



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 2230 OF 2004
IN THE MATER OF THE ESTATE OF JOHN KARORI GITIRIA (DECEASED)
ZIPPORAH MUTHONI KARORI.....APPLICANT
VERSUS
DAVID GITIRIA KARORI.....RESPONDENT
RULING

1. The deceased John Karori Gitiria died on 23rd October 2003. He was survived by the following beneficiaries:

- a. Florence Wanjiru Karori – wife (deceased);
- b. Jennifer Wangui Gakuo – daughter (administrator);
- c. Eunice Mira Karori – daughter;
- d. Zipporah Muthoni Karori – daughter (applicant);
- e. Lucy Njeri – daughter;
- f. David Gitiria Karori – son (administrator) (respondent);
- g. Hannah Wagikuyu – daughter;
- h. Joyce Wairimu Karori – daughter; and
- i. Judy Wambui Karori – daughter.

His estate comprised of the following assets:

- a. Kaagia Farm No. 4885/58;
- b. Nyathuna Plot No. 419;
- c. Nyathuna Plot No. 294;
- d. Fixed Deposit- Standard Chartered Bank;
- e. Savings- Standard Chartered Bank; and
- f. Posta Bank Account.

2. The initial grant of letters of administration was issued to Florence Wanjiru Karori and David Gatiria Karori on 30th September 2004. It was, however, revoked by this court through its order made on 19th March 2013. A fresh grant was issued to David Gatiri Karori and Jennifer Wangoi Gakuo on 19th March 2013, and confirmed on the same day. The respondent being dissatisfied with the order of 19th March 2013 through which the fresh grant was made and confirmed, filed a Notice of Appeal on the 12th of April 2013. The appeal has never been prosecuted.

3. On 30th September 2015 the applicant brought the present application under **Rule 73** of the **Probate and Administration Rules** and **Section 45** of the **Law of Succession Act (Cap. 160)** seeking orders that:

a. the Deputy Registrar do sign the transfer/transmission documents and all other requisite documents regarding the conveyance of the parcel of land known as Kaagia Farm No. 4885/58 by transmission to the beneficiaries/heirs as per the certificate of confirmation of grant herein dated 19th March 2013;

b. the respondent be cited for contempt of court and be imprisoned in civil jail for a period of six (6) months; and

c. costs be provided for.

4. The application was based on the grounds that the Hon. Lady Justice Mugo gave her ruling on the 27th July 2012 restraining the 1st administrator from interfering with the other beneficiaries' use and rights over the estate land; subsequently the estate was distributed following the confirmation of the grant on 19th March 2013; the respondent was not satisfied and filed a Notice of Appeal, however, it now well over two years and the respondent has neither filed the intended appeal in court nor served the other beneficiaries with any appeal; that the respondent has refused to sign the transmission/transfer papers therefore frustrating the efforts of the other beneficiaries in having the property conveyed to them as per the confirmed grant; that the 1st administrator had denied some of the beneficiaries' access to their share of that parcel of land known as Kaagia Farm Plot No. 4835/58 yet they have nowhere else to cultivate or develop; that the respondent is, contrary to the order of this court, interfering with the other beneficiaries' use and rights over the estate land, is actually uprooting and destroying their crops thereon as well as spraying them with dangerous chemicals; and that the respondent is using the excuse of an intended appeal as a delaying tactic and denying the other beneficiaries/heirs the fruits of the confirmed grant. The application was supported by the affidavit of the applicant

5. The application was opposed by the respondent. He denied having neglected or refused to sign transmission documents, or having in any particular instance interfered with the applicants share of the estate land. He further denied having uprooted any crops or sprayed chemicals on them, and stated that the beneficiaries were not destitute since they have marital homes. Regarding the delay in pursuing the appeal, he stated that the same had been occasioned by delay in retrieving court proceedings and was not an excuse to finalise distribution of the estate. On being in contempt of court, he stated that he was not in contempt but rather he was open to court's direction regarding this matter.

6. Parties filed their written submissions which I have considered.

7. It is clear that since 19th March 2013 when the grant was confirmed the respondent has not signed transfer and other necessary documents to enable the applicant and each of the other beneficiaries inherit their designated entitlements over land parcel Kaagia Farm No. 4885/58. He was entitled to appeal, if not satisfied with the way the estate had been shared. But, about five years later, he has not prosecuted the appeal. In fact the actual appeal has not been filed. He did not seek to stay the decree that came from this court as he pursued the appeal. He did not seek stay in the Court of Appeal. It is apparent that the filing of the Notice of Appeal was merely intended to frustrate the finalisation of this cause by the distribution of the estate of the deceased. Court orders are made to be obeyed, and the applicant and the other beneficiaries are entitled to enjoy the fruits of this old dispute.

8. This being the case, I direct the Deputy Registrar of this court to sign all the necessary papers to make sure that the distribution in accordance with the certificate of confirmation issued herein is given effect to, and each beneficiary has got his/her share of the estate.

9. The application dated 30th September 2015 and filed on the same date shall be allowed in those terms. Costs shall be borne by the respondent.

DATED and DELIVERED at NAIROBI this 2ND day of OCTOBER 2018.

A.O. MUCHELULE

JUDGE