



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Succession Cause 295 of 1997

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

BETWEEN

HENRY GITONGA MUGAMBI PETITIONER/RESPONDENT

Versus

JEREMIAH MBOBUA MUGAMBI APPLICANT/OBJECTOR

RULING OF THE COURT

What is before me is a summons application dated 6.10.2004 in which the objector/applicant seeks the following orders:-

- (a) That the Executive Officer of the Honourable Court do execute all documents necessary to facilitate the effective transfer of the title in the parcel of land known as NTIMA/IGOKI/6422 formerly part and sub division of NTIMA/IGOKI/2843 and in a portion measuring 2 acres part of the parcel known as Land Reference number KIIRUA/KIIRUA/824.
- (b) That the Honourable Court do issue such orders as will meet the ends of justice in this cause.
- (c) That the costs of these proceedings be borne by the respondent/petitioner herein.

The application is brought under rules 49 and 73 of the Probate and Administration Rules and is supported by the applicant's affidavit made and sworn on 13.10.2004. The applicant states that following the filing of his objection proceedings to the filing of the petition by the petitioner/respondent herein, the parties negotiated an out of court settlement which was recorded in court on the 13.11.2000. That consent of 13.11.2000 was recorded in the following terms.

1. The respondent shall sub divide the parcel of land comprised in title No. NTIMA/IGOKI/2843 into two equal portions and transfer one portion.
2. The respondent shall sub-divide two acres of land from parcel comprised in title No. KIIRUA/KIIRUA/824 and transfer the said two acres to the applicant.
3. The applicant shall be the legal guardian of Miss Gloria Kawira who is the daughter of his deceased sister.
4. The respondent shall be the legal guardian of Master Desmond Asibwe Gakure who is the son of his deceased sister.

5. Each party shall pay his own costs.

The applicant contends that inspite of these consent orders, and inspite of the fact that the respondent has given possession of half of the portion comprised in land parcel No. NTIMA/IGOKI/2843 and further that though the respondent has caused the applicant no sign relevant applications for Land Control board consent in respect of NTIMA/IGOKI/2843 the respondent has failed to execute the necessary transfer forms to effect the transfers in the applicant's names. Though the applicant indicated in his affidavit that he had annexed thereto copies of the Land Control Board consents in respect of the transfer of NTIMA/IGOKI/2843 and NTIMA/IGOKI 6422, those annextures were not attached.

The application was not opposed. Since there was ample evidence that Mrs. Ndorongo for the respondent was served on 22.2.2005, a last minute application for adjournment and or leave to cease from acting for the respondent was refused on the ground that the application for adjournment was being used by the petitioner/respondent as a mere delaying tactic to have the matter finalized.

The only issue for determination of the court is whether the applicant is entitled to the orders sought. I have considered the application in detail, the affidavit in support thereof and the submissions by Mr. Karuti advocate for the applicant. It is not in dispute that the warring parties herein consented to the distribution of the deceased's estate as per the consent orders recorded in court on 13.11.2000. That fact is not controverted by the respondent. The respondent was and is still under a duty to do all that is necessary to put into effect those consent orders entered into on 13.11.2000. The respondent has shown no reason why he has not done so and why he cannot do so. My view therefore is that the respondent is obstructing the course of justice.

In the result, the applicant's application dated 6.10.2004 is allowed in terms of prayers (a) and (c) thereof. I further order that the Executive Officer shall comply with the said orders within twenty one (21) days from the date of this ruling.

Orders accordingly.

Dated and delivered at Meru this 16th day of May 2005.

RUTH N. SITATI

JUDGE

16.5.2005