



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 696 OF 2009**

**IN THE MATTER OF THE ESTATE OF DANIEL KHASIEVERA ANUSU (DECEASED)**

**AND**

**EVANS KHASIEVERA ANUSU..... PETITIONER/RESPONDENT**

**VERSUS**

**DAVID KHASIEVERA ANUSU.....APPLICANT**

**R U L I N G**

1. The applicant has filed a notice of motion dated 24<sup>th</sup> September, 2019 seeking for orders that:-

(a) The Deputy Registrar, Kakamega High Court be empowered to execute on behalf of the petitioner/respondent, all the documents necessary to facilitate the partitioning of land parcel No. **TIRIKI/SEREM/762** into five portions as per amended certificate of confirmation dated 31<sup>st</sup> October, 2019.

(b) That the Land Registrar, Vihiga County, do effect transmission of the five respective portions into respective names of all beneficiaries.

(c) Costs of this application be provided for.

2. The grounds in support of the application are that this court has decreed that all the beneficiaries herein are entitled to equal share measuring 0.52 Ha. out of land parcel No. **TIRIKI/SEREM/762** and that the same should be excised from the said title and registered in the names of each of the beneficiaries. That the petitioner/respondent as administrator of the estate, in a bid to defeat the court's decree, has declined to execute the documents necessary to facilitate the partition and transmission of the deceased's estate to the beneficiaries.

3. The petitioner/respondent opposed the application vide his replying affidavit sworn on 8<sup>th</sup> October, 2019. In the affidavit the respondent says the applicant has never forwarded the referred to documents to him for the stated purpose. That instead the applicant has gone out of his way to scheming to have him imprisoned on fabricated charges in order to displace him as the administrator of the estate. That he made him to be arraigned in court over a charge of assault. That he also made false allegations that he had defiled his (petitioner's) daughter. Further that to allow the application would amount to a revocation of the grant and that of the Deputy Registrar exercising jurisdiction not conferred by law.

4. I have considered the application and the grounds in opposition thereto. The judgment of the court that ordered that the estate be shared equally between the beneficiaries was delivered on the 25<sup>th</sup> May, 2017. Among the duties of an administrator of an estate as set out in Rule 83 of the Probate and Administration Rules are to within six months from the date of confirmation of grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.

5. It is now 2½ years since when the court made its orders. The respondent as administrator of the estate has not done anything towards completion of the administration of the estate. It is clear that he has declined to comply with the court's orders made on 25<sup>th</sup> May, 2017. It was not the duty of the applicant to forward documents to the respondent for execution. That was the duty of the administrator. Instead of complying with the court orders, the applicant is raising frivolous issues that have no connection with the application at hand. It is clear that the respondent has refused to execute the documents for ulterior motives which is in no doubt meant to punish the respondent due to their own personal differences. In the premises the respondent has failed in his duty as administrator of the estate of the deceased.

6. This court has inherent powers under Rule 73 of the Probate and Administration Rules to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The respondent herein has abused his powers as administrator in refusing to

complete the administration of the estate for ulterior motives. Consequently the application dated 24<sup>th</sup> September, 2019 is allowed as prayed in terms of prayers (a) and (b).

Each party to bear its own costs.

**Delivered, dated and signed in open court at Kakamega this 5<sup>th</sup> day of December, 2019.**

**J. NJAGI**

**JUDGE**

In the presence of:

Miss Shichenji for Petitioner/Respondent

Miss Khateshi for Applicant

Parties:

Petitioner/Respondent – present

Applicant – present

Court Assistant - Polycarp

30 days right of appeal.