Respondent**

**F. MUCHEMI**

**J U D G E**