



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 205 OF 2011

In the matter of the Estate of JOSHUA NDWIGA KAGIO (Deceased)

NTHIGA JOSHUA.....1ST PETITIONER/APPLICANT

ANTHONY KARIUKI KAGIO.....2ND PETITIONER/APPLICANT

VERSUS

EUSTACE NJIRU JOSHUA.....PROTESTOR/RESPONDENT

RULING

1. This is a ruling on the application dated 22/09/2016 seeking for orders that the respondent be ordered to deposit in court KShs.1,104,000/= being the rent collected in 2/5 share of plot No. Embu/Township/59 and Stall 5Y 106 Embu Municipality for 2 years within 14 days from the date of this order and that the land registrar do dispense with production of the original lease certificate and/or any other original document that may be required in respect of Plot No. Embu/Municipality/59 and Stall 5Y 106 Embu Municipality while registering the confirmed grant.
2. The application is supported by the affidavit by Nthiga Joshua the 1st applicant. He depones that the respondent has collected rent amounting to Kshs. 104,000/= for plot No. Embu/Township/59 and Stall 5Y 106 Embu Municipality for a period of 2 years since the grant was confirmed. The respondent has failed to account for the rent and has denied access to the other beneficiaries.
3. It is also stated that the respondent has refused to surrender the original lease certificate and other original document for the deceased's properties thus frustrating the implementation of the grant.
4. The 1st applicant further states that the two widows of the deceased are old and sickly and have not benefited from the income of the estate.
5. The court ordered the respondent to account for the rent he collects from the deceased's properties in an order resulting from the application dated 27/08/2015. The said order has not been complied with.
6. The respondent in his replying affidavit sworn on 17/10/2016 denies that he is in possession of any ownership documents of the properties of the deceased. It is also denied that he has collected rent amounting to KShs.1,104,000/= and demands that the applicants produce documents to support the allegations.
7. It is also denied by the respondent that Stall No. 5Y 106 Embu Municipality exists and that the

applicants should establish ownership. The respondent states that if the applicants can prove that the said property belongs to the deceased, he has no objection to the court issuing an order to dispense with the production of the ownership document.

8. The court record shows that in an earlier application brought by the applicants dated 22/08/2015 were given orders against the respondent to the effect that:-

(a) To render account of the rent collected in Plot No. Embu Township/59 (2/5 share) and stall No. 5Y 106 Embu Municipality within 14 days from the date of the ruling delivered on 19/04/2006 and to deposit the income in a joint account of Nthiga Joshua and two others.

(b) That the Deputy Registrar executes the transmission of documents in implementation of the grant in respect of Plot No. Embu/Township/59 2/5 share and No. Embu Municipality stall No. 5Y 106.

(c) To surrender the original document for the two plots which are also the subject matter of this application.

9. Some of the prayers in this application are similar or overlap with the ones of the earlier application. The court must exercise caution not to give duplicated order or to give orders which are not capable of being implemented. Having ordered the respondent to render account of the rent in Stall No. 5Y/106 and No. 59 Embu Municipality the applicants need to follow enforcement of the order first before applying for orders to deposit the rent collected.

10. The applicants have not so far attempted to have the order enforced. The respondent denies that he collects rent amounting Kshs.1,004,000/= or there about and puts the applicants to strict proof.

11. The applicants have not annexed any documents in support of the figure sought to be deposited. There is no information as to the nature of the premises, the number or size of the units being rented out and the income drawn from therein. Without the crucial information the court declines to grant the prayer to order the respondent deposit the figure given by the applicants.

12. The respondent also states he does not know about stall No. 5Y/106. The copy of register filed in this case gives plot No. 106 registered in the name of the Trust Land Board. The name of the deceased does not feature in the register and no letter of stall allocation or other document supporting possession by the family of the deceased has been availed. The family requires to provide further and better particulars in regard to the stall for this court to satisfy itself as to its existence, the nature of business carried out, the tenancy status, the annual or monthly rent and any other relevant information.

13. As for prayer 3 seeking that the Land Registrar do dispense of the original titles/lease document of plot No. 59, the respondent denies he is in possession of the ownership documents. The grant requires to be executed and it is appropriate that the process be facilitated.

14. As for plot No. 106 in the name of Land Trust Board, this prayer is deferred pending production of further and better particulars in regard to ownership.

15. All considered, I allow prayer No. 3 as prayed and make the following directions:-

(a) That the applicants within 30 days do provide further documentation and information in respect of plot No. Embu Municipality Stall 5Y/106 as explained in this ruling.

(b) That the respondent being an a co-administrator do co-operate with the applicants in all that appertains to implementation of the grant and in rendering accounts of the income of deceased's properties in default of which the applicants will be at liberty to enforce the orders issued on 19/04/2006.

(c) That each party meets its own costs of this application.

DELIVERED, DATED AND SIGNED AT EMBU THIS 21ST DAY OF FEBRUARY, 2017.

F. MUCHEMI

J U D G E

In the presence of:-

Ms. Muthoni for Applicants

Mr. Njoroge for Ndorogo for Respondents