



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1780 OF 2011

IN THE MATTER OF THE ESTATE OF LUCY WANJIRU NJUGUNA (DECEASED)

JAMES NGUGI NJUGUNA.....APPLICANT

VERSUS

PETER NJOROGE NJUGUNA.....RESPONDENT

RULING

1. What is for determination is an application filed by way of summons dated 23rd July, 2019 and brought under **sections 45(1)**, and **47** of the **Law of Succession Act** and **rules 59(1)** and **61(1)** of the **Probate and Administration Rules**. In it, the Applicant seeks for orders:

a. *Spent.*

b. To suspend and remove forthwith the appointment of the Respondent as co-administrator of the Estate of the deceased herein and the Applicant be declared the sole Administrator of the Estate of the deceased.

c. To the Respondent to give an account of the property which he has since disposed of and immediately vacate L.R. No. Ruiru/KIU Block 3/605.

d. To review the orders issued on 19th March, 2012 and the signature of the Respondent be dispensed with and the Deputy Registrar to sign on his behalf.

e. The Respondent be restrained by himself and/or his agents and servants from interfering with the Applicant's discharge of his duties under section 83 of the Law of Succession Act in relation to all the remaining assets of the Estate of the deceased until further orders from this court.

2. The application is supported by an affidavit sworn by the Applicant on even date in which he deposes that himself and the Respondent are the administrators of the estate of the deceased. That a Grant of letters of administration intestate had been issued to them on 19th March, 2012 and confirmed on 15th May, 2013.

3. The Applicant averred that the dependants of the deceased had, through the affidavit sworn in support of the confirmation of grant agreed to share the property comprising the estate of the deceased equally. That the dependants had also agreed to form a company to ensure proper growth and smooth administration of her property. He asserted that the Respondent had however acted contrary to the wishes of the dependants and disposed of some of the property of the estate of the deceased without their prior consent. That the Respondent had sold the Kasarani property; Plots 5 and 6 at Njabini Flyover and was in sole occupation of the Kahawa Sukari property being Ruiru/KIU Block 3/605.

4. The Applicant further deposed that the beneficiaries of the estate of the deceased were seeking to have the Respondent give a true and full account of the property comprising the estate of the deceased in addition to the manner of division and disposition. That this was not only a requirement that the beneficiaries can make but was also a duty bestowed on the Respondent by the Law of Succession Act. He urged that the court was clothed with powers to remove the Respondent from the list of Administrators for his failure to abide by the law and declare the Applicant the sole Administrator of the estate of the deceased.

5. It was the Applicant's statement that to prevent further wasting of the estate of the deceased, the court ought to issue orders restraining the Respondent by himself and/or his agents and servants from interfering with the Applicant's discharge of his duties under section **83** of the **Law of Succession Act** in relation to all the remaining assets of the Estate until further orders from this court. Further that any person who may have benefited from the disposition of any property comprising the estate of the deceased be restrained from enjoying the benefits of such disposition.

6. In response to the application, the Respondent filed a Replying Affidavit sworn by himself on 29th January, 2020 in which he termed the instant application fraudulent and asked the court to dismiss it with costs.

7. The Respondent confirmed that the Certificate of Confirmation of Grant had provided that the Estate of the deceased be shared among the beneficiaries in equal share and that the beneficiaries had agreed to register a company to ensure proper administration of the Estate. He deposed that whereas the said company was formed and registered under **section 14** of the **Business Names Act, CAP 499**, to the best of his knowledge, the intentions of forming the company were not met and the property comprising the Estate of the deceased is yet to devolve upon the dependants.

8. According to the Respondent, the delay in the distribution of the estate of the deceased has been occasioned by the Applicant. He averred that the Applicant had continued to purport to manage the estate of the deceased without involving him despite the fact that they were co-administrators. That he was consequently not in a position to render a complete and accurate account of the continuing administration within the six (6) months from the date of confirmation of grant.

9. The Respondent confirmed that he was in occupation of the property known as Ruiru/KIU Block 3/605 but asserted that he had informed the beneficiaries of the estate, to the exclusion of the Applicant, of his intention to construct a house on a portion of the property to provide shelter and residence for himself and his two young daughters. That as a beneficiary of the estate of the deceased, he is entitled to an equal right to the property as do all dependants and his act of residing on the property cannot be said to be an effort to misappropriate the Estate of the deceased. He urged that the instant application was therefore malicious and intended only to render him homeless and destitute.

10. In respect of Plots 5 and 6 at Njabini Flyover, the Respondent denied the averment that he had sold the plots and averred that the Applicant was in actual and factual possession of the title documents to the property. That in any case, the Applicant had not produced any evidence of a sale or of a search conducted on the said plots to ascertain such sale, waste or disposal of the said Plots by the Respondent.

11. In respect to the Kasarani property, the Respondent deposed that the Applicant was seeking to fraudulently dispose him of his right to the property. The Respondent asserted that before the demise of his mother who is the deceased herein, he had purchased the property and was listed as the owner of the said property in the Muthokinjo Residents/House Owners list dated 5th July, 2000. That upon demise of his mother, the Applicant maliciously intended to dispossess him of the property by alleging that it belonged to his mother and wanted it included as property forming part of the deceased's estate. He asserted that he lodged a complaint with the area chief in this respect and upon presenting relevant documents, it was determined that he was the owner of the said property. He urged that the Applicant was aggrieved by the decision and lodged a further complaint with the area District Commissioner who also determined that the Respondent was the rightful owner of the property.

12. The application was disposed of by way of written submissions.

13. Learned Counsel Mr. Ileri filed written submissions dated 5th March, 2020 on behalf of the Applicant in which he reiterated the contents of the Applicant's supporting affidavit and urged the court to grant the orders sought in the summons application to ensure that the succession process and the grant of letters of administration were not issued in vain.

14. Mr. Ileri contended that by selling part of the estate of the deceased, the Respondent has acted beyond his powers reasons for which his position as co-administrator ought to be revoked. He asserted that a personal representative holds property for the benefit of the beneficiaries/dependants and not for their personal benefit as administrators since the property does not vest in them absolutely. To this end, Counsel cited the provisions of **section 79** of the **Law of Succession Act** and the decision in **Re Estate of Njue Kamunde (deceased) [2018] eKLR**.

15. It was Mr. Ileri's further submission that the Respondent ought to be compelled to give a full account of the assets of the Estate of the deceased that he was in possession of and those that he had since disposed of. Counsel asserted that administrators are by dint of **section 83(g)** of the **Law of Succession Act** tasked with giving a full and accurate account of the assets and liabilities of all the dealings in their capacity as personal representatives. That the Respondent had however failed to do so despite having been in the spotlight severally for selling property of the Estate of the deceased without consulting the dependants or remitting a full inventory of the said sales.

16. According to Mr. Ileri, the Respondent had, by allowing his personal interest to conflict with his duties as co-administrator of the Estate, breached his fiduciary duties, which breach was a ground for the Grant of the Estate of the deceased to be revoked on his part in view of **section 76** of the **Law of Succession Act** and **rule 73** of the **Probate and Administration Rules**.

17. Mr. Ileri urged that it had been demonstrated that the Respondent had contravened the provisions of the Law of Succession Act and was answerable not only to his co-administrator being the Applicant, but also to the court to the extent of the assets of the Estate of the deceased that he had since disposed of. Counsel cited **section 45** of the **Law of Succession Act** and the decision in **Tabitha Nitbuka Mboroki vs. Julius Gitonga M' Marete [2016] eKLR** to buttress his point.

18. In opposition, learned Counsel Ms. Kaima filed written submissions dated 23rd March, 2020 on behalf of the Respondent. Counsel submitted that the instant application which was seeking to suspend the Respondent as an Administrator on the basis of fraud, misrepresentation and forgery was unfounded and qualified as an act of forum shopping by the Applicant to defeat the Respondent's right to the subject properties. That the allegations made by the Applicant did not establish a *prima facie* case to merit the orders sought and in any event, the Applicant was guilty of material non-disclosure and was therefore disentitled from any legal or equitable relief by the court. Reliance was placed on the decisions in **John Terer & Others vs. John Mbaraka & others [2009] eKLR** and **Musa Kanda Kiptum vs. Simeon M. Kitum & another [2014] eKLR**.

19. Ms. Kaima contended that it was unjust for the Applicant to pray for an order that the Respondent file an inventory when the Applicant had also not complied and filed any such inventory. Counsel cited the decision in **Stephen Gitonga M'Murithi vs. Faith Ngira Muriithi [2015] eKLR** where it was held that the provisions of **sections 83(e)** and **(g)** of the **Law of Succession Act** applied to all the three

administrators of the Estate of the deceased therein. Counsel urged that the application was therefore merely an attempt by the Applicant to continue with his schemed arrangements to defeat the Respondent's rights and to ensure that he was accountable to no one since the other beneficiaries reside out of the country.

20. It was Mr. Kaima's further submission that the court ought to allow the Respondent to continue residing on the property known as Ruiru/KIU Block 3/605 on the basis of right. That by virtue of **section 38** of the **Law of Succession Act**, the Respondent is entitled to an equal share of the Estate of the deceased by virtue of being a beneficiary of the deceased and the existing Confirmation of Grant. Therefore, that the application should be dismissed with costs.

21. The deceased whose estate is in issue herein died intestate on 20th November, 2010. The deceased was survived by five (5) children: Margaret Wairimu Njuguna, James Ngugi Njuguna (the Applicant herein), Susan Wangari Njuguna, Peter Njoroge Njuguna (the Respondent herein) and Anthony Chege Njuguna. On 19th March, 2012 a Grant of Letters of Administration Intestate of all the deceased's estate was issued to James Ngugi Njuguna and Peter Njoroge Njuguna. The Grant was consequently confirmed on 15th May, 2013.

22. From the record, it is evident that the Confirmed Grant remains in force as it has never been revoked. The Estate of the deceased is however yet to be distributed despite the fact that eight (8) years have since lapsed since the Grant was confirmed.

23. An examination of the Certificate of Confirmation of Grant reveals that the properties named in the instant application are listed under the heading "description of properties" as comprising the deceased's net intestate estate. The Certificate of Confirmation further state that the properties are to be shared equally amongst the named beneficiaries, who are the five children of the deceased named hereinabove.

24. By stating that he is entitled to the properties named in the instant application, the Respondent is in effect seeking to reopen this succession cause. This is because challenges to the ownership of the properties are matters which ought to have been canvassed during the hearing of the application for confirmation of grant. It is curious that the Respondent now lays claim to the said properties when in the joint affidavit sworn by himself and the Applicant in support of the summons for confirmation of grant the properties are listed as comprising the Estate of the deceased. Both Administrators and the rest of the beneficiaries had consented to the Confirmation of Grant in the manner set out in the affidavit sworn in support of the grant. To deal with the properties otherwise than in the manner stated in the Certificate of Confirmation of Grant would be to disregard the orders of this court and against the interest of the beneficiaries of the Estate of the deceased.

25. In any event, should the Respondent be dissatisfied with the manner in which the Certificate of Confirmation of Grant was set out he has recourse under the provisions of the Law of Succession Act and it is upon him to move the court appropriately to this end.

26. On the issue of accounts, I am guided by the provisions of **section 83(h)** of the **Law of Succession Act** which provides *inter alia* that personal representatives shall have a duty to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account. In the instant case, the personal representatives of the Estate of the deceased are the Applicant and the Respondent who are the Administrators to whom the Grant of Letters of Administration Intestate of the Estate of the deceased was confirmed.

27. In view of the foregoing, I find that the orders seeking removal of the Respondent as co-administrator cannot be granted at this time. This is especially so since neither the Applicant nor the Respondent in their capacities as administrators have furnished the court with full and accurate accounts of the estate of the deceased. They have also failed to give an accurate account of the completed administration if at all this has been done.

28. In the end, I invoke section 83 of the Law of Succession Act and direct as follows:

a. The Administrators, being the Applicant and the Respondent herein, shall furnish this court with a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account within three (3) months of this ruling;

b. The Administrators shall complete the administration of the Estate of the deceased within six (6) months of the date of this ruling and render a full and accurate account of the complete administration in accordance with **section 83(g)** and **(i)** of the **Law of Succession Act**.

c. The estate of the deceased shall be distributed in the manner set out under the Certificate of Confirmation of Grant dated 15th May, 2013.

It is so ordered.

DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 22ND DAY OF FEBRUARY, 2022.

.....

L. A. ACHODE

HIGH COURT JUDGE

IN THE PRESENCE OFADVOCATE FOR THE APPLICANT.

IN THE PRESENCE OF.....ADVOCATE FOR THE RESPONDENT.