



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT CHUKA
SUCCESSION CAUSE NO. 496 OF 2015
(FORMERLY CHUKA SPM SUCCESSION CAUSE NO. 107 OF 2014)
IN THE MATTER OF THE ESTATE OF THE LATE MWARANIA MARIA (DECEASED)
AND
EUNICE NGURU MWARANIA.....PETITIONER
VERSUS
JULIUS IRERI MWARANIA.....PROTESTOR

R U L I N G

This matter relates to the estate of Mwarania Maria (deceased). What is pending before this court is an application dated 5/2/2021 filed by Eunice Nguru Mwarania the petitioner which seeks an order that the District Surveyor Chuka be ordered to visit Land Parcel No. Mwimbi/N. Mugumango/540 for the purpose of sub-dividing in accordance with the certificate of confirmation of grant dated 13/12/2016 was subsequently issued. The estate of the deceased comprised in:-

A. Land Parcel No. Mwimbi/N. Mugumango/540 was ordered to be distributed as follows:-

- (i) Kenneth Kithuci Mwarania - 0.52 acres
- (ii) Eunice Nguru Mwarania - 0.52 acres to hold for herself and in trust for;
 - Esther Mukwaiti Mwarania
 - Evelyne Mukwanjeru Mwarania
 - Dorothy Thigaa Mwarania
 - Igoji Mwarania
 - Mercy Mukwanyaga Mwarania
- (iii) Elias Nkongo Mwarania - 0.52 acres
- (iv) Wilfred Kinyua Mwarania - 0.52 acres
- (v) Julius Ireri Mwarania - 0.52 acres

B. Mwimbi/N. Mugumango/855

Eunice Nguru Mwarania - whole to have a life interest thereon and hold in trust for all the children of the deceased in equal shares.

It is the petitioner's case that the respondent has refused to let her from enforcing and or to effectuate the grant. That it is now four years

since the grant was confirmed and the parties cannot enjoy the fruits of the Judgment. The petitioner urges the court to assist her execute her mandate as the administratrix of the estate of the deceased.

1. The application is opposed by the respondent who has relied on a further affidavit of protest sworn on 19/10/2016 and filed in court on 12/11/2020. This affidavit is not relevant to the application before this court as it was considered in the Judgment in this matter by **Justice Mabeya**.

2. I have considered the application. This is a simple application which seeks an order that the land be surveyed so that the respective beneficiaries can get their shares. The court had directed the parties to file written submissions. The applicant filed her submissions but no submissions were filed by the respondent. The only issue which arises for determination is whether the application should be allowed. I should point out that in the absence of a replying affidavit by the respondent, the application is not opposed.

3. The **Law of Succession Act (Cap 160 Laws of Kenya)** gives this court wide powers to issue such orders as may be necessary to meet the ends of Justice.

Section 47 of the Act provides:

“ The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient: Provided that the High Court may for the purpose of this section be represented by resident magistrates appointed by the Chief Justice.”

The court has pronounced its Judgment which is still valid and although it has been in place for over four years there has been no orders issued on appeal, review nor is there any pending application for revocation of grant which was issued subsequent to the Judgment. **Rule 73 of the Probate and Administration Rule** provides:-

“ 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 or to prevent abuse of the process of the court.”

The rule adorns the court with inherent powers to make orders which in its view are necessary for the ends of Justice. The inherent powers donated by this rule gives the court wide discretion to make such orders as may be necessary to meet the ends of justice and to prevent abuse of the court process.

4. By this application the applicant is inviting this court to exercise its discretion under Section 47 of the Law of Succession Act and Rule 73 of the probate and Administration Rules. It is a cardinal principle in the administration of justice that court orders are not made in vain and must be obeyed by all in order to preserve the rule of law. In this case the dispute was heard and all the parties were given an opportunity to be heard by way of ‘*viva voce*’ evidence. The Judge proceeded to give a Judgment which effectively determined the rights of all the beneficiaries and their entitlement including the respondent. It is a high time that Judgement which was delivered four years ago should be executed. For these reasons, I find that the application has merits.

I order that:-

(i) The District Surveyor Chuka shall visit Land Parcel No, Mwimbi/N. Mugumango/540 for the purpose of sub-dividing the land in conformity with the certificate of confirmation of grant dated 13/12/2016

(ii) The OCS Chuka Police Station shall provide security during the exercise.

(iii) The District Surveyor to comply with the order within 60 days of service of the order.

(iv) Costs be in the cause.

Dated, signed and delivered at Chuka this 13th day of May 2021.

L.W. GITARI

JUDGE