



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

SUCCESSION CAUSE NO. 113 OF 2013

[FORMERLY EMBU HIGH COURT P&A CAUSE 195 OF 2011]

RE ESTATE OF HEBRON MAINA WAIREGI ALIAS MAINA WAIREGI (DECEASED)

LYDIA WAIRIMU CHEGE.....PETITIONER

VERSUS

JOSEPH GABRIEL MWANGI HEBRON.....PROTESTOR

RULING

1. The petitioner craves two reliefs in her summons dated 16th August 2019. Firstly, that the Deputy Registrar be authorized to execute all necessary documents to enable the properties listed in the certificate of grant be partitioned, consolidated and transferred to the respective beneficiaries. Secondly, that the Land Registrar be directed to dispense with the production of title deeds or certificates for three properties known as Loc.12/Sub.Loc.5/776; Nthawa/Riandu/2422 and Nthawa/Riandu/2423.

2. The application is contested by the administrator of the estate, Joseph Gabriel Mwangi through a replying affidavit sworn on 15th October 2019.

3. The substratum of the application is that the administrator collected the original certificate of grant but misunderstood his legal duties and refused to distribute the estate. It is alleged that he is withholding the original titles and frustrating the interests of the beneficiaries.

4. The administrator's retort is two-pronged: Firstly, that the titles are in fact in possession of the applicant; and, secondly, that in a meeting of the beneficiaries held on 20th April 2019, it was resolved that they all share the costs attendant to the subdivision. He avers that upon their compliance, he will proceed as appropriate.

5. But I noted from his submissions that he is reluctant to follow the decree of this court issued on 12th March 2019. Doubt is removed by paragraph 7 of his deposition where he states that the family "*agreed that the land be divided into six (6) equal portions but not to thirty (30) equal portions*" as ordered by the court.

6. In the judgment delivered on 12th March 2019, the court ordered as follows-

[21] The final orders shall be as follows-

i) That the grant issued on 25th June 2012 by the High Court in Embu is hereby revoked.

ii) That the protestor, Joseph Gabriel Mwangi Hebron, is hereby appointed as the sole administrator of the estate of the deceased.

iii) That the estate of the deceased shall be divided equally between the children of deceased or their successors as particularized in paragraph 9 of this judgment.

iv) For the avoidance of doubt the portion for Stephen Chege Maina (son, now deceased) shall devolve to his widow Lydia Wairimu Chege. The part due to Obed Kahuru Maina (son, now deceased) shall devolve to his widow Mary Wairimu Kahuru. The part of the estate due to Margaret Waithira Hebron (daughter, also deceased) shall devolve to her son Macharia Waithira Hebron; and, to the children of her late daughter, Jane Nyambura Waithira.

v) In order to facilitate the distribution, the two adjacent properties in Embu known as Nthawa/Riandu/2422 and Nthawa/Riandu/2423 shall be consolidated into one title.

7. There is no doubt that the High Court is imbued with power to grant the prayers now sought by the petitioner. But it will throw the administration of the estate into an unnecessary spin. Firstly, it is not clear who between the disputants is holding the original title deeds to the three properties or whether the documents are lost. Prayer number 2 in the summons is thus ill-founded and disallowed.

8. Secondly, the respondent is the *sole* administrator to the estate. He may not agree with the decree or is recalcitrant but he has no choice at the moment. He confirmed that he has neither sought review nor appealed against the judgment.

9. I nevertheless find that to direct the Deputy Registrar to execute the instruments to partition, consolidate or transfer the estate will be to completely remove the administrator. It would also offend section 79 of the **Law of Succession Act** which now vests all the properties comprised in the estate to him as a personal representative. I thus decline to grant prayer number 2 of the summons.

10. However, to ensure that the ends of justice are not defeated; and, under powers donated to the Court by sections 83 (e), (g) and (j) of the **Law of Succession Act** as read together with Rule 73 of the **Probate and Administration Rules**, I order that the administrator shall present a comprehensive written report under his hand to the Court regarding the distribution of the estate within *60 days* of today's date. In default, the petitioner or any of the beneficiaries shall be at liberty to move the court for removal of the administrator or for further orders.

11. I make *no* order on costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 13TH DAY OF APRIL 2021

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Mr. Waweru hoding brief for Mr. Mbuthia for the petitioner instructed by J. N. Mbuthia & Company Advocates.

Protestor (in person) present.

Ms. Dorcas and Ms. Elizabeth, Court Assistants.