



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO.2 OF 2020**

**IN THE MATTER OF THE ESTATE OF LAWRENCE KAIRANYA**

**M'MUKINDIA ALIAS M'MUKINDIA M'KAIRANYA (DECEASED)**

**ESTHER MUKIRI KAIRANYA.....1<sup>ST</sup> PETITIONER**

**JOHN KIRIMI KAIRANYA.....2<sup>ND</sup> PETITIONER**

**JEREMY KAMATHI.....3<sup>RD</sup> PETITIONER**

**MWENDA JACOB KAIRANYA.....PETITIONERS**

**AND**

**MARTIN KAIRANYA.....APPLICANT**

**VERSUS**

**JEREMY KAMATHI KAIRANYA.....1<sup>ST</sup> INTERESTED PARTY**

**CATHERINE NKATHA MBAYA.....2<sup>ND</sup> INTERESTED PARTY**

**SUSAN MUKUBA KAIRANYA.....3<sup>RD</sup> INTERESTED PARTY**

**JANE KANANU KAIRANYA.....4<sup>TH</sup> INTERESTED PARTY**

**EZRA MUGUNA KAIRANYA.....5<sup>TH</sup> INTERESTED PARTY**

**KAIRANYA INVESTMENTS LTD.....6<sup>TH</sup> INTERESTED PARTY**

**RULING**

1. The court is called upon to determine 2 applications by Martin Kairanya (**henceforth called the applicant**) and Ezra Muguna Kairanya (**henceforth called the 5<sup>th</sup> interested party**). The 1<sup>st</sup> application is a summons under certificate of urgency dated 26<sup>th</sup> June 2014 pursuant to Section 47 of the Law of Succession Act, Rules 49 & 73 of the Probate and Administration Rules and Order 45 Rule 1 of the Civil Procedure Rules. In that application, the applicant seeks:

2. Spent

3. An order be issued compelling the petitioners/administrators to transfer to the applicant all the properties distributed to Martin Kairanya as per the amended certificate of confirmation of grant.

4. Spent.

5. The rent income from the properties managed and run by Kairanya Investments Limited be deposited in court pending the hearing and determination of this application or until further court orders.

6. The honourable court be pleased to redistribute the properties held by Kairanya Investments Limited to all the deceased's beneficiaries in equal shares.

2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Martin Kairanya, the applicant herein, sworn on even date.

3. He contends that Meru Municipality Block 11/9,128,197 & 202, Plot No. 82 Meru, Plot Nos. 2890/62 & 2890/119, Gakoromone Plot No. 50, 50% of Ntima/Igoki/1964 were distributed to Kairanya Investments Limited. The said plots are prime commercial plots within Meru Municipality and the petitioners receive rent therefrom running into millions of shillings, which they solely pocket for their own use, to the applicant's detriment. He contends that since the confirmation of the grant in 2001, the petitioners have never distributed to him the properties he is entitled to as per the amended certificate of confirmation of grant. He contends that he depends on well-wishers and friends for money for his day to day use. He describes himself as asthmatic, epileptic and constantly on medication and that he struggles to make ends meet yet the petitioners collect rent which they do not share with him. He wrote a letter to the petitioners on 30/5/2014, which they blatantly ignored, thereby necessitating the filing of this application. He prays that the rent income generated from the listed properties be deposited in court, pending the determination of this application or until further orders of the court. He faults the petitioners for refusing to allow him to inspect the bank accounts where the rent is deposited, in order to ascertain the exact figures of the rent collected by the petitioners. He knew John Kirimi, Jeremy Kamathi and Jacob Mwenda are signatories to a Bank account held at Co-operative Bank where the rent is deposited. He urges the court to allow his application for justice to prevail to all the deceased beneficiaries.

4. The petitioners opposed the application through the replying affidavit of Jacob Mwenda Kairanya sworn on 21/09/2020. He deponed that after the demise of the deceased herein, a petition was filed by the petitioners, with the consent of all the beneficiaries. Following the concession by all the beneficiaries on the mode of distribution, the letters of administration intestate issued to the petitioners was confirmed and a certificate of confirmation of grant issued. He deponed that they distributed the deceased estate to the rightful beneficiaries as per the certificate of confirmation of grant. He confirmed that Meru Municipality Block 11/9,128 and 202 were registered under Kairanya Investments Limited, whereas Plot Nos. 2890/62, 2890/119 and Gakoromone No. 50 are still in the name of the deceased, but under the management of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> interested parties/ applicants. He deponed that properties given to the applicant as per the certificate of confirmation of grant had since been transferred and registered in his name. He deponed that Plot Nos. B11/202 and 82 were unknown as they were not assets of the estate. He deponed that the applicant's medical bills were paid by Kairanya Investments Limited. He deponed that the administrators had no powers to direct the operations of the company on its operations of its business including how and where to deposit rent from its properties, because it was a legal entity. He denied knowledge of any other assets of the deceased which were yet to be distributed, save for the properties in the name of the company. He deponed that it was in the interest of justice that the application be dismissed with costs.

5. Jeremy Kamathi Kairanya, the 1<sup>st</sup> interested party, swore an affidavit on 21/12/2021. He averred that they had filed the company's audited books of account in compliance with the court's order. On 4/12/2021, the beneficiaries held a meeting with a view to redistribute the properties held by the 6<sup>th</sup> interested party. He averred that the redistribution of the properties held by the 6<sup>th</sup> interested party would entail dissolving the company, which process is governed by the Company Act. He averred that Kairanya Investment Ltd was a private company duly incorporated and governed by its Articles of Association in accordance with the Companies Act. He averred that dissolving the company was a process governed by law and the parties must accommodate it. He averred that Mary Kirimi, the widow to John Kirimi was sufficiently and adequately provided for in the distribution of the estate, and additionally receives Ksh. 30,000 from the company like everybody else. The said Mary Kirimi sold land at Isiolo and is in the process of finalizing construction of a hotel on NYAKI/KITHOKA/360 against a court order. Her claims that she is destitute are thus false, as she is using the claim of school fees for children who are undertaking their post graduate studies to draw the attention of the court.

6. The **2<sup>nd</sup> application** is a chamber summons dated, 7<sup>th</sup> July 2020, under certificate of urgency and expressed to be pursuant to Sections 47 & 76 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules. In the application, the 5<sup>th</sup> interested party seeks that Jeremy Kimathi and Jacob Mwenda Kairanya, the surviving administrators of the deceased estate, be compelled to have a joint bank account opened and operated in their names and the names of all the 5 interested parties and the applicant, where all rent proceeds from all the deceased commercial properties being MERU MUNICIPALITY BLOCK 11/9, 128, 197, 202,119 and Plot No. 50 GAKOROMONE be deposited from July 2020 onwards and in the alternative the same be deposited in court and that the court be pleased to include land parcels Nos. NANYUKI DAIGA ETHI BLOCK 2/1455, 1459, 1463, 1476 and 1477 as part of the deceased estate and available for distribution since the same were either inadvertently or by design left out during petitioning and distribution.

7. The grounds upon which the application is premised are that after the death of Esther Mukiri Kairanya, the widow to the deceased herein, the interested parties have been kept in the dark over the family finances by the 2 surviving administrators while the 3<sup>rd</sup> interested party is afflicted and enfeebled by ill-health and struggling financially to afford necessary medical attention despite the colossal income generated by the deceased estate. The petitioners are accused of squandering the rental proceeds on luxuries and waging unnecessary wars on the interested parties hence it is imperative that the rental income be pooled in a common pot for the benefit of the estate and the beneficiaries. In his supporting affidavit sworn on even date, the 5<sup>th</sup> interested party avers that the estate of the deceased comprises of several commercial properties namely MERU MUNICIPALITY BLOCK 11/9, 128, 197, 202,119 and Plot No. 50 GAKOROMONE, which cumulatively garner over Kshs 1,000,000 monthly rent which rent is collected and utilized by Jeremy Kimathi and Mwenda Jacob Kairanya solely for personal use without any regard to the other beneficiaries. He avers that although the applicant had obtained orders to have the petitioners render account of the rental income they have received to date, it was imperative that a common account be opened, for the benefit of all the beneficiaries and the estate. In the alternative, the rent can be deposited in the safe custody of the court until the matter is determined. He further deponed and repeated that if the orders sought are declined, the estate and the beneficiaries will continue to suffer great prejudice.

8. The petitioners opposed the application through their replying affidavit sworn by Jacob Mwenda Kairanya, on 21/9/2020 where it is contended that at the time of his father's death, the deceased, he was married only to their mother Esther Mukiri Kairanya (now deceased).

He contends that the 5<sup>th</sup> interested party is not a son to the deceased either by birth, adoption or otherwise. He adds that his father had not at any given time introduced the 5<sup>th</sup> interested party as his son. He contends that they petitioned for letters of administration after all the beneficiaries had given their consent and later, after all the beneficiaries had agreed on the mode of distribution of the estate, the grant was confirmed and the properties distributed in line with the certificate of confirmation of grant. He reiterates that the estate properties have since been transferred and registered in the names of the rightful beneficiaries except the properties held by the company. He contends that since the properties are registered in the name of a legal entity, the administrators have no powers to direct the said company on how to operate its business including how and where to deposit rent collected therefrom. In his view, the allegation that the properties in question generate Kshs 1,000,000 per month is farfetched as the same is not only untrue, but also unreasonable. He contends that before the grant was confirmed, due process of the law was complied with and faults the interested parties for failing to object or protest to the issuance of the letters of administration to the petitioners and confirmation of the grant despite being aware of these proceedings. He makes a conclusion that it is in the interest of justice that the application be dismissed.

9. The 6<sup>th</sup> interested party opposed the application through a replying affidavit sworn by its director, Jeremy Kamathi Kairanya on 5/10/2020 in which it is averred that after the confirmation of the grant herein, the petitioners have over the years completed administration of the estate. He avers that at the time of the demise of the deceased herein, he had only one wife namely Esther Mukiri Kairanya adding that the shares of the deceased beneficiaries form part of their estates and are used by their widows and children. In his view, so much had gone under the bridge since upon agreement of the mode of distribution, the beneficiaries got their rightful shares, and some even sold to 3<sup>rd</sup> parties. On the 2<sup>nd</sup> interested party, Catherine Mbaya Muthamia, it was pointed out that her husband, Washington Mbaya Muthamia was one of the guarantors to the petitioners, and thus she cannot now turn around and make the allegations made in the application. He avers that the 5<sup>th</sup> interested party is a stranger to the estate because he has emerged 20 years after the deceased died. He avers that the properties held by the company have been developed using the rent collected and bank loans. According to him, interference with the company's accounts will cause untold loss to it and its properties could be sold by the bank. He avers that some of the properties listed are no longer available as they have since been transferred to innocent 3<sup>rd</sup> parties. It is in the interest of justice that this matter is allowed to rest as the grounds supporting the application are untrue. He urges the court to dismiss the applications because they have been brought too late in time in order to scuttle the order prevailing at the time adding that the applicant is bound by Articles of Association of Kairanya Investments Limited and he can only refer any dispute he has with it or its shareholders to arbitration.

10. Jacob Mwenda Kairanya swore an affidavit to confirm that the administration of the estate of the deceased had since been completed and that the administrators are ready to effect the transfers of the properties they were holding in trust for Rose Kairanya, Catherine Mbaya, Susan Kairanya and Jane Kairanya once the necessary documents required to effect the said transfers have been availed. He avers that they would equally transfer the properties held by the 6<sup>th</sup> interested party as per the amended certificate of confirmation of grant, after the deceased co-administrators have been substituted.

11. The 5<sup>th</sup> interested party in his affidavit sworn on 31/1/2020 avers that the cause was filed by non-disclosure of material facts to the court, because he was not involved in the filing and distribution of the estate, despite being a son to the deceased. He refutes the claims by the petitioners that he came from an undisclosed humble background and that it was Jeremy Kairanya who took him in and gave him a stable home. He avers that he was born of the deceased in 1985 and was staying with the deceased from the time he was in class 4 until the death of his father in 1999. He avers that his mother, Florence Kathambi Murithi, who is still alive, is willing to shed light on his paternity. He avers that if his step brothers, doubt his paternity, he is ready to undergo a sibling DNA with the 2 of them and accuses them of dishonesty, because all of the daughters of the deceased, who are his step sisters, are in agreement that he is a son to the deceased. He denies the claims by the petitioners that he was given a share of NGUSISHI/SETTLEMENT SCHEME/537, where he has erected a home, and avers that he has built his home in land parcel No. NTIMA/IGOKI/4597 which is in Mwiteria area of Meru Municipality. He avers further that after the death of his father, the petitioners took over his education and other needs from the proceeds of his late father's companies and properties and that him being son to the deceased cannot be doubted because both his ID card and Birth Certificate prove that fact. He further points out that he was listed in the Newspaper obituary notices and the eulogy as a son and therefore the allegation by the petitioners that he is not a son of the deceased, is an afterthought and a scheme to drag this matter for long, to enable them continue enjoying the estate solely to his exclusion.

12. Florence Kathambi Murithi, the biological mother of the 5<sup>th</sup> interested party, swore an affidavit on 31/1/2020, in support of the application and asserted that she bore the 5<sup>th</sup> interested party with the deceased in 1985, raised him in infancy till he was class 4 when she handed him over to his father, the deceased, who took up all his parental responsibilities. She refutes the allegations that it was Jeremy Kimathi Kairanya who rescued her son from undisclosed background and faulted the petitioners for failing to explain why the 5<sup>th</sup> interested party assumed Kairanya as his surname or his father's name.

13. The 1<sup>st</sup> to 5<sup>th</sup> interested parties in their affidavit sworn on 22/10/2020 in response to the 6<sup>th</sup> interested party's affidavit, accuse the petitioners of failing to disclose the other directors of the company. They aver that the 6<sup>th</sup> interested party has never been associated with the deceased herein. They fault the petitioners for failing to tender proof on when the company was incorporated and urge the court to lift the veil of incorporation to find out who its directors and shareholders are. They aver that the affidavit of the 6<sup>th</sup> interested party is a red herring meant to divert the court from the main issue. They aver that the accounts of the company ought to be rendered in order to establish the monies generated from monthly rent. They aver that the deceased left behind known dependants and Kairanya Investments Limited was not a beneficiary of the estate, as evidenced by the introductory letter by the chief. They urge the court to order that the rental proceeds from the estate be pooled in a common account for the benefit of all the beneficiaries. They aver that the length of time does not cure the inherent irregularities and illegalities by the petitioners over the deceased estate and injuries meted on them and that they held their horses since they did not want to kill their mother Esther Mukiri Kairanya (now deceased) over family properties, tried unsuccessfully attempted to resolve the issue as a family and before the elders and ended with tokens or nothing from the deceased estate as if they were lesser children of the deceased, yet it is their entitlement. They take the position that entertaining the 6<sup>th</sup> interested party in this cause would only lead to confusion and chaos over the main issue herein.

#### **Submissions**

14. The applications were directed to be canvassed by way of written submissions, which were duly filed on 21/12/2021, 22/12/2021 and

17/1/2022. The applicant submitted that the administrators have been collecting rent from the deceased properties held by Kairanya Investments Limited and utilizing it solely to the exclusion of all else and contrary to their responsibilities and obligations under Section 83(h) of the Law of Succession Act. He urged the court to direct that the rental income from Kairanya Investments Limited, which is in excess of Ksh.1,000,000 a month be deposited in court, as the administrators are unable to account for the same. He further urged the court to redistribute the properties held by Kairanya Investments Limited to all the beneficiaries in equal shares. He concluded that the application is merited and the orders sought therein should be granted.

15. The 1<sup>st</sup> to 5<sup>th</sup> interested parties submitted that they are all children of the deceased, and that their prayer to have a joint account operated by all the beneficiaries is not prejudicial to any party, because the surviving petitioners have donned the cloak of the company, to solely benefit from the rental proceeds from the deceased estate. They submitted that since the properties held by the 6<sup>th</sup> interested party belonged to the deceased, they ought to equally benefit from the rent income generated therefrom. They submitted that they had proved that there were some properties of the deceased which were inadvertently left out, which ought to be included.

16. The 6<sup>th</sup> interested party submitted that the parties herein had agreed to dissolve the company, and prayed for more time to finalize the out of court settlement. It submitted that since it is 20 years after the death of the deceased, a lot of water has gone under the bridge as some of the beneficiaries have since died and their shares devolved to their respective beneficiaries. It submitted that all the beneficiaries have settled, developed and established their homes on their respective portions of land, and they will be adversely affected if the grant is revoked. It submitted that redistributing the estate without the input of the parties would not only open flood gates of litigation and disturbance of peace, but also lead to disintegration of the family and bring anarchy adding that instead of dissolving the company, each beneficiary should be allotted equal shares of Ksh.1000 of the company. It further submitted that the application dated 26/6/2014 was similar to the one dated 14/4/2021 in Meru HCC No. E007/2021, and thus making a determination in this application would conflict with latter and that the applicant being a shareholder is bound by the Articles of Association of the company to refer the dispute to arbitration contending further that the court lacked jurisdiction to entertain the application and prayed for its dismissal. The court is then urged to compromise the application by allowing the parties to exercise their autonomy and settle the matter in line with its submissions, in the interest of justice, peace and harmony among the close family members.

### **Analysis and Determination**

17. Even though there be two distinct applications, both target a portion of the estate that was transferred to the 6<sup>th</sup> interested party and the income therefrom. The target is to have that property reverted to the estate for distribution among all the entitled beneficiaries. There is also disclosed property known as **Nanyuki Daiga Ethi/Block 2/1455, 1459,1463, 1476 and 1477** which were left out of the estate either inadvertently or by design.

18. The contention on whether the 5<sup>th</sup> interested party is a son to the deceased is not hard to resolve. The Identity Card of the 5<sup>th</sup> interested bears Kairanya as his surname. Further, Lawrence Kairanya M'Mukindia is indicated as the name and surname of his father in his birth certificate. It is evident that the 5<sup>th</sup> interested party was listed in the obituaries of Esther Mukiri Kairanya and John Kirimi Kairanya as son and brother respectively. That to me is conclusive proof that he is without any doubt a son to the deceased herein. I accordingly find that the 5<sup>th</sup> interested party is a son to the deceased, and as such, he is entitled to a share of his estate.

19. On the need to revert the property registered in favour of and held by the 6<sup>th</sup> Interested, there is no contestation that the same revert to the estate. Only for the Laikipia property was there insufficient material on when it was transferred to the company and if they ever belonged to the deceased. The copies of green cards on record only reveal that Land Parcel Nos. LAIKIPIA/DAIGA ETHI BLOCK 2/1455, 1459, 1463, 1476 and 1477 were as at 23/8/2010, and to date, owned by Kairanya Investments Limited, without more details on how the company acquired same. However, by the resolution of the family meeting held on the 4.12.2021, it was agreed that the same go to the interested parties. I infer a concession by the administrator, the company and the family in general that the said property and the commercial property, indeed is due to the estate and ought to be reverted to the estate and made available for distribution. With such desire by the parties, which the court deems as a realization that something untoward did take place, the court of justice cannot in fairness withhold such property from being reverted to the estate.

20. It thus commends to me that the said property known as Land Parcel Nos. LAIKIPIA/DAIGA ETHI BLOCK 2/1455, 1459, 1463, 1476 and 1477 and MERU MUNICIPALITY BLOCK 11/9, 128, 197, 202,119 and Plot No. 50 GAKOROMONE, be transferred by the 6<sup>th</sup> to the estate to enable the same be distributed in a fair and just manner to the beneficiaries. That the court directs to be done within 45 days from today. The transfer fess be paid by the 6<sup>th</sup> respondent from the rental income which were ordered to be banked.

21. For avoidance of doubt, it is not the law that the property can only be reverted to the estate upon dissolution of the 6<sup>th</sup> respondent. The ownership of the said property does not determine the existence of the property. The company must not be dissolved before the property can be transferred back to the estate. In deed if there must be a dissolution before transfer a rigmarole would result as one may then ask how a nonexistent entity can effect a transfer. **This timeline is of essence and it is ordered that in default by the directors to execute the deeds the deputy registrar shall execute the instruments of transfer in place of the directors. If, however, it shall be the administrators who shall be unable to use their control of the company to avail funds to facilitate the transfer, they shall have failed on their duty as administrators and they shall stand removed**

22. Having reverted the said assets to the estate for distribution afresh, it is in the interest of all concerned that the certificate of confirmation of grant be rectified. It is therefore directed that the administrators file and serve an application for rectification along the lines disclosed in the exhibited minutes of the family meeting. That be done within 14 days from the date of this decision and on default the administrators shall stand removed

23. Upon service of that application, any beneficiary who shall be of contrary opinion to the proposed distribution shall file affidavits giving own proposals. Such affidavits be served within 14 days after service

24. That being the finding and direction by the court, it become unnecessary to accede to the application by Martin Kairanya that the property distributed to him be transferred to him. That would be preemptive and disruptive

25. For the 2<sup>nd</sup> application, the court having reverted the Nanyuki property back to the estate only the prayer for opening and operation of the joint account remains for determination. That prayer I consider to be one that would be disruptive of the timetable set by this ruling to move the file towards closure. I see no benefit to be derived by granting it

26. In the end, I find the applications dated 26/6/2014 and 7/7/2020 to be merited and the same are accordingly allowed to the extent of the orders set out above. For any other application pending in the file, I invoke the courts power pursuant to section 47 and Rule 73 of the Rules and put same in abeyance pending the compliance with the orders granted herein.

27. Each party shall bear own costs

**DATED SIGNED AND DELIVERED AT MERU THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2022**

**PATRICK J.O OTIENO**

**JUDGE**

In presence of

Mr. Mwirigi for the applicant/Beneficiary

Mr. Orimbo for the 6<sup>th</sup> interested party

No appearance for Mr. Gichunge for interested party

Mr. Kamundi for petitioners.

**PATRICK J.O OTIENO**

**JUDGE**