



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO.362 OF 1998**

**IN THE MATTE OF THE ESTATE OF ZACHARIA KAMAU NDUATI (DECEASED)**

**MUMBI WAITITU WACHIRA.....APPLICANT**

**VERSUS**

**ESTHER**

**WAMBUI KAMAU.....**

**.....RESPONDENT**

**RULING**

The deceased in this cause, Zacharia Kamau Nduati, was survived by two widows, Esther Wambui Kamau (the respondent) and Mumbi Waititu Wachira (the applicant).

Upon the death of the deceased, both widows filed separate succession causes. The respondent filed No.362 of 1998 while the applicant filed No.22 of 1998. The two causes were consolidated and after hearing the two widows and their witnesses, the court (Rimita, J) found in his judgment delivered on 9<sup>th</sup> March, 2001 that the two widows were lawfully married to the deceased and that parcel of land No.L.R. NYANDARUA/NGORIKA/503, constituting the estate, be shared equally between the two houses. The grant of letters of administration was jointly issued to the two widows. The grant of letter of administration, which was obtained by the respondent on 22<sup>nd</sup> October, 1998 was subsequently confirmed on 16<sup>th</sup> March, 2007.

On 7<sup>th</sup> October, 2009 by consent of the parties, the court (Mugo, J) ordered that the applicant surrenders the title deed to NYANDARUA/NGORIKA/503 to the court. The applicant duly complied with the order. On 2<sup>nd</sup> December, 2009 a further consent was recorded to the effect:

- i) that the certificate of confirmation of the grant issued to the respondent on 16<sup>th</sup> March, 2007 be surrendered within 14 days to be cancelled;
- ii) that the title deed to NYANDARUA/NGORIKA/503 be filed in High Court Succession Cause No.,22 of 1998.

The applicant has now brought the instant summons for orders that she be allowed by the court to proceed with the subdivision of the land in question in accordance with the certificate of confirmation of the grant

dated 5<sup>th</sup> December, 2003 and that the title deed held by the court be released to her to facilitate the sub-division.

It is the applicant's contention that although she is desirous of sub-dividing the property in question, the respondent is not cooperative; that she requires the title deed for the purpose of the sub-division. The respondent through her counsel filed grounds of opposition in which it is argued that there is no procedure in the **Law of Succession Act** or **Probate and Administration Rules** for the relief sought in the application; that the applicant ought to file an action under the Civil Procedure Rules to enforce the decree.

I have considered the arguments and the authority relied on by learned counsel for the respondent, namely, "***The Law of Succession***" by W. Musyoka.

The judgment of Rimita, J decreed that the grant be issued in the joint names of the applicant and the respondent; and that NYANDARUA/NGORIKA/503 be shared between the houses of the parties. That was ten (10) years ago. To date, the last order has not been executed. All the applicant seeks in this application is a go-ahead to sub-divide the property as decreed by this court and the release of the title deed held by the court to enable her do so.

Both **section 47** of the **Law of Succession Act** and **Rule 73** of the **Probate and Administration Rules** empowers the court to entertain any application and determine any dispute under the Act and the rules and to pronounce such decrees and make such orders as may be expedient and necessary for the ends of justice and to prevent abuse of its process.

Both administratrix are under a duty to proceed diligently with the administration of the estate. Indeed failure to do so can be a ground for revocation of the grant. Further by dint of **section 83** of the **Law of Succession Act**, the administratrix were required to complete the administration of the estate within six months from the date of confirmation of the grant.

What the applicant seeks to do is long overdue. It is in the interest of the estate and the parties; it is also expedient and necessary for the end of justice and to prevent abuse of the process of court, that the application be granted. The applicant is at liberty to proceed to subdivide the suit property into two equal shares, the respondent retaining the portion where her house, if any stands.

To facilitate this exercise, the Deputy Registrar of this court is directed to release to the applicant the title deed deposited in court by her counsel's letter dated 4<sup>th</sup> November, 2009.

Costs of this application to be borne by the respondent.

**Dated, Signed and Delivered at Nakuru this 14<sup>th</sup> day of February, 2012.**

**W. OUKO**  
**JUDGE**