



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT SUCCESSION CAUSE NO. 931 OF 2012

IN THE MATTER OF THE ESTATE OF GATHEKIA S/O MURIU (DECEASED)

PAUL NDIRANGU GATHEKIA.....APPLICANT

-V E R S U S-

MARY MUTHONI MARUHI.....RESPONDENT

R U L I N G

Before me is a summons general brought under Rule 73 of the Probate and Administration Rules of the Law of Succession Act Cap 21(sic) Laws of Kenya. The applicant must have meant Cap 160.

It seeks orders that the Deputy Registrar of this court do sign the relevant applications and transfer forms in place of one of the beneficiaries Mary Muthoni Maruhi who has declined to sign the necessary forms to give effect to the transfer to person entitled in intesting on LR. Othaya/Gura/368.

In his supporting affidavit sworn on 30/6/2016 the petitioner applicant states that he is the administrator of the estate – and since 17/7/2014 when the grant of letter of administration intestate was confirmed the respondent, has refused to sign the relevant transfer forms tot effect transmission of the beneficiaries shares as per the grant.

S.6 of the Land Act No. 3/12 provides that;

Upon confirmation of the grant, and upon production of the grant the Registrar may without requiring the personal representative to be registered, register by transmission;

- (a) Any transfer by personal representative.

For the transmission to take place an application must be made in the prescribed form.

In this case Gathekia s/o Muriu died leaving three beneficiaries to his estate – his sons, Paul Ndirangu Gathekia, and John Wachira Gathekia and his daughter in law Mary Muthoni Maruhi. His property was Land Parcel No. Othaya/Gura/368 in which he registered in his name and that of one Migwi s/o Kori in shares indicated in the certificate of search as:

Gathekia s/o Muriu 2.1acres

Migwi s/o Kori 0.4 acres

The grant was confirmed whereby the beneficiaries of the estate were to share the estate in equal shares.

Mary Muthoni Maruhi refused to sign the transmission papers and when she was summoned to court she came on 2/3/2017 in the company of her adult children, John Mwangi and Leah Wanjiru. She told the court that her husband (deceased) told her not to sign any papers.

The need for signing the “papers” was explained to them and the matter was fixed for another mention date on 11/4/2017 to give room for any clarification to be made by the administrator and the family members to agree on the same.

On 11/4/2017 – all three beneficiaries were present and the respondent Mary Muthoni Maruhi remained adamant telling the court that her husband the late Stephen Gathekia had told her not to sign any papers. She would not give any other explanation.

The petitioner/applicant urged the court to rule on the matter.

Rule 73 of the P&A Rules provides for the inherent powers of the court to make such orders as to as may be necessary for the ends of justice or prevent the abuse of the court process. The respondent in refusing to sign the transmission documents without reasonable cause is making it impossible for the administrator to fulfil his statutory duties. That status cannot be allowed to remain.

I have confirmed from Form P&A 54 shows that each beneficiary will get an equal share of the deceased’s estate – the respondent has not given any reason as to why she would not sign the transmission papers and there is no reason not to allow the application.

I allow the application dated 30/6/2016 that; -

The Deputy Registrar of this court does sign the relevant application and transfer form instead of the beneficiary Mary Muthoni Maruhi so as to effect the transmission as per the grant confirmed on 17/7/2014.

There is no order as to costs.

Dated, Signed and delivered this 13th Day of June 2017 at Nyeri.

TERESIA MATHEKA

JUDGE

In the presence of;

The applicant

N/A for the Respondent

Court Assistant Harriet