



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 737 OF 1992**

**IN THE MATTER OF THE ESTATE OF KIRUTHU KIMITI (DECEASED)**

**CATHERINE NJERI NG'ANG'A .....APPLICANT**

**VERSUS**

**JANE WAITITU NJOROGE.....1<sup>ST</sup> RESPONDENT**

**JEAN VERA WAMBUI.....2<sup>ND</sup> RESPONDENT**

**RULING**

Catherine Njeri Ng'ang'a, the Applicant, has brought this Summons under Section 48 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules seeking the following orders:

1. That the administratrixes of the estate, Jane Waititu Njoroge and Jean Vera Wambui be compelled by this honourable court to sign all requisite transmission documents necessary for transmission of all that parcel of land known as **L.R No. NGENDA/GITHUGUCHU/2815**(an excise from **L.R. NO. NGENDA/GITHUNGUCHU/1**) to Catherine Njeri Ng'ang'a as per Certificate of Confirmation of Grant issued on 6<sup>th</sup> September 2019.
2. That in the alternative the Deputy Registrar of this honourable court be authorized to sign all necessary and requisite transmission documents necessary for transmission of all that parcel of land known as **L. R. NO. NGENDA/GITHUNGUCHU/2815**(an excise **from L. R. NO. NGENDA/GITHUNGUCHU/1**) to Catherine Njeri Ng'ang'a as per Certificate of Confirmation of Grant issued on 6<sup>th</sup> September 2019.
3. That the costs of this application be provided for.

The Applicant has supported this Summons with grounds found on the face of the Summons and on the Supporting Affidavit sworn on 16<sup>th</sup> January 2020 that the inheritance issues in this matter came to a conclusion on 6<sup>th</sup> September 2019 when this honourable court issued a rectified Certificate of Confirmation of Grant and a schedule of distribution annexed thereto; that upon the confirmation of the Grant herein as amended on 12<sup>th</sup> December 2019, the property being **L. R. NO. NGENDA/GITHUNGUCHU/2815**(an excise from **L. R. No. NGENDA/GITHUNGUCHU/1**) was to be transmitted to Catherine Njeri Ng'ang'a as evidenced in the Certificate of Confirmation of Grant; that the Administratrixes have for their own selfish purposes declined to transmit the aforementioned share of the property to the Applicant herein despite incessant pleas to undertake their duties and execute the necessary transmission forms in favour of the Applicant herein and that the efforts of the Applicant to have the Administratrixes execute the necessary documents have been met with hostility.

The Applicant has sworn an affidavit in support of the Summons. She deposes that she is one of the beneficiaries in the Estate of Kiruthu Kimiti, deceased, by virtue of a rectified grant dated 6<sup>th</sup> September 2019; that upon confirmation of the grant she was bequeathed 19.3 acres from the Estate of the deceased now comprised in **L. R. NO. NGENDA/GITHUNGUCHU/2815** (an excise from **L. R. NO. NGENDA/GITHUNGUCHU/1**); that despite the fact that the grant was amended in her favour in 2019 the administratrixes have refused and or neglected to transmit the parcel of land in her favour for no apparent reason; that her efforts to have this parcel of land transmitted to her have been unsuccessful hence her coming to court to seek orders of this honourable court to compel the administratrixes to actualize the grant by transmitting the named property to her.

The Summons is opposed. In their Replying Affidavit sworn on the 16<sup>th</sup> October 2020, the Respondents, who are the Administratrixes admit that the Applicant is a beneficiary of the Estate of Kiruthu Kimiti, deceased, by virtue of being daughter in law of the deceased and wife to Joel Ng'ang'a (deceased) who is son to the decease whose estate this matter relates. They admit that the Grant was rectified on 6<sup>th</sup> September 2019 and the Applicant's name was substituted in her deceased husband's place. They admit that Joel Ng'ang'a, was, before he died, bequeathed 19.3 acres out of the Estate of the deceased known as **L. R. NO. NGENDA/GITHUNGUCHU/2815** which parcel had been excised from **L. R. NO. NGENDA/GITHUNGUCHU/1**. They depose that the Applicant's late husband sold several pieces of land to

several purchasers including Peter Nginga Kiguta and Stephen Ngugi Njuguna and that the Applicant is aware of the sale transactions, signed the documents and received money together with her deceased husband. The Respondents further admit that they have refused to execute transmission documents because the Applicant is denying innocent parties their portions of land in which consideration had already been paid to her and her late husband. They state that the Applicant is aware of Gatundu ELC Case No. 27 of 2019 formerly Nairobi ELC Case No. 708 of 2016 in which Peter Nginya Kiguta has sued the Applicant's late husband with regard to subdivision of parcel **L. R. No. NGENDA/GITHUNGUCHU/2815**.

The Respondents state that they are willing to complete the administration and distribution of the estate of Kiruthu Kimiti, deceased, once the Applicant acknowledges the other beneficiaries of her share of the estate. The Respondents urge that this Summons be dismissed with costs.

The Summons was canvassed by way of written submissions. I have carefully read the rival submissions. Each side reiterates their case. I need not repeat what the submissions state. They are on record.

I have considered this matter. The issues in this Succession Cause are fresh in my mind having determined the Application dated 16<sup>th</sup> October 2020 in which Peter Nginga Kiguta had sought to be enjoined in this Cause as an Interested Party, among other orders sought in that Application. That Application was dismissed. I need not repeat here my reasons for the dismissal of that Application because the record is clear on that.

The Administratrixes in this matter are behaving badly. I think they are not properly advised. All through the proceedings in this Succession Cause from the first Certificate of Confirmation issued on 4<sup>th</sup> June 1999 and the subsequent numerous rectified Certificates of Confirmation, the late Joel Ng'ang'a Kamau, husband to the Applicant, is indicated as being entitled to 19.3 acres from the Estate of the late Kiruthu Kimiti comprising of L.R. No. NGENDA/GITHUNGUCHU/1. It is clear from the record, and it is admitted by the Respondents that parcel **L. R. NO. NGENDA/GITHUNGUCHU/2815** measuring 19.3 acres is an excise of **L.R. NO. NGENDA/GITHUNGUCHU/1**. The record is clear that this parcel of land was bequeathed to the Applicant's late husband and that through a rectification of the grant, it went to the Applicant who was substituted for her late husband. There is no record showing that the Respondents sought to have the purchasers included in the succession proceedings as beneficiaries. They ought to have been aware of the purchasers' claim given that they claim they are aware that the Applicant signed sale documents and received consideration together with her late husband for the pieces of land sold.

It is not for this court to determine whether the purchasers bought parcels of land from the beneficial share meant for the Applicant through her deceased husband. I so pronounced myself in the Ruling in respect of the Application dated 16<sup>th</sup> October 2020. I stated that jurisdiction to determine purchasers claim where such purchaser has not been acknowledged as such and included in the persons entitled to a share of the estate at the time of confirming the grant lies elsewhere. To refresh ourselves on my determination of the Application dated 16<sup>th</sup> October 2020, I stated in part that:

***“..... Clearly, disputes as between the estate and third parties need not be determined within the succession cause. The legal infrastructure in place provides for resolution elsewhere, and upon a determination being made by the civil court, the decree or order is then made available to the probate court for implementation. In the meantime the property in question is removed from the distribution table. The presumption is that such disputes arise before the distribution of the estate, or the confirmation of the grant. Where they arise after confirmation, then they ought strictly to be determined outside of the probate suit, for the probate court would in most case be functus officio so far as the property in question is concerned..... (emphasis added) (see Re: Estate of Alice Mumbua Mutua (Deceased) [2017] cited with approval In re Estate of Kamunge Kagithi (Deceased) [2019]).***

The Respondents cannot argue that they have refused to sign transmissions documents until the Applicant can acknowledge the purchasers. In so doing they are failing in their duty to administer the Estate of the deceased. One of the major duties of administrators of the estate of a deceased person is ***to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration (See Section 83 (i) of the Law of Succession Act)***. Completion of the administration of the estate entails completion of distribution of the shares to the assigned beneficiaries. By failing to sign transmission documents in this case, the Respondents are ill-advised and are breached the law. I need to remind the Respondents that failure to proceed diligently with the administration with the estate may lead to making the grant become useless and inoperative. The two are some of the grounds for revocation of the grant.

This court, sitting as a Probate Court, must proceed diligently and oversee the completion of the administration of the estate of the deceased. For these reasons, I hereby allow this Summons. I allow Prayer 1 of this Summons. The Respondents are given 90 days to complete the administration of the estate in this Succession Cause as prayed in Order 1 of this Summons. Failure to do so, Order No. 2 shall issue. For avoidance of doubt, if within 90 days from the date of this Ruling, the Respondents will not have acted as ordered, then the Deputy Registrar of this Court shall be at liberty to sign the necessary documents to enable transmission of **L.R. NGENDA/GITUNGUCHU/2815** to the Applicant as prayed in No. 2 of this Summons. These orders do not prejudice any purchaser for value. Such a purchaser has a recourse in ELC Court. orders to issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 20TH DAY OF SEPTEMBER 2021.**

**S. N. MUTUKU**

**JUDGE**