



In re Estate of the Late Rachael Mukuhi Ndumbi (Deceased) (Succession Cause 598 of 2012) [2025] KEHC 152 (KLR) (17 January 2025) (Ruling)

Neutral citation: [2025] KEHC 152 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 598 OF 2012
SM MOHOCHI, J
JANUARY 17, 2025
IN THE MATTER OF THE ESTATE OF THE LATE
RACHAEL MUKUHI NDUMBI (DECEASED)**

BETWEEN

MARGRET KITAU WAITHERA APPLICANT

AND

WALLACE CHOMBA RESPONDENT

RULING

1. On the 15th March 2024 after an AJS Mediation, a Consent Order confirming the grant for distribution was adopted as an order of this Court. The Court proceeded to direct the Administrator to forthwith undertake the Survey, subdivision and transmission of the assets of the deceased to respective beneficiaries.
2. The Court equally in the presence of all parties reserved the 29th July 2024, as the date to confirm compliance and settlement of the estate. The Administrator was a no-show, and the Court was notified by the Applicant of the administrator's failure and refusal to undertake the subdivision and transmission. The Court directed that a substantive application be filed.
3. Before me is the substantive summons filed dated 19th August 2024 brought under Rules 49 and 73 of the Probate and Administrations rules seeking the following reliefs;
 - a. The Court do order the Deputy Registrar to sign all the requisite document to effect the grant herein.
 - b. The Court do order the Land Registrar(s) to dispense with the original title(s) in effecting the said grant.



- c. The Court do order that the surveyor be provided with Gilgil police officers security during the surveying of the estate.
 - d. The Court do issue such further order as may meet the ends of justice.
 - e. Cost of this application be borne by the respondent.
4. The Application is based on the following grounds: -
 - a. The petitioner has refused to effect the grant by way of transmission.
 - b. The succession cause is finalized and its only effecting the same that is pending.
 - c. This Court had given the petitioner respondent 90 days to effect the grant but he has not taken any step to that effect.
 5. This is another classical case where a male offspring of the deceased is appointed administrator to the estate of the deceased without any genuine desire to share the assets of the deceased with the female offspring, the case equally manifests the misplaced notion that the administrator wields superior powers that he/she can lord over the other beneficiaries.
 6. Whereas the Applicant never demonstrated service upon the Administrator, this Court is wide-eyed to the fact that, over six months have lapsed since this grant was confirmed. The matter has come up before Court for mentions twice after the lapse of the period and the administrator has been a no-show before Court disregarding the directions to undertake the subdivision and transfer as per the confirmed grant.
 7. I am thus persuaded that unless this Court intervenes and allows this instant Application, the Administrator harbors no desire to settle this probate.
 8. In the circumstances where a Court Appointed administrator to an estate fails and refuses to undertake his duty then the Court may either revoke the grant and appoint a new administrator to undertake the exercise or in the Alternate if the probate is at the tail end then the Court can order the Deputy Registrar to execute all requisite transmission forms to effect the distribution.
 9. I find the Summons dated 19th August 2024 to be of merit and make the following final orders;
 - i. The Applicant shall undertake the Survey and Subdivision of Gilgil/Karunga Block9/23 and Gilgil/Karunga Block1/257 at her own expense.
 - ii. Each Beneficiary shall bear the cost of the Transfers.
 - iii. An Order is hereby issued directing the Deputy Registrar to sign and execute all the requisite document (in place of the Administrator) to effect the transmission in this grant herein.
 - iv. An Order is hereby issued to the Officer Commanding Gilgil Police Station to provide security and maintain law and Order during the survey and subdivision by the Applicant of the following properties;
 - a. Gilgil/Karunga Block9/23
 - b. Gilgil/Karunga Block1/257
 - v. An Order is hereby Issued the Land Registrar(s) to dispense with the following original title(s) in effecting the said grant.
 - c. Gilgil/Karunga Block9/23



- d. Gilgil/Karunga Block1/257
- vi. There shall be no orders as to costs.
- vii. This matter shall be mentioned in the next 6 months to confirm distribution and settlement of the probate.

It is so Ordered.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 17TH DAY OF JANUARY 2025.

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MOHOCHI S. M.

JUDGE

