



**In re Estate of Muchuru Njeru (Deceased) (Succession Cause
209 of 2015) [2024] KEHC 3070 (KLR) (4 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3070 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
SUCCESSION CAUSE 209 OF 2015**

LW GITARI, J

MARCH 4, 2024

BETWEEN

FREDRICK NYAGA MUCHURU APPLICANT

AND

JOHN MICHENI RIUNGU PROTESTOR

RULING

1. The matter which is before this court is the summons brought under Rule 49 and 73 of the *Probate and Administration Rules* which is dated 10/8/2023. The summons is filed by John Micheni Riungu and the main prayer in the said application is that the second administrator herein Fredrick Nyaga Muchuru be ordered to sign all the necessary documents to facilitate the implementation of the certificate of confirmation of grant issued by this court on 1/7/2019 and in default the Deputy Registrar of this court be ordered and directed to sign the said documents.
2. The summons is based on the grounds that the certificate of confirmation of grant was issued on 1/7/2019 and has never been implemented as there is a statement occasioned by the 2nd administrator who has failed to sign the necessary documents for implementing the grant. The summons is supported by the affidavit of the applicant.
3. The summons is opposed by the respondent Fredrick Nyaga Muchuru, the second administrator who has filed his affidavit sworn on 15/9/2023. His contention is that the application has been brought in bad faith as the applicant had interfered with the boundaries fixed by the surveyor and re-located them into the respondent's entitlement. He contends that it is the applicant who has been un-co-operative with the respondent who has taken it upon himself to have the grant implemented. That the applicant has failed to comply with the orders of Justice Limo that each beneficiary should contribute money to facilitate the implementation of the grant. That the Judge had also directed that one of the beneficiaries who was ready to contribute towards implementation of the grant could do so and claim his expenses from the other beneficiaries. It is the averment by the respondent that he has spent



Kshs.85,000/- for the sub-division of Karingani/Ndagani/3751 into five resultant parcels as shown on the mutation form annexed marked FNMI. He contends that the beneficiaries including the applicant have not contributed to the survey fees which is Kshs.17,000/- and should be directed to pay so that the implementation of the certificate becomes possible.

4. I have considered the application. The applicant is seeking the inherent powers of this court as donated under Rule 73 of the *Probate and Administration Rules* which provides for the saving of inherent powers of the court and states that-

Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice and prevent abuse of the process of the court.”

5. It is trite that the inherent powers of the court are exercised fairly and judicially in the interest of justice. I have considered the applicant’s application. I note that he is one of the administrators who has a duty to ensure implementation of the grant and to effect the orders of this court. The applicant has not demonstrated that he has taken any one step towards implementation of the certificate of grant. Though he has said upon being asked by this court that he paid Ksh.8000/- it was not on his affidavit and he had no document to show he paid. He has not shown that he has complied with the orders of this court issued by Justice Limo for the parties to contribute the money required for the implementation of the grant. The applicant has also not shown that he has prepared the documents for execution by the respondent and that the respondent has failed to sign them. The applicant has therefore not supported his application with solid grounds. He has not contributed money for the sub-division despite having being ordered by the Judge together with other beneficiaries to do so. The applicant has not come to equity with clean hands. The respondent has demonstrated that he paid for the survey and a mutation form has been issued. This shows that the respondent has not refused to sign the said documents. Court orders are not made in vain. It is not in the interest of justice to order the respondent to sign documents when he has already proved that he has taken steps using his own money to have the grant implemented. I find that the exercise of the court’s discretion does not tilt in favour of the applicant. I find that the application lacks merits. The beneficiaries should contribute the money needed to implement the certificate of grant. The present application lacks merits and is dismissed.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 4TH DAY OF MARCH 2024.

L. W. GITARI

JUDGE

4/3/2024

