



In re Estate of Virgina Muthoni Kahengeri (Deceased) (Succession Cause E1231 of 2022) [2023] KEHC 17415 (KLR) (Family) (28 April 2023) (Ruling)

Neutral citation: [2023] KEHC 17415 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E1231 OF 2022
MA ODERO, J
APRIL 28, 2023
IN THE MATTER OF THE ESTATE OF VIRGINA
MUTHONI KAHENGERI (DECEASED)**

BETWEEN

KENNETH GITHURE NGANGA 1ST PETITIONER

ANNE WAMBOI LASOI 2ND PETITIONER

AND

SERAH WANJIRU MUTHONI 1ST RESPONDENT

DAVID GITU 2ND RESPONDENT

RULING

1. Before this court for determination is the Notice of Motion Application dated July 13, 2022 by which the Applicants Kenneth Githure Nganga And Anne Wamboi Lasoi seek the following orders:-

- “1. Spent.
2. That an injunctory order be issued against the 2nd Respondent, his agents, personal representatives, his relatives & his legal representatives not to interfere in any manner whatsoever with the properties and any other asset belong to the estate of the deceased. That this order remains in force pending determination of this application or main suit, whichever period is longer and just, as this honourable court deems fit.
3. That the Respondents be compelled, jointly and severally, to produce all Title deeds and all ancillary related information and documentation held in their



possession or within their control of the legal representatives of the estate being Kazi Advocates LLP within four (4) days of service of this honourable court's order.

4. That the Respondents be compelled, jointly and severally, to produce a full and accurate inventory of assets and liabilities including all rent monies collected since the date of demise of the deceased to the present date being the date of filing such return to this Honourable court. This compliance to include copies of Bank statements, mobile money statements and any other financial statements detailing all accounts and amounts in which any money has been credited to as rent or other credit on behalf of the estate whether in respect of properties within their control.
 5. That pending accounts being rendered of rental monies being collected from the 'Kariobangi Flat' (Google map in coordinates; PVVJ+FP), the 1st Respondent be compelled to pay on a monthly basis Letshego Kenya Ltd a sum of KES 150,000/= (one hundred and fifty thousand shillings only) by the 15th day of each calendar month as part contribution towards continued settlement of a pending loan issued in favour of the deceased.
2. The application which was premised upon Sections 45, 46 (2), 47 51, (2) (b) and 55 (c) of the Law of Succession Act and Articles 40, 43, 47 and 159 of the Constitution of Kenya was supported by the Affidavit of even date sworn by the Applicants.
 3. The Respondents Serah Wanjiru Muthoni And David Gitu opposed the application through their Replying Affidavit dated September 13, 2022. The Application was canvassed by way of written submissions. The Applicant filed the written submissions dated September 13, 2022 whilst the Respondents did not file any written submissions.

Background

4. This Succession Cause relates to the estate of the late Virgina Muthoni Kahengeri (hereinafter 'the Deceased') who died intestate on December 13, 2021. A copy of the Death Certificate Serial Number 1270577 is annexed to the Petition for Grant of letters of Administration Intestate dated July 8, 2022. The Deceased was survived by the following persons:-
 - i) Anne Wamboi Lasoi - Daughter
 - ii) Serah Wanjiru Muthoni - Daughter
 - iii) Kenneth Githure Nganga - Son
5. The estate of the Deceased was said to comprise of the following assets:-
 - a) Land Parcel: LR NO 209/11XXX/240;
 - b) Land Parcel: LR NO 209/8XXXX/7;
 - c) Land Parcel: (Property situated at Kariobangi North Area);
 - d) Land Parcel: (Property situated at in Kamulu, along Kangundo road, close to St Justin De Jacobis along Fahaleo Dr Road);



- e) Land Parcel: (Property situated at Kantafu Area located on both sides of borders of Nairobi and Machakos Counties). In the name of the deceased. Absolute owner;
 - f) Kariobangi South Market Stall No 1XX (City Council Market Stall);
 - g) Money held in various bank accounts within Kenyan Banks;
 - h) Money held in M-Mpesa under Safaricom Ltd.
6. Following the demise of the Deceased here son Kenneth Githure Nganga And Anne Wamboi Lasoi petitioned the court for Grant of letters of Administration Intestate. The Grant is yet to be issued.
 7. The Applicants then file this present application seeking various orders against the Respondents who are the daughter and grandson of the Deceased. The Applicants contend that the Respondents are withholding vital information which has hindered the completion of the filing of his Succession Cause.
 8. That the Respondents have denied the Applicants access to the Deceased properties and that the Respondents who are collecting the rental income from the property situated at Kariobangi North have fabricated the repayment of an outstanding loan owed by the deceased to Letshego Kenya Limited.
 9. The Applicants aver that the Respondents who are in possession of the Title Deeds to estate property are likely to dispose off the said assets to the detriment of the other beneficiaries. The Applicants also claim that the 2nd Respondent has been interfering in the management of the estate which is likely to cause irreparable harm.
 10. On their part the Respondents aver that they were not involved and were not aware of the filing of this Succession Cause. They contend that their consents as beneficiaries to the estate was neither sought nor obtained.
 11. The Respondents claim that during her lifetime the Deceased allowed her son Kenneth Githure (the 1st Applicant) to take a loan of Kshs 10 Million which loans is being serviced by the rental income derived from one of the estate properties being LR NO 209/83XX/1.
 12. The Respondents accuse the Applicants of having opened an account in their joint names with Co-operative Bank of Kenya into which account rental income amounting to Kshs 450,000 per month derived from estate property is deposited.
 13. That the Applicants are utilizing these funds themselves to the exclusion of the other beneficiaries. The Respondents urged the court to direct the Applicants to provide full details of this account held at Co-operative Bank.
 14. The Respondents claim that the Deceased during her lifetime distributed her properties to all the beneficiaries including the 2nd Respondent who is a grandson to the Deceased. That the Deceased had expressed a wish that a family home be set up in Kamulu. The Respondents urge the court to direct that all four (4) beneficiaries of the estate be appointed as Administrators so that the estate may be distributed according to the wishes of the Deceased.

Analysis and Determination

15. I have carefully considered the application before this court, the Reply filed thereto as well as the written submissions filed.



16. It is pertinent to note that as at the present time no Grant has been issued to any party in respect of the estate of the Deceased. The Applicants filed a Petition dated July 12, 2022 seeking for a grant to be made to themselves but no Grant has yet been issued.
17. Section 82 (a) of the Law of Succession Act is very clear that only a person appointed by the court as ‘personal representative’ of a Deceased person is legally authorized to deal with the property of the Deceased person.
18. In the case of Alexander Mutunga Wathome v Peter Lavu Tumbo & Another [2015] eKLR the court noted as follows:-
- “In law one can only represent the estate of a deceased person when a grant of representation has been made in respect of the estate of such deceased person under the Law of Succession Act. In addition section 82 of the Law of Succession Act provides that it is the personal representative who has the powers to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased. A personal representative is defined under section 3 of the Act as the executor or administrator, as the case may be, of a deceased person.” [own emphasis]
19. Any person who purports to deal with the property of the Deceased without a Grant of letters of Administration becomes an ‘intermeddler’ and is liable to be sanctioned by the court. In the Estate Of Veronica Njoki Wakagoto (deceased) [2013] eKLR the court stated:-
- “the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by the law..... the law takes a very serious view of intermeddling and makes it a criminal offence.”
20. From the claims being made by both sides in this matter it appears that both the Applicants and the Respondents are purporting to deal with the property left behind by the Deceased despite neither having the requisite legal authority to do so. It is clear that the beneficiaries have not sat down to discuss the way forward in the administration of the estate left behind by the Deceased. The first port of call in the event of such disagreement should not be the court.
21. This court cautions both side against any further intermeddling with the property of the Deceased. The beneficiaries are urged to sit down with a mediator if need be to decide on who should petition the court for letters of Administration and to decide on the mode of distribution of the estate.
22. Having said that this court has a duty to prevent any wastage of the property left behind by the Deceased. Section 47 of the Law of Succession Act grants the High Court jurisdiction to make such orders as may be expedient whilst Rule 73 of the Probate and Administration Rules grants the court inherent power to make such orders as may be necessary to meet the ends of justice. Accordingly Therefore I now make the following orders:-
- (1) A temporary injunction is hereby issued against both the Applicants and the Respondents, their agents, personal representative, and/or agents from in any manner whatsoever interfering with the properties and assets comprising the estate of the Deceased pending the issuance of a Grant of letter of Administration by the court.
 - (2) All rental income derived from assets comprising the estate of the Deceased shall from the date of this Ruling be deposited into a joint interest earning account opened in the name of the Advocates for the Applicants and the Respondent Serah Wanjiru Muthoni.



- (3) The said rental income should not be utilized without the authority of the court and is to remain in the joint account until a Grant of Representation is issued by the court.
- (4) The beneficiaries to hold a meeting/meetings together with their Advocates to decide who should Petition the Court for Grant of Representation to the estate of the Deceased.
- (5) The matter will be mentioned within forty (40) days for further orders.
- (6) This being a family matter each side will bear its own costs.

DATED IN NAIROBI THIS 28TH DAY OF APRIL 2023.

MAUREEN A. ODERO

JUDGE

