



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.3 OF 2017**

**IN THE MATTER OF THE ESTATE OF JOYCE KANJIRU NJIRU .....DECEASED**

ROSE NJERI AYANGA.....1<sup>ST</sup> APPLICANT

CATHERINE GICHUKU MBARIRE.....2<sup>ND</sup> APPLICANT

JOHN MIRITI MBARITE.....3<sup>RD</sup> APPLICANT

**VERSUS**

NICHOLAS IRERI MBARIRE.....1<sup>ST</sup> RESPONDENT

LUCY GATUNE NJIRU.....2<sup>ND</sup> RESPONDENT

**RULING**

1. The application pending before Court is dated 10/01/2019 whereby the applicant is seeking for that orders be issued enabling the Deputy Registrar to co-sign and execute all instructions and conveyance documents pertaining to the Estate of JOYCE KANJIRU NJIRU on behalf of the 2<sup>nd</sup> administrator who has refused to co-operate.

2. The application was based on the ground that the 2<sup>nd</sup> administrator has refused to co-operate with him in order to execute the grant confirmed on 07/12/2017. That she has indicated that she will not sign the proposed division of **NANYUKI MUNICIPALITY BLOCK 11/11 (FORMERLY L.R 2787/395)** which will enable the Lands office to issue individual title deed to the beneficiaries. That the 2<sup>nd</sup> administrator together with JOHN MIRITI and CATHERINE GICUKU have instructed the tenants occupying **L.R 2787/395 Nanyuki** not to open the gate for him and has put chain and heavy lock on the entrance gate.

3. The respondent in her response sated that the applicant commenced the process of distribution of the Estate without consulting JOHN MIRITI, CATHERINE GICUKU and herself in spite of the fact that they are beneficiaries of their mother. That the prayer sought is premature as no asset has been registered as required by **Section 82(a) of the Law of Succession Act**. That the applicant together with their sister LUCY GATUNE visited the Nanyuki property together with a surveyor in a bid to partition the property and their intention was to hive off part of the property which has rented house so that they can begin to collect rent. That at no time has the applicant and LUCY GATUNE sent her any documents to sign and she refused. That they are ready to follow due process by first registering the property in their names as personal representatives and thereafter distributing the same as ordered in the confirmation of grant.

4. I have considered the application and the submissions.

**Section 82(a) of the Law of Succession Act** provides:

***“Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative”***

This means that a personal representative has liberty to move the court to seek orders to enforce the grant. He may file a suit or move the court otherwise. The operating word is by suit or otherwise. It is not premature for the applicant to bring this kind of application.

5. This is an old matter having been filed in 2009 under **Embu Succession Cause No. 121 of 2009**. The court confirmed the grant on 07/12/2017 and the parties are yet to benefit from the said judgment. The estate in question is in regard to **L.R 2787/395 Nanyuki** where the court ordered that the same be shared equally with each dependant getting approximately 0.20 Ha.

6. From the way this application has been argued, it is obvious that the parties cannot be expected to sit down and agree to sign the documents to effect the orders of this court. This court has to come in and ensure that the orders are enforced.

That is why the Law of Succession Act has given this Court wide powers to grant such orders as may be necessary to meet the ends of justice. Rule 73 of the Probate and Administration Rules provides for saving of inherent powers of court. It states;

***“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 end of justice or to prevent abuse of the process of the Court” (emphasis mine).***

7. It is in the interest of justice that the orders of this court be executed and that litigation must come to an end one way or the other.

**Section 80 (2) of the Law of Succession Act** provides;

***“A grant of Letters of Administration with or without the will annexed shall take effect only as from the date of such grant”.***

The grant in this matter has taken effect the property in dispute needs to be distributed and each dependant to get each of her own share. The 2<sup>nd</sup> Petitioner has not shown any ruling to execute the documents to facilitate this distribution. I therefore find that this application has merits.

I order as follows;

**a) The Deputy Registrar of this court is authorized to execute all instruments, conveyance documents pertaining to the estate of the deceased JOYCE WANJIRU NJIRU on behalf of the 2<sup>nd</sup> Administrator ROSE NJERI AYANGA.**

**b) Each party to bear it's own costs.**

**Dated at Kerugoya this 6<sup>th</sup> day of February 2020.**

**L. W. GITARI**

**JUDGE**