

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

SUCCESSION CAUSE NO: 1131 OF 1991

IN THE MATTER OF THE ESTATE OF WILLIAM KUNGU NDWARU (DECEASED)

RULING

The Motion for determination is dated 2nd March 2012. The applicant, Charles Muchemi Ikinya, asks the court to empower the Deputy Registrar to sign a transfer form and certain documents under the Land Control Act, to facilitate transfer of a certain asset from the estate to his name. He argues that this court on 3rd March 2009 ordered the transfer of the said parcel of land from the estate to him but the administrator of the estate has failed, refused or neglected to do so to date, hence this application.

The administrator of the estate is Florence Wambui Kung'u. There is no record that the application dated 2nd March 2012 was served on the said Florence Wambui Kung'u. The said administrator has not responded to the said application, but there is on record an affidavit by Susan Njeri Kung'u which ostensibly replies to the application dated 9th March 2012. The said Susan Njeri Kung'u describes herself as a daughter of the deceased and a beneficiary to his estate. I doubt whether a beneficiary can file a reply to an application which ideally ought to be responded to by the person to whom administration has been committed. It is the personal representative of the deceased who ought to discharge the duties that the applicant is complaining about. Beneficiaries have no duties whatsoever to discharge any responsibilities with respect to administration, and they have no obligation to account. The application dated 9th March 2012 ought to have been responded to by Florence Wambui Kung'u and not Susan Njeri Kung'u. If the said Florence Wambui Kung'u can no longer discharge her duties as administrator and personal representative, then she ought to relinquish that office to those who are able to. Susan Njeri Kung'u, as beneficiary is not the proper person to respond to the application dated 9th March 2012.

The application apparently seeks the enforcement of an order made by this court on 3rd March 1999. The portion of the order of 3rd March 1999 which is relevant to the application dated 9th March 2012 was to the effect that the administrator was ordered to cause portion D in the proposed subdivision of LR No. Dagoretti/Riruta/10 to be registered in the name of the applicant herein, Charles Muchemi Ikinya, subject to completion of payment of the balance of the purchase price.

I note from the affidavit of Charles Muchemi Ikinya in support of the application that he deposes that the administrator has failed or refused or neglected to cause the registration of the described portion of Dagoretti/Riruta/10 to his favour. The applicant does not depose that he has completed payment of the purchase price so as to become entitled to the property being registered in his name. The order of 3rd March 1999 was clear that registration in favour of the applicant was ***“upon completion of the balance of the purchase price.”*** The applicant has not demonstrated that he has since completed paying the purchase price.

I have gone through the record and noted that the issue of the completion of the purchase has been raised

by the administrator in a number of instances and the applicant ought to have taken a cue from that. One such instance was 9th October 2012, when counsel appearing for the administrator mentioned that conditions which were to be fulfilled before the transfer had not been complied with. The affidavit of the beneficiary, Susan Njeri Kung'u, despite what I have said about it, says as much. The applicant ought to have made an effort to respond to these matters in his affidavits.

I am not satisfied that the applicant is entitled to the orders that he is asking me to make for he has not satisfied me that he completed the payment of the purchase price. The application dated 9th March 2012 is for dismissal and I hereby dismiss it with costs.

DATED, SIGNED and DELIVERED AT NAIROBI THIS 27th DAY OF June 2013.

W.M. Musyoka

JUDGE