



REPUBLIC OF KENYA



KENYA LAW
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In re estate of Karige Kihoro Alias Karege Kihoro (Deceased) (Succession Cause E005 of 2022) [2022] KEHC 13164 (KLR) (22 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13164 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE E005 OF 2022
FN MUCHEMI, J
SEPTEMBER 22, 2022**

BETWEEN

HANNAH WAHU NGUNYA APPLICANT

AND

LYDIA MUTHONI NJOROGE RESPONDENT

RULING

Brief Facts

1. This is a ruling for the application dated March 29, 2022 brought under sections 1A, 1B, 3, 3A of the *Civil Procedure Act*, sections 45 & 47 of the *Law of Succession Act* and rules 49 and 73 of the *Probate and Administration Rules* seeking to restrain the respondent from collecting rental income from the deceased's properties namely Nairobi/block 251/425 and Nairobi/block 251/315. Further the applicant requests the court to issue an order to deposit the rental income from the said properties into Mascot Properties Ltd A/c No 1125324031 and the tenants occupying the said premises to deposit the rent in the said account. The applicant further seeks for orders compelling the respondent to render an account of all the rental income that she has collected from the said premises from the date of the deceased's death to date. The applicant also seeks for orders that the Officer in Charge (OCS) Starehe Police Station do ensure compliance of the orders given.
2. The application was opposed by the respondent who filed a replying affidavit sworn on April 26, 2022 and filed on May 18, 2022.

The Applicant's Case

3. The applicant states that the family of the deceased including the respondent held a meeting before a mediator and agreed on the management of the properties and later after the deceased's death, agreed that the rental income will be deposited in an account managed by Mascot Properties Ltd.



4. The rental houses on the suit properties occupied by tenants are accruing a rental income of over Kshs 400,000/- per month. The applicant states that the respondent is collecting rent and not accounting for it and is misappropriating the same. Furthermore, the respondent through her advocates T W Murage & Co Advocates sent a letter to Mascot Properties Ltd stopping them from collecting the rent.
5. The applicant further contends that the deceased was survived by twelve (12) beneficiaries some of whom are below eighteen years of age. The applicant further states that the children of the deceased who depended on their father for basic needs are currently languishing in poverty. As such, the applicant seeks an injunction restraining the respondent from intermeddling with the deceased's estate.

The Respondent's Case

6. The respondent's response is that the deceased died on June 18, 2021 and that he was living with her on premises known as Nairobi/block 251/425. She further states that the deceased is the registered proprietor of land parcels no.s Nairobi/block 251/425 and Nairobi/block 251/315.
7. The respondent states that some family members convened a meeting on July 7, 2021 and she was informed that the issue therein was the hospital bill and burial expenses. The respondent contends that she only knew that mediators were present in the meeting after the meeting ended.
8. The respondent further contends that the issue of management of the two properties was to be taken up by the two proposed administrators being herself, Muchiri Karige and Wairimu Karige Kihoro. The respondent further states that the applicant has never participated in the management of the two properties and the amount stated of Kshs 400,000/- as rent is grossly exaggerated.
9. The respondent states outlined the rent and expenses of the rental houses on Nairobi/block 251/425 is as follows:-
46 rooms each at Kshs 3,500/- Kshs 161,000/-
9 shops at diverse rental payment expenses Kshs 54,000/-
Total Kshs 215,000/-
Less cleaner expenses Kshs 4,000/-
Caretaker 8,500/- water Kshs 16,000/-
Electricity for common area and water pump Kshs 4,000/-
Total Kshs 186,000/-
Title Nairobi/block 251/315 comprises:-
1B rooms at Kshs 3,100 Kshs 55,000/-
1 Godown at Kshs 9,000 Kshs 9,000/-
Less caretaker salary Kshs 7,000/-
Cleaner Kshs 4,000/-
Average water bill Kshs 7,000/-
Common area and water pump Kshs 2,500/-
Total Kshs 44,300/-
10. The respondent contends that the total amount collected when the two properties are full, which is rare is Kshs 230,000/- which amount does not include repairs on the building and rates. The respondent



- further contends that she was collecting rent at the onset and upon the erection of the building and was paid through Mpesa by the tenants to later deposit the amount to the deceased's husband account at Family Bank Limited.
11. The respondent further states that she was summoned at the Deputy County Commissioner office in Nyeri where the family members together with the Area Chief Gatitu location requested that she produces copies of title deeds for the properties owned by the deceased to which she states that she obliged.
 12. The respondent states that the deceased is survived by 12 children as well as dependants but only her daughters Jane Wambui Karige and Shanice Mugure who are minors and require school fees and maintenance. Further, the respondent contends that her husband, the deceased was not supporting the applicant having separated 25 years ago and the so called dependants are grown up earning their living or are married.
 13. The respondent states that there was no such meeting that resolved or agreed to give the management of the properties to Mascot Properties Ltd and she further states that the managing partner Mr Kiaraho is a cousin to the deceased.
 14. The respondent further contends that she solely relied on the rental income of the two properties which she built with the deceased and she applied for installation of electricity and water supply and she has been paying land rates and other statutory payments.
 15. The respondent states that upon the burial of the deceased, the applicant locked her matrimonial home with the deceased comprised in Aguthi/Gatitu/1914 situated in land measuring 4.5 acres and thereafter the applicant did not allow the applicant access her home. Further, she states that she had planted hay and macadamia getting an income of Kshs 50,000/-. Moreover, the respondent contends that she and the deceased had constructed rental houses on parcel number Aguthi/Gatitu/5548 which were complete but the applicant has taken complete control over the premises. Further, parcel number Marmanet Melwa Block 1/3173 which comprises of an agricultural farm is occupied by Muchiri Karige who has rented the premises out to people.
 16. The respondent states that her advocate on record wrote to Mascot Properties Ltd after illegally and unprocedurally attempting to take over control and management of the properties intimidating the tenants therein. As such, the respondent argues that the applicant has not proved that she has intermeddled with the estate of the deceased and she states that she has carried her duties as when her husband was alive.
 17. The respondent did not file submissions in this application despite being given time to do so.

The Applicant's Submissions

18. The applicant reiterates what she deposed in her affidavit and submits that the succession cause began as a citation when the respondent refused to cooperate in filing the succession. The applicant further submits that the respondent has not shown in her replying affidavit how she contributed in the development of the deceased's properties. The applicant further submits that the estate of the deceased is being wasted in the hands of the respondent and that the respondent has been dealing with the properties of the deceased without a grant.
19. The applicant relies on section 45 of the *Law of Succession Act* and the cases of the *Estate of George M'Mboroki (Deceased)* [2008] eKLR and in the case of *Veronica Njoki Wakagoto (Deceased)* [2013] eKLR and submits that a person can only deal with the property of a deceased person upon obtaining



a grant of representation. Anything to the contrary amounts to intermeddling which the law makes a criminal offence.

20. The applicant submits that if the orders sought are not given the respondent shall continue intermeddling with the deceased's estate while the other 11 beneficiaries languish in poverty.

Issues For Determination

21. The main issue for determination is whether the applicant has satisfied the court as to be granted the orders sought.

The Law

Whether the applicant ought to be granted the orders sought.

22. Section 45 (1) of the *Law of Succession Act* provides:-

Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

23. It is not in dispute that both the applicant and the respondent are the administrators of the estate of the deceased herein. The petition for letters of administration intestate indicate that the assets of the estate include Nairobi/block 251/425 and Nairobi/block 251/315. To the petition, the administrators have annexed search certificates for the respective parcels of land which indicate that the registered proprietor is the deceased, a fact confirmed by both the parties. The contention by the respondent is that she is only carrying out her duties just as she did during the lifetime of the deceased. The transactions in the attached documents show that she used to deposit the rental income into her deceased husband's account at Family Bank, a fact she averred in her affidavit.
24. I have also noted that there is a letter dated August 27, 2021 by the Deputy County Commissioner Nyeri advising Mascot Properties Ltd to collect and distribute the rent. The respondent has denied that no such meeting was held or resolved to give the management of the properties to Mascot Properties Ltd. yet the respondent's name and signature appears in the minutes of the meeting held on July 5, 2021. There was no allegation that the signature was forged.
25. In that meeting attended by eight out of twelve beneficiaries, it was agreed that the rent for the deceased's assets be collected by an agent Mascot Properties Ltd and be distributed to the beneficiaries. The preservation of the rent was a good idea but distributing it to the beneficiaries was ill advised because the estate of the deceased is yet to be distributed. The family agreed to have three administrators who are the parties in this case and one Muchiri Karige. However, the parties herein are the petitioners in this case.
26. It is important to note that intermeddling with the deceased's property amounts to a criminal offence punishable with a fine not exceeding Kshs 10,000/- in default one(1) year imprisonment or both such fine and imprisonment. A person who intermeddles must be made accountable to the assets lost or destroyed.
27. Perusal of the attachments show that the applicant has continued to collect rent of the two properties of the deceased after his death to date which is about one year and failed to account for the funds to the other beneficiaries.
28. I am of the considered view that the respondent has intermeddled with the assets of the deceased in regard to LR Nairobi/Block 251/425 and Nairobi/Block 251/315. The applicant is said to also be



receiving rent from rental houses constructed on the land where the matrimonial home is situated which has not been denied. However, the particulars of the said rent and land reference number were not given. This rent, if it exists also require to be preserved and accounted for pending the determination of this cause.

29. The applicant seek for injunctive orders against the respondent and orders for involvement of police but in my view such orders may not be appropriate in this cause at this stage. The parties have attempted mediation out of court which was a good move for the family but the process seems to have failed since the agreement has not been implemented. It is also noted that the administrators of the estate are yet to be appointed.
30. In my considered view, the application has merit and I hereby give the following orders:-
- a. That the respondent is hereby ordered to deposit the rent collected from LR Nairobi/Block/251/425 and LR Nairobi/Block 251/315 in a joint account to be opened in the names of Hannah Wahu Ngunya, Lydia Muthoni Njoroge and Muchiri Karige pending the appointment of the administrators and the determination of this cause, which accounts should be opened within 30 days.
 - b. That any other rented or income from the deceased's properties be deposited in the same account.
 - c. That the respondent do account for the rent collected from LR Nairobi/Block/251/425 and LR Nairobi/Block 251/315 from the date of deceased's death to date.
 - d. That the applicant do account for any rent or other income collected by her from other assets of the deceased to be identified by reference numbers from the date of deceased's death to date and do deposit such income in the account herein ordered to be opened.
 - e. That each party herein do meet their own costs of this application.
31. It is hereby so ordered.

DATED AND SIGNED AT NYERI THIS 22ND DAY OF SEPTEMBER, 2022.

F. MUCHEMI

JUDGE

Ruling delivered through video link this 22nd day of September 2022

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