



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Samuel Waithaka (Deceased) (Succession Cause E1160 of 2021)
[2023] KEHC 24495 (KLR) (Family) (27 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24495 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E1160 OF 2021
MA ODERO, J
OCTOBER 27, 2023**

BETWEEN

SUSAN WAMBUI WAITHAKA APPLICANT

AND

MBARI YA WAITHAKA 1ST RESPONDENT

ELIUD KINGARA – CHAIRMAN 2ND RESPONDENT

RULING

1. Before this Court is the summons dated 21st March 2023 by which the Applicant/Administrator Susan Wambui Waithaka seeks the following orders:-
 - “1. That the Respondents be restrained either through their servants or agents from transferring, selling or allocating any shares it holds in the name of the deceased Samuel Waithaka pending confirmation of letters of Administration and issuance of Certificate of Confirmation of Grant.
 2. That the Respondent be restrained either through themselves or through their agents from transferring, distributing or allocating any dividend and profits it hold in name of the deceased Samuel Waithaka pending confirmation of letters of administration and issuance of Certificate of Confirmation of Grant.
 3. That the 2nd Respondent do account fully for all profits and dividends generated from the shares of Samuel Waithaka since his death on 5th January 2021.



4. That the 2nd Respondent do make a full disclosure of all interests, shares and dividends held in the name of the Deceased Samuel Waithaka as the information if paramount for distribution of the estate.
 5. That the 1st and 2nd Respondents have intermeddled with the estate of the deceased and should pay to the estate beneficiaries interest lost from funds dispersed to only one administrator.
 6. That costs be provided for.”
2. The Application which was premised upon Article 159 of *the Constitution* of Kenya, Sections 45 and 47 *Law of Succession Act* Cap 160 and Rule 73 Probate and Administration Rules was supported by the Affidavit sworn by the Applicant.
 3. The Respondents Mbari Ya Waithaka and Eluid Kingara – Chairman opposed the application through the Replying Affidavit dated 19th April 2023 sworn by the 2nd Respondent.
 4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 12th June 2023 whilst the Respondent relied upon their written submissions dated 21st June 2023.

Background

5. This Succession Cause relates to the estate of the late Samuel Waithaka (hereinafter ‘the Deceased’) who died intestate on 5th January 2021 at the Coptic Hospital in Nairobi. A copy of the Certificate of Death Serial Number 1027866 is annexed to the Petition for Grant of letters of Administration dated 20th May 2021
6. The Deceased is said to be survived by the following persons:-
 - a) Assumpta Grace Wanjiru Waithaka - Wife
 - b) John Kuria Waithaka - Son
 - c) Maryann Njango Waithaka - Daughter
 - d) Eugenia Wairimu Waithaka - Daughter
 - e) Susan Waithaka - Daughter
 - f) Caroline Wairimu Waithaka - Daughter
 - g) Francis Mbugua Waithaka - Son
7. The Deceased left the following assets:-
 - 1) Nairobi South B, Kapiti Estate – LR 209/7289;
 - 2) Ndumberi Farm – Title: Ndumberi/Ndumberi/203;
 - 3) Account at KCB Bank – Account Number 1107317436;
 - 4) Account at Equity Bank – Account Number 0640191925372;
 - 5) Account with K-Unity – Account Number;
 - 6) Shares at Juja Farm;
 - 7) Shares at Wahongo House;



- 8) Kiambu Town Plot.
8. Following the demise of the Deceased Grant of letters of Administration Intestate was on 1st September 2021 issued to Assumpta Grace Wanjiru Waithaka, Eugenia Wairimu Waithaka, John Kuria Waithaka and Susan Wambui Waithaka. The Grant is yet to be confirmed.
 9. The Applicant who is a daughter to the Deceased and one of the Administrators of the estate accuses the Respondents of intermeddling with the estate of the Deceased by surrendering an amount of Kshs.310,000 to Assumpta Grace Wanjiru Waithaka who was one of the Administrators of the estate and is also the widow of the Deceased and failing to notify the other Administrators of the fact. That the monies so released to 'Assumpta Grace' represent the share of the Deceased arising from the sale of the property known as Ruiru Block 2/4244 in which the Deceased held 600 shares.
 10. The Applicant accuses the Respondents of having taken sides in the Succession dispute and of favouring some beneficiaries over others.
 11. The Respondents on their part state that they are not beneficiaries to the estate and categorically deny having intermeddled with the estate. The Respondents concede that they released sum of Kshs.321, 608/= to 'Assumpta Grace' in her capacity as the widow to the Deceased which amount the Respondents claim was due to the family of the Deceased.
 12. The Respondents state that in any event they have not been issued with any Certificate of Confirmed Grant in respect of the estate.

Analysis and Determination

13. I have carefully considered the application before this court, the Reply filed by the Respondents as well as the written submissions filed by both parties.
14. It is true that the Respondents are not beneficiaries to the estate of the Deceased and have no interest in the estate at all.
15. The Respondents have admitted that they paid Kshs.321, 608/= to the widow of the Deceased. This does not amount to intermeddling with the estate. All that need to be done is that at the point of distribution this amount be noted and accounted for.
16. The Applicant is the daughter of the Deceased. The widow who received the money in question is her mother. It appears that there exists bad blood between the Applicant and her mother. Instead of settling their issues in house as a family the Applicant has opted to drag in the Respondents who have no interest in this Succession Cause.
17. The Applicant seeks orders to restrain the Respondents from transferring any dividends or profits due to the Deceased to 'Assumpta Grace'. The Applicant has not demonstrated to this court that there are any profits and/or dividends which are due to the estate from the Respondents. Courts do not make orders in vain.
18. Finally, I find no merit in this application. The same is dismissed in its entirety. Costs will be met by the Applicant.

DATED IN NAIROBI THIS 27TH DAY OF OCTOBER, 2023.

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MAUREEN A. ODERO



JUDGE

