



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Succession Cause 208 of 1993

IN THE MATTER OF THE ESTATE OF MURITHI MUGAMBI (DECEASED)

FRANKLINE KITHINJI MURITHI.....APPLICANT
VERSUS
PHARIS NYAGA MURITHIRESPONDENT

RULING

There is a ruling delivered by this court dated 24th November 2005. That ruling related to the distribution of the deceased estate. Following that ruling, the grant was confirmed and a certificate of confirmation was issued on 30th May 2006. It indicated the mode of distribution of the deceased estate. That ruling is the subject of a pending appeal before the Court of Appeal. An application has been filed which is the subject of this ruling. It is dated 16th December 2009. That application is filed by one of the beneficiaries namely; Frankline Kithinji Murithi. He seeks the following prayers:-

1. *That the court be pleased to convict and sentence the personal representative named above for the offences committed under this Act (sic).*
2. *This court be pleased to appoint two more administrators to represent the interests of the other two houses.*
3. *The court be pleased to use its inherent powers to revoke the grant.*

In support of that application, it was argued that the administrator Pharis Nyaga Murithi failed to include the deceased property which was stated to be plot number 45 Kabeche Maara District. Frankline did not annex a search to prove that the plot belong to the deceased. In response to the said application, Pharis attached a certificate of lease of parcel number *Mwimbi/chogoria/893/35 which he said was sold by the deceased before his death* to Sarah Maitha. Since the deposition of Pharis in respect of that property were not controverted the court rejects Frankline assertion that the administrator failed to include all the properties of the deceased. Frankline further argued that the administrator failed to give inventory of the deceased assets as required by section 83(e) and (g). I have looked at those sections. The inventory was required prior to confirmation of grant. Once grant was confirmed, all that remains is the distribution of the deceased property to the various beneficiaries. Frankline further alleged that there is a continuing trust and that there is therefore need for another administrator to be appointed to join Pharis. Again, Frankline did not give details of who was the subject of the

continuing trust. The last complaint by Frankline related to the delay in the distribution of the estate. He therefore seeks that the grant be revoked because Pharis has delayed in distributing the property. I have in perusing this file and I have come across a pending application by Pharis seeking the court's order that the land registrar would dispense with the requirement of the original titles in respect of parcels number 1475, 1477, and 1478. He blames the lack of original titles, in respect of those parcels, as the reason for not distributing and further states that the beneficiaries will be required to provide finances for the survey work to be carried to enable distribution to be done. In my view, the interest of justice will best be served by entertaining the application filed by Pharis dated 7th January 2010 and disallowing the application of Frankline dated 16th December 2009. To entertain the application by Pharis of 7th January 2010 would allow the putting into effect this court's ruling dated 24th November 2005. I therefore grant the following orders:-

1. *The land registrar is granted leave to dispense with the requirements of the original title documents in respect of Mwimbi/Murugi/1475, 1477 and 1478 putting into effect the certificate of confirmation of grant in this matter issued on 24th November 2005 and dated 30th May 2006.*
2. *The Chamber Summons dated 16th December 2009 is dismissed with costs being awarded to Pharis Nyaga Murithi. The application dated 7th January 2010 is allowed in terms of number (1) above with no orders as to costs.*

Dated and delivered at Meru this 21st day of May 2010.

MARY KASANGO
JUDGE