



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO.172 OF 1990**

**IN THE MATTER OF THE ESTATE OF JONAH KARIUKI GAKURU (DECEASED)**

**ELIUD MBUGUA KARIUKI.....APPLICANT**

**VERSUS**

**SIMON NJOROGE KARIUKI..... RESPONDENT**

**RULING**

The original grant issued to Rahab Wairimu Kariuki, in respect of her deceased husband Jonah Kariuki Gakuru, who died intestate, was confirmed on 5<sup>th</sup> March, 1991. Rahab Wairimu Kariuki subsequently passed away on 25<sup>th</sup> June, 1992 and her sons, Simon Njoroge Kariuki and Eliud Mbugua Kariuki were substituted as the administrators and a fresh Certificate of Confirmation was issued in their joint names. I say nothing about this procedure. This Certificate of Confirmation was issued on 16<sup>th</sup> July, 2004.

Eliud Mbugua Kariuki (the applicant) has now brought the instant summons asking that the court compels Simon Njoroge Kariuki (the respondent) to produce and surrenders the title documents in respect of LR No.6746/15 – I.R 42695, being part of their deceased father's estate for purposes of registration of the beneficiaries as proprietors.

The applicant also seeks that the court be pleased to order the Land Registrar to dispense with the signature of the respondent in respect of the sub-division of the land in question for purposes of registration.

The application is based on the grounds that the grant was confirmed in 2004 in the joint names of the applicant and the respondent following the death of their mother, the original administratrix; that the respondent has refused to ensure expeditious and efficient distribution of the estate; that he has refused to produce the original title documents for purposes of distribution. The respondent did not file any reply or attend court when the matter was canvassed.

He later wrote to the court explaining why he failed to attend court. On 22<sup>nd</sup> November, 2010 as this ruling was pending, he appeared before me and explained that when the matter came for *interpartes* hearing, he went to High Court No.2 instead of No.3. He further explained that he was reluctant to release the documents of title as his share of the estate was less by one acre.

No replying affidavit was filed even though the respondent had sufficient time to do so. Secondly,

the court had reserved a date for this ruling and there is no procedure of staying a ruling. The court, however, now understands why the respondent has declined to surrender the documents of title. The Certificate of Confirmation issued on 16<sup>th</sup> July, 2004 complies with **section 71** of the **Law of Succession** for it provides for the respective identities and shares and entitlement of each beneficiary.

The applicant and the respondent, as the joint personal representatives are under a statutory duty to distribute all assets forming part of the estate to the beneficiaries according to each beneficiary's interest or share.

**Section 83(g)** of the **Law of Succession Act** provides that:  
**“83. Personal representatives shall have the following duties –**

.....  
.....  
.....

**(g) Within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts and to produce to the court a full and accurate account of the complete administration.”**

It is clear from this portion that the personal representatives, (the applicant and the respondent) have failed to adhere to the timeline for finalization of administration. They have taken six (6) years instead of six months from 16<sup>th</sup> July, 2004.

Ordinarily, in terms of **section 76(d)(ii)** of the **Act**, such failure would be a ground for revocation of a grant. The applicant, instead seeks that the respondent either be compelled to surrender the documents of title or the land registrar be ordered to dispense with the respondent's signature. The application is brought under the inherent jurisdiction of the court in **section 47** of the **Act** and **Rule 49** of the **Probate and Administration Rules** as there is no specific provision in the Act or rules for the relief sought.

Under the former (**section 47**), this court has jurisdiction to entertain any application and determine any dispute and to pronounce any decree or make any orders as may be expedient. An application for such relief is brought by summons (see the later, **Rule 49**)

To proceed under **section 76(d)(ii)** aforesaid – to revoke the grant will not be expedient as the process that has taken twenty (20) years since this case was filed would have to start afresh.

It is expedient therefore, that the respondent be ordered, as I hereby do, to surrender the documents of title in respect of the parcels of land in question for purposes of completing the administration of the estate. This he must do within fourteen (14) days from the date of this order, failing which the land registrar is authorized to dispense with the respondent's signature in registering the respective entitlements of the beneficiaries.

In any case and for the avoidance of doubt, the respondent must get his full share as contained in the Certificate of Confirmation.

I make no order as to costs.

**Dated, Delivered and Signed at Nakuru this 28<sup>th</sup> day of February, 2011.**

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

