



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO 1069 OF 2009

IN THE MATTER OF THE ESTATE OF WILLIAM KABAKI alias KIBUE s/o KABAKI (DECEASED)

AND

IN THE MATTER OF AN APPLICATION BY

MOSES WAMBUGU KIBUE.....APPLICANT

VERSUS

JASON KANJA KIBUE.....1ST RESPONDENT

SIMON MIROBI KIBUE.....2ND RESPONDENT

KIBUE WANJOHI.....3RD RESPONDENT

WILLIAM KIBUE WANJIKU.....4TH RESPONDENT

DAVID NYAGUANJI KIBUE.....5TH RESPONDENT

R U L I N G

On 16th December 2015 the certificate of confirmation of grant in the matter of the estate of William Kibui Kibaki alias Kibui s/o Kibaki was issued to Moses Wambugu Kibue and Jason Kanja Kibue.

The estate comprising of Thengenge/Ihithi/266 was to be registered in the names of 7 beneficiaries who include the 2 administrators and

Simon Mirobi Kibui

Kibue Wanjohi.

William Kibue Wanjiku

Paul Kamunya Kibue

David Nyaguanji Kibue as Tenants in common in equal shares.

On 26th July 2018 Moses Wambugu Kibue filed a Summons General seeking orders that the documents for effecting the registration of the certificate of the grant by the Deputy Registrar, and the Land Registrar, to dispense with the production of the requisite documents –i.e. copies of ID cards, PIN certificate, passport size photos by the respondents.

He also sought an order for the correction of the name of the 1st respondent to read JASON KANJA KIBUI.

His main ground for the application was that the co-administrators and the respondents had refused to execute the necessary documents to enable him transmit the estate as per the certificate of confirmation of the grant.

In a replying affidavit sworn on 27th November 2018 the 1st respondent pointed out that he and the other respondents were willing to sign the

Forms 19 & 17 but that the applicant and one Paul Kimunya had changed the beacons on ground affecting the portions belonging to Jason Kanja Kibui and William Kibue Wanjiku. His contended that for that matter be settled once and for all, the court would have to direct the District Surveyor to make an audit of the ground and establish the correctness of the acreage for each beneficiary.

The applicant responded through a “*further supporting affidavit*” that the said Jason Kanja Kibui was the one who was bringing issues as what was required for now was the transmission of the estate from the deceased to the beneficiaries and the issue of boundaries was a non-issue. That the same had already been done by a surveyor. In any event the other beneficiaries had already given him their documents.

I have carefully considered the application before me and the affidavits that have been sworn by the rival parties. The certificate of grant is very clear that the beneficiaries are to be registered as tenants in common in equal shares. That means that they all own the parcel of land but each has an equal share of the land. That far, the court did its work.

On the issue of boundaries, it appears to me that the persons with an issue are Jason Kanja Kibue and William Kibue Wanjiku. The other respondents have not expressed any concerns over their specific portion of the estate.

The applicant has deponed that the other beneficiaries have produced their documents for the transmission process except for the two.

Should the respondents be compelled to execute the documents for purposes of transmission? It is important not to mix the two issues of the actual distribution on the ground and the transmission exercise. The former must take place before the latter. It is therefore necessary for the transmission exercise to take off. The application is allowed in the following terms:

1. That all the beneficiaries execute the Forms RL 19 &17 within 30 days hereof in default the Deputy Registrar is authorized to execute the same.
2. Jason Kanja Kibue’s name to be amended in the grant and certificate of confirmation of grant to read Jason Kanja Kibui.
3. With regard to the actual distribution of the estate on the ground the District Surveyor may visit the land in the presence of all the beneficiaries at the expense of Jason Kanja Kibui and William Kibue Wanjiku within 60 days hereof and file a report on the status of the boundaries on ground. In default then the Land Registrar to dispense with their documents as prayed.
4. No orders as to costs of the application.
5. Mention on 29th April 2019 to confirm the position.

Dated, delivered and signed at Nyeri this day of 8th February 2019.

Mumbua T. Matheka

Judge

In the presence of:

Court Assistant: Juliet

Moses Wambugu

Simon Mirobi Kibui

Paul Kamunya Kibui

David Nyanguanji Kibui

William Kibui Wanjiku

Mumbua T. Matheka

Judge

8/2/19