



In re Estate of Helenia Shiuthara Halan (Deceased) (Civil Appeal E024 of 2022) [2024] KEHC 4799 (KLR) (8 May 2024) (Ruling)

Neutral citation: [2024] KEHC 4799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E024 OF 2022
LM NJUGUNA, J
MAY 8, 2024**

IN THE MATTER OF THE ESTATE OF HELENIA SHIUTHARA HALAN (DECEASED)

BETWEEN

MARY IGOKI IRERI APPLICANT

AND

MARY RWAMBA NJAGI 1ST RESPONDENT

JOHN MUCHANGI NYAGA 2ND RESPONDENT

RULING

1. The applicant has filed summons dated 04th October 2023 seeking the following orders:
 1. That the Honourable court issue orders authorizing the Deputy Registrar of the High Court at Embu to execute all relevant registrable documents pertaining to execution and distribution of LR Kaagari/Kanja/2885 in facilitating/implementing the grant issued by the Honourable court and issued on 19th December 2022;
 2. That the Honourable court be pleased to order the Land Registrar Embu County to forthwith remove/vacate the illegal caution that was placed by the 2nd respondent on LR Kaagari/Kanja/2885 and the respondents be permanently enjoined from placing any further cautions on the said land;
 3. That an order be issued to the sub-county Land Registrar Embu directing him/her to dispense with the requirement to produce the original title deed for LR Kaagari/Kanja/2885 since it cannot be traced;
 4. That an order be issued to the District Land Surveyor Embu County directing him/her to visit LR Kaagari/Kanja/2885 and subdivide it equally as per the grant issued on 19th December 2022;



5. That the OCS Kianjokoma Police Station be ordered to provide security during sub-division of land parcel number LR Kaagari/Kanja/2885;
 6. That the court grant any other orders that are deemed just and expedient to meet the ends of justice; and
 7. Costs of the application be borne by the respondents.
2. The applicant stated that a grant of letters of administration in the estate of the deceased was issued to herself and the 1st respondent and a certificate of confirmation of grant was issued on 19th December 2022, distributing the suit land between the 2 of them. That the respondents have frustrated enforcement of the said distribution and will continue to do so unless the court intervenes. That the respondents have physically prevented the applicant from accessing or entering the said land on which they are farming tea. That when the surveyor went to the land to subdivide it, the respondents met him with threats to physical harm. She urged the court to grant the orders.
 3. In opposition of the summons, the respondents filed a replying affidavit dated 17th January 2024 in which they stated that the trial court determined that the suit land is to be inherited solely by the 1st respondent. That the finding of this court on 19th December 2022 distributing the estate between the applicant and the 1st respondent was reviewed and set aside. That the respondents have already lodged an appeal against the decision of this court at the Court of Appeal in Nyeri and the same is pending determination. That in the interest of justice, the court herein should halt all proceedings herein pending determination of the second appeal. They urged the court not to allow the application as this would lead to destruction of their livelihood.
 4. The court directed the parties to file their written submission and they all complied save for the 1st respondent.
 5. The applicant submitted that the respondents have admitted that they are in possession of the property and continue to utilize it regardless of the provisions of the grant. That the purported second appeal has never been served upon the applicant and the respondents have not sought stay of execution orders from this court or any other court. She relied on section 3(1) and 82 of the *Law of succession Act* and Rule 73 of the *Probate & Administration Rules*. She stated that the court has inherent powers to make any orders it deems just in the interest of justice and that the applicant is well within her rights to seek the orders as an administrator of the estate of the deceased.
 6. Reliance was placed on the cases of *In Re Estate of Helena Wangechi Njoroge (deceased)* (2015) eKLR, *In Re Estate of Vereonica Njoki Wakagoto (deceased)* (2013) eKLR and section 45 of the *Law of Succession Act*. She submitted that it was necessary to compel the Deputy Registrar High Court to sign the transfer documents and to compel the Land Registrar to dispense with registration requirements to enable the estate to transmit to the applicant as a beneficiary. She relied on the cases of *William Juma Mbui v Public Trustee & another* (2019) eKLR and *In Re Estate of the Late Kubuta Kamara Nguuro Alias Pharis Njegegu (Deceased)* [2021] eKLR and section 31 of the *Land Registration Act* which allows registration of transfers without the requirement to produce the original title deed if the registrar dispenses with the requirement.
 7. The 2nd respondent submitted that the applicant had received a different parcel of land from the deceased prior to his death. That allowing execution of the grant is greatly disadvantageous to him since he has invested heavily on the said land where he resides with his family.
 8. The issue for determination herein is whether the orders sought should be granted.



9. A certificate of confirmation of grant was issued to the applicant and the 1st respondent, distributing the estate of the deceased between them equally. In the application herein, the applicant alleges that her efforts to execute the distribution have so far become futile as the respondents have continually resisted her efforts to have the land subdivided. On their part, the respondents allege that the orders of this court given on 19th December 2022 were set aside through a review application that was allowed. This is inaccurate. The judgment of this court dated 19th December 2022 culminating into the certificate of conformation of grant, has not been set aside or reviewed.
10. The 2nd respondent herein, following the said judgment, filed an application seeking review of the judgment. The court determined the said application by dismissing it through the ruling dated 12th July 2023, which is the subject of appeal. The respondents produced a copy of the notice of appeal dated 25th July 2023. The respondents have not sought stay of execution against the orders of the court issued on 19th December 2022. This means that the applicant is within her rights to seek for the orders sought herein as the certificate of confirmation of grant is still in enforceable.
11. The applicant and the 1st respondent, being administrators of the estate of the deceased, are under obligation to administer the estate of the deceased fully and distribute it to the beneficiaries. Section 83(f) & (g) of the *Law of Succession Act* Provides thus:
- “(f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be
 - (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.”
12. In the case of *Re Estate of Wilfred Munene Ngumi (Deceased)* [2020] eKLR, the court stated;
- “Section 83(g) of the Act mandates administrators of an estate to, within six months of confirmation of grant or longer period as the court may allow, complete the administration of the estate, and to produce to the court a full and accurate account of the completed administration. This undertaking cannot be done unless the necessary documents are executed by the relevant parties.....”
13. As beneficiaries of the estate of the deceased, the applicant and the 1st respondent both have a right to the property under Article 40 of the *Constitution*. When this right is hampered, the applicant has the option to approach the court as she has done herein and the same may be considered by the court even though there is no express provision for it in the law. Rule 49 of the Probate and Administration Rules which provides: -
- “A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary, by affidavit.”
14. Section 47 of the *Law of Succession Act* and Rule 73 of the *Probate & Administration Rules* give the High Court discretion to determine any matter before it in the interest of justice. (see also the cases of



In re Estate of Simon Kiprop Cheruiyot (Deceased) [2021] eKLR and *In Re Estate of the Late Kubuta Kamara Nguuro Alias Pharis Njegegu (Deceased)* [2021] eKLR (*supra*). In light of the foregoing, it is necessary that the orders sought be allowed since there is no stay order in place.

15. Therefore, having considered the pleadings and arguments of the parties herein, I find that the application has merit. The following orders shall issue:

1. The Deputy Registrar of the High Court at Embu to execute all relevant registrable documents on behalf of the 1st respondent, pertaining to distribution of LR Kaagari/Kanja/2885 according to the certificate of confirmation of grant issued on 19th December 2022;
2. The Land Registrar Embu County is hereby ordered to immediately remove the caution that was placed by the 2nd respondent on LR Kaagari/Kanja/2885;
3. The respondents are hereby restrained from placing a caution or any other encumbrance on the property parcel number Kaagari/Kanja/2885;
4. The Land Surveyor Embu County is hereby ordered to visit LR Kaagari/Kanja/2885 and subdivide it equally as per the certificate of confirmation of grant issued on 19th December 2022;
5. The OCS Kianjokoma Police Station is hereby ordered to provide security during subdivision of land parcel number LR Kaagari/Kanja/2885; and
6. There shall be no order as to costs.

16. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 08TH DAY OF MAY, 2024.

L. NJUGUNA

JUDGE

.....for the Applicant

.....for the 1st Respondent

.....for the 2nd Respondent

