

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Succession Cause 182 of 1999

IN THE MATTER OF THE ESTATE OF FRANCIS MWANGI WAIGWA – DECEASED

PETER J. KIAMA MWANGI.....APPLICANT

VERSUS

FREDRICK WAMBUGU MWANGI.....RESPONDENT

RULING

PETER J. KIAMA MWANGI, invoked the inherent jurisdiction of the court under *rule 73* of the Probate and Administration Rules where upon he took out the Summons dated 4th March 2010 praying for an order dispensing with the production of the title deeds to effect the transfer of various properties stated on the certificate of Confirmation of Grant. The Applicant swore an affidavit which he filed in support of the Summons. The application was served upon FREDRICK WAMBUGU MWANGI, hereinafter referred to as the ‘Respondent’, but the same attracted no response hence the Applicant was granted leave to prosecute the application *ex parte*.

The main ground advanced in support of the application is that the Respondent has refused to surrender the titles which are in his possession despite the fact that the grant has been confirmed and no one has applied for its nullification. It is said that the Respondent has always been uncooperative and that is why this court issued an order authorizing the Deputy Registrar to execute the transfer documents in place of the Respondent.

I have considered the averments contained in the affidavit of Peter J. Kiama Mwangi. There is no affidavit to controvert the fact that the confirmed grant contains the schedule of the distribution of assets of the Estate. There is also no dispute that Fredrick Wambugu Mwangi has refused to surrender titles in respect of properties stated in the confirmed grant. It is a requirement that the terms of the confirmed grant can only be actualized if the titles are surrendered to the Lands Office or this court issues an order directing the Land Registrar to dispense with their production under *Section 33* of the Registered Land Act (Cap. 300 Laws of Kenya). I find the application to be with merit. The same is allowed as prayed.

Dated and delivered at Nyeri this 14th day of May 2010.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Ng’ang’a for Applicant and no appearance Respondent.