



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS

Succession Cause 48 of 1993

LAWRENCE KIMANI NYANJUI

MARGARET MUNGAI NYANJUI APPLICANTS

VERSUS

NJAU NYANJUI THITU

JOEL MUNGAI NYANJUI RESPONDENTS

R U L I N G

This application is brought by Summons dated 20th June, 2011 and taken out under **Rules 49** and **73** of the **Probate and Administration Rules**. The Applicants thereby seek orders –

1. That this Honourable Court be pleased to order the Respondents to execute the transfer forms and all other relevant documents and instruments to effect and facilitate the transfer of all the properties comprised in the estate of the deceased in terms of the Certificate of Confirmation of Grant on 15th October, 2003.

ALTERNATIVELY

(i) That this Honourable Court be pleased to order the Deputy Registrar (Family Division) to sign the said transfer forms and all other relevant documents and instruments on behalf of the said Applicants so as to effectuate and/or facilitate the transfer of all the properties comprised in the estate of the deceased in terms of the Certificate of Grant of Confirmation issued herein on 15th October, 2003.

(ii) That this Honourable Court do authorize District Land Registrars in the respective districts to register the transfers of parcels of land to the respective beneficiaries in the respective districts without requiring the production of the Respondents PIN Certificates, ID Copies and their passport sized photographs.

2. That costs of this application be borne by the Respondents herein in any event.

The application is supported by the annexed affidavit of Lawrence

Kimani Kinyanjui and is based on the following grounds –

(a) That the said Respondents have deliberately and unreasonably refused to sign the said transfer forms so as to facilitate the transfer and/or transmission of the said properties of the deceased despite this Honourable Court having issued a Certificate of Confirmation of Grant way back on 15th October, 2003 thus denying the Applicants the fruits of this long and winding litigation.

(b) Instead the Respondents filed Appeal against the orders confirming the grant herein but which has been dismissed and they have not taken any (sic) to prosecute thus further delaying the finalization of the matter herein.

(c) That the Respondents have never sought any orders of stay of the said orders confirm the grant herein and/or suspension of the said Certificate of Confirmation of Grant issued on 15th October, 2003.

(d) That in order to give effect of the said Certificate of Confirmation of Grant and bring to a final conclusion of this old matter it is only fair, just and expedient that this Honourable Court directs the Respondents to sign the said transfer forms and all other relevant documents and/or instruments or alternatively it directs its Deputy Registrar, Family Division, to do so on their behalf.

At the hearing of this application, Mr. Gakaria appeared for the

Applicants who are the 3rd and 4th Administrators. He told the Court that the Applicants were seeking orders for the Respondents to execute the transfer forms to facilitate the transfer of property in terms of the order made on 15th October, 2003. Should the Respondents fail to do so, then the Deputy Registrar of the Family Division be authorized to execute the transfers.

For record purposes, the Respondents did not attend Court for the hearing of this matter. I note that the application was served on them on 2nd April, 2012. This gave them sufficient notice both to file and serve any replying affidavit or grounds of opposition but they filed neither of them. On the designated hearing date, they did not attend Court. In the circumstances, I find that the application is unopposed and that the Applicants are entitled to the orders sought.

I accordingly make the following orders –

1. Order 1 is hereby granted as prayed. The Respondents to

comply with the said order within 21 days of service.

2. Failure to comply will automatically activate orders 1 (i)

and (ii) for the Deputy Registrar and Land Registrars to act

appropriately as directed therein.

3. The Respondents will bear the costs of this application in

any event.

DATED and DELIVERED at NAIROBI this 3rd day of May, 2012.

L. NJAGI

JUDGE