



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

SUCCESSION CAUSE NO. 36 OF 2013

IN THE MATTER OF THE ESTATE OF WILFRED MUNENE NGUMI ...DCD

LOISE WAIRIMU MUNENE.....PETITIONER

V E R S U S

PASQUELINA WANJIRU MUNENE.....1ST CITEE

JUDITH WAMBUI MUNENE2ND CITEE

RULING ON APPLICATION BY SUMMONS DATED 23/9/2019

1. The Citees/Respondents in this cause filed a protest by their affidavit of protest on the 10/10/2015 stating that the petitioners did not consult them during the filing of the application for Grant of Letters of Administration and Confirmation of the grant in respect of the estate of the late Wilfred Munene Ngumi (deceased).

2. The Court (Hon. Gitari J) heard the protest by viva voce evidence wherein the protestors and the petitioner testified, upon which a Judgment was delivered on the 8/3/2019, in the presence of all the parties, distributing the entire estate to the beneficiaries including the protestors.

I have perused the proceedings and court record post the Judgment. No appeal has been filed by any of the parties, nor an application for review. As such, the said Judgment remains as is.

3. An attempt to interfere with the Judgment by the protestors was made by an application by summons for revocation/annulment of the grant filed on the 28/11/2019. It was argued on the 5/10/2020 and upon consideration, the court dismissed it on the same day, the 5/10/2020.

4. Summons dated 23/9/2019.

It was brought under the provisions of Rules 49 and 73 of the Probate and Administration Rules of the Law of Succession Act, Cap 160, by the Petitioner Loise Wairimu Munene, seeking numerous orders as stated therein, being;

1. That this Honourable court be pleased to authorize its Deputy Registrar to be executing all the relevant documents for transfer by transmission to give effect to the certificate of confirmed grant herein documents including R.L 19, R.L 7, applications for consent of the relevant Land Control Board, Mutation form, survey documents and partition document in liu of the respective parties herein who have refused to co-operate.

2. That the Land Registrar – Kirinyaga County be authorized to dispense with the production of all legal documents expected to be produced by the Respondents herein including the old title deed for land parcel No. Kirinyaga/Gathigiriri/277, PIN certificates, passports size photos and copies of their National Identity Cards to give effect to the certificate of confirmed grant issued herein on 14/5/2019.

3. That the County Secretary Kirinyaga County and the relevant Ministry of Lands be authorized and ordered to transfer the Wang'uru plot Number 14 and B391 Wang'uru in favour of the parties as per the certificate of the confirmed grant.

4. That the Officer Commanding Station Wang'uru Police Station be authorized to provide Security during the sub-division day.

5. That all relevant costs and expenses necessary and or payable to the relevant state departments and agencies including but not limited to Land Office and survey works while effecting transfer by transmission in favour of the beneficiaries be shared equally between all the parties herein.

6. That the costs of this application be provided for.

The grounds for the application are stated on the face thereof and the supporting affidavit sworn by the applicant on the 23/9/2019.

5. The deceased's estate comprise of three land parcels; **Kirinyaga/Gathigiriri/277, Plot No. 14 Wang'uru and Plot No. B391 Wang'uru.** By the said Judgment, the court ordered the distribution to the Applicant, the respondents and other beneficiaries. The grant was confirmed on the 14/5/2019. It is averred by the applicant that the Respondents have refused to execute the relevant transfer documents namely, R. L19 and R. L7 to facilitate transfer by transmission of the various portions of the land/plots by the Administrators. They too have failed to produce the original title deed to the Land parcel, Kirinyaga/Gathigiriri/277.

6. The court has been urged to authorize the Deputy Registrar of the court to execute the said documents: **Section 83(g) of the Act** mandates administrators of an estate to, within six months of 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 administration.

This undertaking cannot be done unless the necessary documents are executed by the relevant parties.

7. Rule 49 of the Probate and Administration Rules provides:-

A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary by affidavit.

Rule 73 provides for the saving of inherent powers 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.

8. It is evident from the Applicant's affidavit in support of the application and oral arguments by her Advocate, Mr. Kahiga, that the respondents have refused to sign the necessary documents to facilitate execution of the court's Judgment/decree.

9. To prevent abuse of the court process, by the above legal provisions, this court has inherent powers to prevent such abuse. I therefore find, and hold that the petitioner's summons dated 23/9/2019 and filed on the 25/9/2019 to be merited.

10. Accordingly, I grant Prayers No. 1, 2, 3 & 5.

As to prayer No. 4, the need to direct the Officer Commanding Station Wang'uru Police Station to provide security during the sub-division exercise has not been demonstrated. It is pre-mature. It is thus denied, at this stage.

I make no orders as to costs.

Dated, Signed and Delivered at Kerugoya this 5th day of November, 2020.

J. N. MULWA

JUDGE