

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
SUCCESSION CAUSE NO. 209 OF 2015
IN THE MATTER OF THE ESTATE OF MUCHURU
NJERU (DECEASED)

FREDRICK NYAGA MUCHURU.....
.....ADMINISTRATOR/APPLICANT

VERSUS

JOHN MICHENI RIUNGU.....
.....ADMINISTRATOR/RESPONDENT

R U L I N G

1. This ruling is in respect of the Application dated 11th October 2024 seeking the following: -

- i. That the court be pleased to order the Respondent to sign all the documents that are necessary to put into effect the implementation of certificate of confirmation of grant and in default the DR be authorized to sign all such documents in

place of the Respondent John Micheni Riungu.

ii. Costs be in the cause.

2. The Application is anchored on the grounds set out on the face of the Applicant and on the Applicant's Supporting affidavit of even date.

3. The Applicant deposed that he is one of the administrators of the deceased's estate. That together with the Respondent who is a co-administrator, they were issued with grant of representation on 1st February 2017 and a Certificate of confirmation of Grant was issued on 1st July 2019.

4. He stated that the Respondent has not been cooperative to have the confirmed Grant implemented by failing to sign the Consent from the

Land Control Board to have LR

KARINGANI/NDAGANI/3751 subdivided as per the Certificate of confirmation of grant. He added that the Consent from the Land Control Board was issued with the full participation of the Respondent.

5. He also stated that the Respondent and the other beneficiaries had declined to contribute money towards subdivision of the parcel of land which costs he met solely.

6. The Applicant further stated that the Respondent uprooted the beacons placed by the surveyor and upon asking him why, he threatened the Applicant with a panga. That despite numerous requests, the Respondent has declined to sign Form 42, issued KRA Pin Certificate, Copy of National Identity and coloured passports to facilitate issuance of titles.

7. He urged the court to order the Respondent to sign Form 42 and avail the necessary documents and in default the Deputy Registrar be authorized to sign in his place so as to implement the Certificate of grant. That if the orders sought are granted, the beneficiaries of the estate will get their entitlement as per the confirmed grant.
8. The Respondent did not file any response to the Application. The Applicant's counsel told the court that the Respondent had been unco-operative all along despite service.
9. I have considered the Application and the grounds it is founded upon. The issue arising for determination is whether this court has jurisdiction and power, under the Law of Succession Act and Rules, to make the orders sought by the Applicant.

10. **Section 47 of the Law of Succession**

Act provides: -

“ The High court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”

11. **Rule 73 of the Probate & Administration**

Rules provides: -

“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

12. Once a grant of letters of administration has been confirmed, the administrators assume fiduciary

duties under Section 83 to administer the estate diligently, to complete distribution, and to render accounts. This duty was well explained in **In re Estate of Gakunyua Ndegwa alias Gakinyua Ndegwa (Deceased) [2022] KEHC 12463 (KLR)** where Muchemi J expressed herself as follows: -

“The duties of personal representatives are fiduciary in nature as explained in section 83 of the Law of Succession Act. The administrator(s) of the deceased’s estate has a duty to distribute the estate to the beneficiaries under section 83(f) while section 83(g) provides for administrators” duty to render the accounts. This was elaborated in the case of Ngumi Kerugoya Succession

Cause No 36 of 2013 Re Estate of Wilfred Munene (deceased) [2020]

eKLR where the learned judge stated:-“Section 83(g) of the Act mandates administrators of an estate to, within six months of the confirmation of grant or longer period as the court may allow, complete the administration of the estate, and to produce to the court a full and accurate account of the completed transaction.”

13. In the present case, the Applicant has urged that there has been a clear and prolonged failure by the Respondent (co-administrator) to cooperate despite the Applicant being ready to effect transmission, refusal to sign necessary forms (Form 42, consent,

transmission forms), failure to provide identity documents, refusal to uphold subdivisions as per the confirmed grant, and removal of survey beacons.

14. This court takes the view that such conduct frustrates and negates the purpose of the confirmed grant which under the law is to allow beneficiaries to obtain their entitlements and for the estate to be distributed. Delay and wilful non-cooperation by one administrator should not be allowed to indefinitely hold up the entire process.

15. As earlier stated, the Respondent did not respond to the Application. That leaves the Applicant's averments uncontroverted.

16. I have however perused the record in order to satisfy myself that the Application was merited. The record shows that there has been a long history of conflict between the co-administrators (who are

brothers) over the distribution of their father's estate. The record has shown multiple applications, resting with the Judgement of Limo J dated 1st July, 2019 which distributed the estate. It appears from the post judgement applications and the conduct of the parties that the 2nd Administrator was unhappy with the distribution. However, there is no evidence that he sought for review or appeal. The judgement and the consequent confirmed Grant therefore remain valid and the same ought to be implemented and the file closed.

17. I further observe that the Succession Cause is 15 years old having been commenced in 2010. It has to come to an end.

18. In the end, I allow the Application and order as follows:-

- (i) The Respondent being a co-administrator shall within 15 days sign the requisite documents for implementation of the grant.
- (ii) The co-administrators shall within 60 days fully implement the Grant and file the final account of the estate in this court.
- (iii) The Deputy Registrar of the court is authorized to execute the requisite documents at the lapse of 21 days if the Respondent will not have complied.

Orders accordingly.

Ruling delivered, dated and signed at Chuka this 3rd day of February, 2026.

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R. LAGAT-KORIR

JUDGE

Ruling, delivered in the presence of Mr. I.C Mugo for the Applicant, and in the absence of the Respondent. Muriuki (Court Assistant)

ORIGINAL