



REPUBLIC OF KENYA



In re Estate of the Late Nyanduko Kanyimbo alias Maria - Deceased (Succession Cause 507 of 2013) [2024] KEHC 1936 (KLR) (21 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1936 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION CAUSE 507 OF 2013**

TA ODERA, J

FEBRUARY 21, 2024

**IN THE MATTER OF THE ESTATE OF THE LATE
NYANDUKO KANYIMBO ALIAS MARIA -DECEASED**

RULING

1. The applicant moved this court by way of summons to compel execution of transfer instruments brought under Rule 59 and 73 of the *Probate and Administration Rules* and section 71 and 82 of the *Law of succession Act* seeking:
 - a. Spent
 - b. Spent
 - c. That this Honourable court be pleased to order and or direct Nemwel Ocharo Karani the joint administrator personal representative with the applicant herein of the estate of Nyanduko Kanyimbo Alias Maria to execute and /or sign all the relevant instruments required for the administration of the estate of the deceased herein inter alia relevant forms such as LR 39, LR 42 and Mutation forms that are necessary for the transfer of the parcels forming part of the estate of the deceased to the beneficiaries as provided for in the certificate of conformation of grant
 - d. Consequent to prayer (3) being granted the Honourable court be pleased to affix and /or specify the timelines within which Nemwel Ocharo Karani is to execute he transfer and incidental documents.
 - e. In the alternative to prayer 2 and 3 hereof, this Honourable court be pleased to order the Deputy Registrar of this Honourable Court to take over the mandate and/or powers of Nemwel Ocharo Karani and execute the transfer and incidental documents to facilitate the completion of the administration.
 - f. That this court may be pleased to issue further and or other reliefs as may be just and /or expedient to facilitate compliance with the certificate of confirmation of grant dated 21.2.2022



- g. Costs of the application be on the cause.
 - h. Such further and other reliefs as may be just and expedient. The application is based on the grounds that;
 - a. The grant letters of administration were jointly issued to the applicant and respondent on 21.2.22.
 - b. They were obliged to commenced the process of distribution of the estate.
 - c. The respondent has failed to execute the statutory forms or instruments to facilitate transfer and is uncooperative.
 - d. That the conduct of the respondent is meant to obstruct the distribution of the estate.
 - e. That the orders sought are in the interest of justice
 - f. That unless the application is allowed the certificate of conformation shall be rendered inoperative.
2. The application is also based on the annexed supporting affidavit of Queen Karani Kanyimbo who reiterated the grounds of the application and indicated that she annexed copies of the certificate of confirmed grant “QKK1” copy of forms which she and respondent executed” QKK2” and a copy of a letter done by her advocate inviting respondent to his chambers for execution of the statutory forms.
 3. I have however perused the record and I note that the grant of letters of administration were granted to the applicant and respondent on 31.10.10 and it was later confirmed on 21.2.22. The applicant says that the respondent has refused and or neglected to sign the forms and or documents to complete the administration.
 4. Section of the 83 (g) of the [law of succession Act](#) provides that; “A personal represented shall;
 - (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 completed administration.”
 5. Is thus clear that it is the duty of the applicant and respondent to fully administer the estate of the deceased and render account to this court. The applicant says this had not been possible as the respondent has refused to co-operate with him. I have perused the letter dated 27.7.22 inviting him to the office of counsel for the applicant to execute the necessary forms to distribute the estate. I have also noted the LR 42 form which the respondent allegedly refused to sign. I have also seen the return of service by Elijah Gekonge Nyangau dated 21.12.23 indicating that he served Ms Sagwe and Co. Advocates for the respondent on 20.12.23 with the certificate of urgency but they did not attend court on 22.1.24. The application is thus unchallenged.
 6. I am satisfied that the applicant deliberately failed /neglected to attend court for hearing of the instant application and he has also refused to execute the necessary transfer forms for distribution of the estate herein. The respondent has thus breached his duties under Section 83 (g) of the [Law of succession Act](#). This act of the respondent has made it impossible for the administration to be complete under the Act.
 7. I proceed to authorize the Deputy Registrar of this court to Sign the transfer forms and necessary documents on behalf of the respondent to enable the estate to be fully administered by the applicant within 60 days from today. Mention on 8.7.24 to confirm compliance.



T.A ODERA

JUDGE

21.2.24

Delivered virtually in the presence of;

Mr. Ochoki Advocate for applicant -Absent

Oigo - Court Assistant

