



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

CIVIL APPEAL NO. 211 OF 2013

SIMON WACHIRA NYAGA.....APPELLANT

-VERSUS-

PATRICIA WAMWIRWA.....RESPONDENT

RULING

1. **PATRICIA WAMWIRWA NYAGA** the applicant herein has brought an application dated 26th November, 2015 for the following orders:

- i. *That this hon. Court be pleased to authorize the executive officer to sign all the relevant documents to enable execution of the grant herein in respect to Land Parcel No. INOI/THAITA/185.*
- ii. *That the Land Registrar, Kirinyaga County be authorized to dispense with the production of copy of identity card, PIN and passport size photographs by the petitioner, Simon Wachira Nyaga.*
- iii. *Costs of this application.*

2. The grounds upon which the application was brought are listed as follows:

- a. *That the appeal that had been preferred herein was determined and that the estate comprised in that property known as INOI/THAITA/185 was ordered to be distributed equally to all the beneficiaries.*
- b. *That the respondent to this application refused to cooperate and is unwilling to execute instruments to facilitate transmission.*
- c. *That it is fair and just to order Land Registrar Kirinyaga County to dispense with the production of the P.I.N. certificate, National Identity card and passport size photographs.*

3. The application before Court was supported by the affidavit of the applicant which was sworn on 26th November, 2015. Basically the deponent/applicant has deposed that the respondent herein has been reluctant to execute transmission document to wit R.L. 19 and R.L. 7 and has further refused to avail his identity card, Personal Identification Number and passport size photographs to the Lands Registrar. She submitted that the respondent refused to pay the surveyor who surveyed the property forming the estate forcing her to pay the costs.

4. The applicant further alleged that the respondent placed restrictions on the parcel comprising the estate herein with a view to frustrating the decision of this Court. She further accused him of hostility and threats to her life.

5. **Simon Wachira Nyaga**, the respondent herein opposed the application accusing the applicant of

peddling lies. He maintained that the estate had been sub-divided by his late father giving him three (3) acres while 2 acres was given to his sister, the applicant included.

6. He based his opposition on the replying affidavit sworn on 18th January, 2016 and grounds of objection dated 20th January, 2016. He faulted the application for being scandalous and an abuse of court process. He has deposed in his affidavit that the application is oppressive to him as he has put up a permanent house and developed the three (3) acres he has been occupying. He further maintained that the application was not made in good faith as he was not made aware of the succession proceedings which he alleges were commenced in 1998 by the family members without his participation.
7. This Court has considered the application and the grounds upon which it has been brought. I have also considered the objection raised by the respondent and the issues raised through his replying affidavit, grounds of objection and preliminary objection on a point of law. The issues raised by the respondent were issues that were determined at the subordinate court and this court when the appeal against the decision of the subordinate court was placed before me. The issue of distribution of the estate was determined. The estate was ordered to be distributed equally among all 3 children of the deceased. This Court confirmed that position on account of the provisions of the Law (**Section 38, Law of Succession Act Cap 160**).
8. The applicant has deposed that the respondent has been uncooperative by declining to execute documents to facilitate transmission. That fact has not been denied by the respondent as what he attempted to do was to justify his reluctance to cooperate to enable each beneficiary get his/her entitlement as per the Court's decision which remains unchallenged. It is obvious from the conduct of the respondent that he is uncomfortable with the decision of this Court. He preferred to get a larger share but the court declined for the reasons given. The respondent cannot be allowed to frustrate the decision of this Court by abusing the court process through omissions and/or commissions.
9. This Court finds merit in the application dated 26th November, 2015 as presented. The same is allowed in the following terms:
 - i. The Deputy Registrar of this Court shall execute all requisite documents to facilitate transmission of the estate herein as per the judgment of this Court in order to bring this matter to an end.
 - ii. The County Lands Registrar Kirinyaga is authorized to dispense with production of identity card, passport size photographs and Personal Identification Number certificate of any beneficiary who is reluctant to produce the same.
 - iii. The respondent is condemned to pay costs.
 - iv. The restriction placed on the property forming the estate – **INOI/THAITA/185** by the respondent shall be removed by the Land Registrar Kirinyaga County.

Finally this Court was told by the applicant that the respondent has been issuing threats and using other unorthodox means to frustrate the applicant from realizing her fruits of judgment. Although this was not on oath, this Court observed at the hearing of this application that the respondent appeared dissatisfied with the decisions arrived at the subordinate court and this court. The same should be channeled through an appeal or review rather than threats as that will invite penal consequences. Parties should therefore respect the decisions made by courts of law and the rule of law.

Dated and delivered at Kerugoya this 2nd day of February, 2016.

R. K. LIMO

JUDGE

2.2.2016

Before Hon. Justice R. Limo

Court Assistant Willy Mwangi

Simon Wachira Nyaga present

Patricia Wamwirwa present

Lucy Wanjiru present

Interpretation English/Kikuyu

COURT: Ruling signed, dated and delivered in open court in the presence of Simon Wachira Nyaga and Patricia Wamwirwa and Lucy Wanjiru. The ruling is translated to Kikuyu by the court clerk as the parties do not understand English.

R. K. LIMO

JUDGE