



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 123 OF 2008

IN THE MATTER OF THE ESTATE OF NAFTARI MUGA alias NAFTALLY BAITIRITHIA (DECEASED)

LUCY MAITHA

RAEL NJERI

PAULINE MUKWAITI

CHARITY IKUMA

JOAN FRIDAH MURIUKI

JOYCE KAARI.....APPLICANTS

VS

GERRAD NJUE M'MUGA....RESPONDENT/PETITIONER

RULING

Subdivision of estate property

[1] The issue that has arisen in these proceedings relates to execution of the rectified certificate of confirmation of a grant dated 13/2/2017. By orders issued by the court on 28/12/2017 and 13/8/2018 the District Surveyor Tharaka Nithi County was directed to subdivide the estate property to wit **Land Parcel No. MUTHAMBI/CHAMUNGA/263** in accordance with the grant. These orders were issued after it became clear to the court that the petitioner who is also the 1st administrator was not willing to implement the grant.

[2] Lucy Maitha Njiru in her supporting affidavit sworn on 4/3/2019 deposed that the District Surveyor visited **Land Parcel No. MUTHAMBI/CHAMUNGA/263** on 3/7/2018 surveyed and subdivided the estate. Except, she averred that, when the petitioner was required to sign the mutation forms he refused to do so. Instead, he insisted on the estate land to be subdivided according to his terms. She averred further that the petitioner has continued to build houses for himself and for his children on the estate property during the pendency of these in a bid to justify his claim that he should get that particular portion of land. She stated that the petitioner now uses his illegal acts to claim the said portions of land in complete disregard of the judgment herein. The deponent suggested that the petitioner is not ready to complete the transmission of the estate and he should therefore be relieved of his duties by the court.

[3] On 27/11/2019 counsel for the 2nd administrator, Lucy Maitha, asked the court to adopt the survey's report. While counsel for the 1st administrator/petitioner relied on their survey's proposal.

[4] The issue at hand initially arose through the application dated 20/2/2015 which prompted the court to seek the intervention of the District Surveyor who, being an employee of the government should provide appropriate and professional subdivision of the estate. Lucy Maitha Njiru through her affidavit produced the mutation forms to demonstrate the subdivisions were carried out by the District Surveyor Meru South District. These are the forms she says that the petitioner ought to sign but has refused to sign. The mutation has not been refuted by the petitioner. He did not also file the survey's proposal as alleged. Be that a sit may, the order of the court was for the District Surveyor to conduct the subdivision and no other party. The order was in execution of the grant and if the petitioner was aggrieved by the said court's decision, he should have sought for redress in the appropriate manner rather than engage in acts which are contrary to his duty as an administrator. Amongst the duties of an administrator is to administer the estate of the deceased diligently and file accounts of completed administration within six months of the confirmation of the grant or such other period as may be ordered by the court. And, the law takes a very serious view of an administrator who fails to administer the estate diligently to the extent that such failure is a potent ground for revocation or annulment of grant issued to such administrator; but of course after due notice is given. See section 76 (d)

76 Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

ii. to proceed diligently with the administration of the estate; or

iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.

[5] This matter was initiated in 2008 and judgment delivered on 16/10/2014. Since that time, beneficiaries of the estate have not been able to enjoy their fruits because the petitioner thinks the land should be divided in a particular manner so as to guarantee him taking a specified portion. Needless to state that subdivision of land is governed by law and land surveyors are amongst the relevant professionals whose determinations, unless the contrary is shown, are authoritative and dependable. I do not think that the process of subdivision of estate property depends on the desires of an individual. In the circumstances of this case, it has become imperative to state that, parties should understand that by building on the estate during the pendency of succession proceedings is not only a violation of the law but assured way to earn you the wrath of the law; not a reward. Such would be self-inflicted damage. This seems to be the case here.

[6] Turning to the main; the report by the District surveyor has not been shown to be contrary to the law or the grant herein. It is credible, professional and appropriate in the distribution of the estate herein.

[7] Having come to the foregoing conclusion, it bears repeating that this matter has been in court for quite a long time and litigation must come to an end. The petitioner cannot seek to hold this court and beneficiaries of the estate hostage until his personal desire is met; to get a particular portion of the estate. The best interest of justice in this case demands that I make the following orders:

- a) The District Surveyor’s report is hereby adopted to be and shall be the official subdivision of the estate property herein.**
- b) Given the conduct of the petitioner/1st administrator, the Executive Officer shall execute the transfer and other necessary transmission documents on behalf of the 1st administrator, Gerrard Njue M’Muga.**
- c) The 2nd administrator to file in court, within 120 days an inventory of administration and more specifically approved and executed subdivision of the estate property.**

Dated signed and delivered in open court this 4th day of February, 2020

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F. GIKONYO

JUDGE

In presence of

Athiero for applicant

Kaumbi for petitioner – absent

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F. GIKONYO

JUDGE