



REPUBLIC OF KENYA



**In re State of Mwangi Thumbi (Deceased) (Succession Cause 1334 of 2002)
[2024] KEHC 7820 (KLR) (Family) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7820 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1334 OF 2002
MA ODERO, J
JUNE 28, 2024
IN THE MATTER OF THE ESTATE OF MWANGI THUMBI (DECEASED)**

RULING

1. Before this court for determination for determination is the Notice of Motion dated 1st March, 2023 by which the Appellant Eva Wakiiyu Kamau Seeks the following orders:-
 - i. This Honourable Court be pleased to order that the Deputy Registrar of this Honourable Court's Family Division to sign and/or execute all the necessary documents to facilitate the effecting of the Court Order issued on 29/09/2020.
 - ii. That this Honourable Court be pleased to Order that the 1st Respondent deposit title deeds in respect of the following parcels of land
 - a. Title Number Nginda/Samar/Block 1/363
 - b. Title Number Nginda/Samar/Block 2/94
 - c. Title Number Loc. 8/Ngaru/Nguyoini/90
(Suit Properties)In court for onward transmissions to the Land Registrar Murang'a Land Registry.
 - iii. That the costs of this application be provided for.
2. The application which was premised upon section 1A, 1B and 3A of the *Civil Procedure Act*, Cap 21, Laws of Kenya, and all enabling provisions of the law was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondents opposed the application through the Grounds of Opposition dated 16th May, 2023. They argued that the estate was not ripe for distribution as the beneficiaries were yet to convene a meeting to agree on the mode of distribution.



Background

4. This succession cause relates to the estate of the late Mwangi Thumbi (hereinafter 'the Deceased') who died intestate on 9th December, 2001.
5. Following the demise of the Deceased Grant of letters of Administration Intestate was made to his two widows Eva Wakuyu Kamau (the Applicant herein) and Hellen Njambi Mwangi (the 1st Respondent)
6. Thereafter a certificate of confirmation of grant was duly issued to the two on 21st September, 2004 and re-issued on 30th September, 2020.
7. The Applicant states that she is old and ailing and wishes to have the estate distributed in terms of the confirmed Grant. The Applicant complains that the Respondents have been unco-operative in pursuing the distribution of the estate.
8. The Applicant states that the Title Documents in respect of the properties known as ;-Ngunda/Samar/Block1.363Ngunda/Samar/Block 1/363Loc 8/Ngaru/Nguyoini 190/90 are currently in the possession of the 1st Respondent. That the 1st Respondent has refused to surrender the said Title Documents to facilitate subdivision and issuance of separate Titles.
9. The Applicant now prays that the court direct the 1st Respondent to deposit the said Title Documents in court, and that the Hon. Deputy Registrar be authorized to execute the relevant documents to facilitate implementation of the courts orders of 29th September, 2020.
10. On their part the Respondents submit that the orders being sought are premature. That the Applicant has only referred to the properties in which she has an interest. They point out that there is a summons seeking rectification of the Grant which is yet to be determined.

Analysis and Determination

11. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
12. It is common ground that a Grant in respect of this estate was issued jointly to the Applicant and the 1st Respondent. That Grant was duly confirmed on 30th September, 2020. The certificate of confirmation of grant indicates the mode of distribution of the estate. So far no application seeking to revoke the confirmed Grant has been filed. Therefore as things stand the estate is ripe for distribution.
13. However upon perusal of the file I note that there is a summons for Rectification of Grant also dated 1st March, 2023 filed by the same Applicant which is yet to be heard. The said summons seeks rectification of the confirmed Grant in respect of the property known as Nginda/Samar/Block 2/1994, which is one of the properties cited by the Applicant in her application. In the circumstances it would be better to have the summons for rectification of Grant heard before distribution commences.
14. I note that this is a very old matter. The Deceased died way back in December, 2001 – almost 23 years ago and the Grant was confirmed in the year 2020 which is four (4) years ago.
15. The Applicant complains that she is old and ailing. It is imperative that the estate be distributed as soon as possible.
16. Finally I dismiss the Notice of Motion dated 1st March, 2023.
However I make the following directions:-



- a. The Summons for rectification of Grant dated 1st March, 2023 to be listed for hearing within fourteen (14) days.
- b. Thereafter the two Administrators to proceed with the process of distribution of the estate.
- c. This being a family matter each side will bear their own costs.

DATED IN NYERI THIS 28TH DAY OF JUNE, 2024.

MAUREEN A. ODERO

JUDGE

