



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

SUCCESSION CAUSE NO. 22 OF 2016

(FORMERLY MERU HIGH COURT SUCCESSION CAUSE NO. 28 OF 1985)

IN THE MATTER OF THE ESTATE OF THE LATE NTUARA AMUNDE (DECEASED)

RITHAA NTUARA.....PETITIONER/APPLICANT

VERSUS

NJUE NTUARA.....1ST PETITIONER/RESPONDENT

MATI NTUARA.....2ND PETITIONER/RESPONDENT

R U L I N G

1. Before this court are Summons dated 28th July, 2016 taken by **RITHAA NTUARA**, the applicant herein who has invoked the provisions of Rules 49 and 73 P&A rules to ask for the following orders namely:-

i. That this application be certified urgent and the same be heard on priority basis.

ii. That the Deputy Registrar of this court be authorized to sign all the necessary documents to put into effect the certificate of confirmed grant and in particular mutation forms in respect of land parcel No. LR KARINGANI/MUGIRIRWA/520 including application for consent for the subdivision of LR KARINGANI/MUGIRIRWA/520.

iii. That the respondents do pay costs of this application.

2. The grounds upon which this application has been brought are as follows:-

a) That there has been bad blood between the applicant and the respondents herein making it hard for them to sit down and finalize the administration of the estate of NTUARA AMUNDE (Deceased).

b) That the respondents and the applicants have been engaged in protracted legal battles over the estate herein since 1985.

c) That the respondents have refused to sign any document in relation to the estate herein and in particular application to the Land Control Board for subdivision of the estate and the mutation forms to facilitate the distribution of the estate herein.

3. The applicant has sworn an affidavit in support of the above grounds and at the hearing of this application, the applicant reiterated that despite every beneficiary getting a share in the estate, the respondents have simply refused to co-operate in order to frustrate the process despite a ruling that determined the dispute.

4. The respondents have opposed the application through a joint affidavit sworn on 19th September, 2016 and a reply dated 19/9/2016. The respondents have not denied that they have refused to co-operate with the applicant by refusing to execute the requisite documents to finalize the administration and distribution of the estate herein. They have accused the applicant and his sons for causing damage to their crops within the land comprising the estate herein. They have added that though they reported the wrongs committed against them at CHUKA POLICE STATION, no action has been taken so far. They have deponed that the estate should, distributed so as to bring this matter to an end.

5. At the hearing of this application, the respondents conceded that they have declined to sign any document in relation to the estate herein because apparently they still hold that the orders issued in **Chuka Cm's Court Succession Cause No. 74 of 2014** still stands. They also accused the applicant herein for carrying out the survey work with the District Surveyor in their absence and damaging their crops in the process.

6. This court has considered this application and the response made. It is not disputed that a ruling was delivered in this cause by **Hon. Justice Mabeya** on 9th June 2016, where this court allowed the applicant's application dated 18th February, 2016 in terms of prayer 1 and 3 thereof which in effect nullified the grant issued in **Chuka CM's Court Succession Cause No. 74 of 2014** and ordered the OCS Chuka to provide security for implementation of a confirmed grant issued vide **Meru High Court Succession Cause No. 28** of 1985 (now **Chuka Succession Cause No. 22 of 2016**) on 8th October, 2013. I have looked at the ruling and noted that the Judge erroneously described **Chuka RM Succession No. 74 of 2014** as Succession Cause No. 74 of 2015. The relevant succession cause in question in that ruling is **PM's Succession Cause No. 74 of 2014** and so I exercise my inherent powers on my own motion to revise for the ends of justice the order to correct misdescription of the relevant succession cause Number to read **P.M's Court Succession Cause No.74 of 2014.**

7. Having dealt with the above minor issue which was uncontested in this application let me now deal with the substance of the application before me. The respondents appear from their response to this application that they are aggrieved and dissatisfied with the court's ruling delivered on 9th June 2016. It is however a misconception and irregular for them to express their displeasure by refusing to execute requisite forms to facilitate transmission of the estate herein as per the decision of this court vide confirmed grant issued on 8th October, 2013. As observed by the Judge vide the above cited ruling, this is really on old matter and even the respondents have conceded as much in this application. Litigations must surely come to an end. Where a decision is given/made by a court of law and it is not appealed and/or set aside by way or review or any other procedure known in law, that decision stands and must have a force of law. I must add that the same, needless to say, must be respected. I do not find any basis for the respondents to refuse to sign forms given to them other than to frustrate and delay due process of the law.

In the premises, I find merit in the application dated 28th July, 2016. I invoke this court's inherent powers under rule 73 of the P& A rules in order to prevent the respondent from abusing the due process of the court. They should have appealed against ruling delivered on 9th June, 2016 or the decision made in Meru High Court to distribute the estate as per the finding of that court. Consequently, I direct and authorize the Deputy Registrar of this court to sign all requisite documents to facilitate distribution and transmission of that parcel of land known as **LR KARINGANI/MUGIRIRWA/520** as per the order of court issued on 14th June, 2016. That order should also be rectified to correctly read at the relevant part **Chuka P.M's Court Succession Cause No. 74 of 2014** and not 2015 as indicated. The respondents are condemned to pay costs of this application for causing unnecessary delays and frustrations in implementing the orders issued by this court. It is so ordered.

Dated and delivered at Chuka this 9th day of March 2017.

R. K. LIMO

JUDGE

9/3/2017

Ruling dated, signed and delivered in open court in the presence of Rithaa Ntuara Petitioner/Applicant
Fredrick Mate and Bedford Njue Ntuara.

R.K. LIMO

JUDGE

9/3/2017