

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIAMBU**  
**SUCCESSION CAUSE NO. 86 OF 2017**

**IN THE MATTER OF THE ESTATE OF WARURU KAIRU (DECEASED)**

**GEORGE KAIRU WARURU.....APPLICANT /ADMINISTRATOR**  
**VERSUS**  
**GRACE WANJIRU WARURU.....RESPONDENT/ADMINISTRATOR**

**RULING**

1. The court is called to determine the application dated 23<sup>rd</sup> June 2021, brought under section 1A,1B, 3A of the Civil Procedure Act and Order 52 Rule 1 of the Civil Procedure Rules 2010, Rule 73 and 63 of the Probate and Administration Rules and all other enabling provisions of the law. It seeks the following orders;

1. *An Order compelling the Respondent to execute all the documents pertaining to the subdivision and subsequent transfer of Limuru/Ngecha/477, Gilgil/Karunga/4/53, Gilgil/Karunga/4/3, and Njoro/Ngata Block 2/271.*
2. *In default of executing the same within 7 days from the date of the order the Deputy Registrar do execute all the documents pertaining to the*

*subdivisions and subsequent transfer of **Limuru/Ngecha/477, Gilgil/Karunga/4/53, Gilgil/Karunga/4/3, and Njoro/Ngata Block 2/271.***

3. *An order directing the County Surveyor, Kiambu County to proceed and subdivide **Limuru/Ngecha/477** as per the certificate of confirmation of grant dated 21<sup>st</sup> November 2019.*
  4. *An order directing the County Surveyor, Nakuru County to proceed and subdivide **Gilgil/Karunga/4/53, Gilgil/Karunga/4/3, and Njoro/Ngata Block 2/271** and register the resultant titles as per the certificate of confirmation of grant dated 21<sup>st</sup> November 2019.*
  5. *An order directing the O.C.S Tigoni Police Station to supervise the subdivision of **Limuru/Ngecha/477***
  6. *An order directing the O.C.S Gilgil Police Station to supervise the subdivision of **Gilgil/Karunga/4/53 and Gilgil/Karunga/4/3.***
  7. *An order directing the O.C.S Njoro Police Station to supervise the subdivision of **Njoro/Ngata Block 2/271.***
2. The application is premised on the grounds that, the Respondent has declined to execute the transfer documents and or refused to co-operate in the subdivision of the properties known as

*Limuru/Ngecha/477, Gilgil/Karunga/4/53, Gilgil/Karunga/4/3, and Njoro/Ngata Block 2/271*

3. The motion is supported by the annexed affidavit of **George Kairu Waruru** who deposes that the Respondent has been hostile to any progress to have the land sub-divided, the succession has dragged for too long due to the refusal of the Respondent to execute the transfer documents.
4. Opposing the application, the Respondent herein filed replying affidavit sworn on 5<sup>th</sup> April 2022, in which she deposes that she has not refused to execute the documents, but there are some issues which are pending clarification. She states that there is a need to rectify the grant issued as some beneficiaries are deceased while others wish to exchange their portions. According to her **Mary Wandithia Waruru** deceased should be replaced by **Rufas Waruru Wandithia, Alice Wangui Ngángá** to retain Limuru/Ngecha plot no.477 and surrender Gilgil/Karunga Block 4/53. She wishes the proceeds of Kshs. 49,000/= being compensation for the road acquired in property Njoro/Ngata Block 2/271 be released to her.
5. The application was canvassed through written submissions.

**Applicant's submissions**

6. The applicant filed submissions dated 14<sup>th</sup> July 2022, in which he deposes that prayer 3-7 of the application have already been granted as per the court orders issued on 13<sup>th</sup> May 2022, and the pending prayers are 1 and 2.
7. Prayers 3- 7 having been granted the application is necessary as the property need to devolve to the beneficiaries in order to bring the matter to a conclusion. That the respondent is of advanced age and has dragged the matter herein with no apparent reason. And further that the Respondent has been holding other beneficiaries in ransom and failed to execute the transfer documents.

**Respondent's submissions**

8. The Respondent did not file any submissions in respect of the instant application. Consequently, her contention is per her Replying Affidavit deposed on 5<sup>th</sup> April, 2022.

**Analysis and determination**

9. Before I proceed with the application I note that prayers 3-7 have already been granted and only prayers 1 and 2 are pending before the court for determination.

10. I have perused the application, the replying affidavit and the submission by the parties. The issue for determination is whether this court should order the respondent to execute the transfer documents in respect to the deceased estate.

11. Section 83 (f) (g) (h) (i) of the Law of Succession Act provides-

*(f.) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;*

*(g.) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.*

*(h)....*

*(i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.*

12. The Respondent herein ought to be aware of her duties as an administrator of the estate of the deceased. The Respondent should ensure that the property of the deceased is subdivided and distributed in accordance to the law. Failure to subdivide and distribute the estates is a criminal offence.
13. The Respondent has told the court that she has not refused to execute the transfer documents as per the grant issued on issued herein on 21<sup>st</sup> November 2019, but intends that the grant be rectified, however she has not filed an application for rectification of the grant.
14. According to the Affidavit of **Alice Wangui Ngáng'a** sworn on 28<sup>th</sup> September 2018, she has denied holding the family at ransom, she has expressed her willingness and co-operation in the distribution of the estate of the deceased as per the confirmed grant. The tactic by the Respondent to alter the certificate of confirmation of grant is aimed at delaying the distribution of the estate of the deceased.
15. From the record therefore, the Respondent has not adduced any sufficient grounds to decline to execute the transfer documents to allow the distribution of the estate of the deceased. The confirmed grant has not been appealed by any beneficiary. There has not been any application for review of the same. I direct the Respondent to comply with the provisions of section 83 of the Law of Succession Act.
16. It is also proper to note that the estate of the deceased comprises of three (3) houses and the refusal of the Respondent to execute the transfer documents continue to delay the other houses from asserting their rights on their property. The Respondent also indicates she has

not refused to sign the transfer documents. I thus do not find the need to continue delaying the distribution of the estate of the deceased further.

17. This matter is a 1997 matter and it is prudent to note that litigation must come to an end. Section 83 (g) provides that the estate should be distributed within 6 months from the date of confirmation of the grant. The grant in this matter was confirmed on 21<sup>st</sup> November, 2019 and should be complied with.

18. In the upshot, therefore I find the application dated 23<sup>rd</sup> June 2021, is merited.

**19. FINAL ORDERS:**

It is directed that the Respondent herein do execute the transfer documents in respect *Limuru/Ngecha/477, Gilgil/Karunga/4/53, Gilgil/Karunga/4/3* and *Njoro/Ngata Block 2/271* within 14 days from the date hereof, failing which the Deputy Registrar will so execute.

**RULING** delivered virtually, dated and signed at **Kiambu**

This **25<sup>th</sup>** day of **April**, 2023

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**P.M. MULWA**  
**JUDGE**

**In the presence of:**

*Mr. Kinyua/ Mr. Duale* – Court Assistants

N/A for Appellant

N/A for Respondent