



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 284 OF 2004

In the matter of the Estate of NJAGI KARJM 8UGU (Deceased)

MARGARET RWAMBA NJAGI.....1ST APPLICANT

VERSUS

TARACISIO NDWIGA NJAGI.....ADMINISTRATOR/RESPONDENT

R U L I N G

The application dated 7/10/2014 seeks for orders that the Deputy Registrar and the applicant be authorized to execute all documents and to do all that is necessary to distribute the estate of the deceased pursuant to the certificate of grant.

The applicant relies on the grounds that the grant was confirmed on 10/2/2009 in favour of the applicant and the respondent Taracisio Ndwiga Njagi. The respondent has refused to co-operate with the applicant to have the estate distributed. This action of the respondent is to the disadvantage of the applicant since it is the respondent who lives and uses the land.

The application was opposed by the respondent on grounds that the interested party one Wilson Muchangi Njagi was given a share by the court but has now lost interest in the estate. The respondent wants to have the grant rectified and other interested parties names Martin Jomo Kinyua and Joseph Nyage Kinyua be substituted to replace Wilson Muchangi Njagi. It is further argued that this issue was discussed at home in presence of the applicant and agreed on. The prayer of the applicant is that rectification of the grant be done to reflect the proposed changes.

The applicant was represented by Duncan Muyodi & Co. Advocates. Ms. Gitari argued the application in court. The respondent relied on his replying affidavit in arguing the application.

On perusal of the court record, it is evident the respondent is the one who petitioned for letters of administration. The applicant joined this cause in her capacity as the surviving widow of the deceased. The first widow ... who is the mother of the respondent was deceased at the time of filing this cause.

By a ruling given by Khaminwa, J. on 2/5/2007 both the respondent and the applicant were appointed as co-administrators. The grant was confirmed on 10/2/2009 where it was ordered that Wilson Muchangi Njiru takes 0.3 Ha. while the remaining land be shared between the two houses of the deceased.

Since the grant was confirmed six year ago, the estate has not been distributed. The applicant is keen to have it distributed in order to get her share.

However, the respondent has refused to cooperate. The reason he has given in his replying affidavit is that he wants the grant to be rectified to substitute the name of Wilson Muchangi with those of two other interested parties whom he refers to as dependants. He states that his wish is to have the grant rectified to include the two dependants as heirs. The applicant argues that the respondent alone is enjoying the fruits of the land Ngandori/Kirigi/557 since he has been using the land and lives there.

I have carefully considered the reasons given by the respondent which are no more but mere excuse. If the respondent was interested in joining other heirs to substitute Wilson Muchangi, he knows that he must approach the court for rectification of grant which he has not done. This is something that requires fast tracking to avoid delaying the distribution of the estate. The applicant and her children are not using the land and are therefore losing out for no good reason. The period of six (6) years since the grant was confirmed is a really long time. It is important that the heirs of the deceased's estate are given their shares. The respondent should not continue holding them in ransom.

I find the application merited and I allow it in the following terms:-

- (a) *That the Deputy Registrar High Court executes the relevant documents on behalf of the administrators in this cause for the purpose of executing the grant dated 10th February 2009.*
- (b) *That there will be no orders as to costs.*

DELIVERED, DATED AND SIGNED AT EMBU THIS 12TH DAY OF MARCH, 2015.

F. MUCHEMI

J U D G E

In the presence of:-

Mr. Okwaro for Applicant

Respondent present in person