



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. H.C 270 OF 2013

**IN THE MATTER OF THE ESTATE OF ESTHER WACHERA MUTERO ALIAS MUTERO ESTHER WACHERA
(DECEASED)**

PATRICIA NYAMBURA MUTERO.....APPLICANT

VERSUS

ERICK CHARLES MUTERO KEIGO.....RESPONDENT

RULING

1. This a ruling on application dated **15th August 2019**, filed by **Patricia Nyambura**, one of the administrators of the estate of the deceased seeking the following orders:-

i. Spent

ii. spent

iii. to preserve the estate of Esher Washera Mutero by restraining and /or prohibiting the respondent either by himself jointly and/or severally or through his agents/representatives from in any way dealing or transacting in or over the estate of Esther Washera Mutero pending the hearing and determination of this suit.

iv. the respondent to produce a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account.

v. That the Honorable Court be pleased to order that the respondent administer the estate in accordance with the grant of the letters of administration issued on 27th June 2013, and in particular to include the applicant in the decision making and joint administration of the estate.

vi. That the applicant herein do serve as the sole administratrix of the estate of Esther Washera mutero until further orders of this Honorable Court. That in the alternative the grant of letter of administration intestate granted to Erick Charles Mutero and Patricia Nyamburs Mutero issued on 16th May 2016 be revoked by this Honorable Court.

vii. That the costs of the application be borne by the respondent.

2. A brief background of this matter is that the the applicant herein **Patricia Nyambura Mutero** jointly petitioned for letters of administration intestate on 30th April 2013 in respect of the estate **Esther Washera Mutero** with **Erick Charles Mutero Keigo** in their capacity as daughter and son respectively.

3. The deceased was survived by the two petitioners and two minors (**Tracey Gathoni Mutero** and **Michael Mwangi Mutero**). A grant of letters of administration intestate was issued to the two petitioners on 27th June 2013 and confirmed on 28th March 2014, as per the proposed mode of distribution where the two administrators were to hold all the properties in trust for themselves and the minors.

4. The administrators filed summons for rectification of grant on 16th June 2014, to include shares in Midtown Therapeutics Nakuru, Motor Vehicles KBJ 536H, Motor Vehicle KAJ 283Z, death gratuity, Safaricom M-pesa No. 0722766234, and Barclays Account No. 0276217062 as part of the property of the deceased. The Court in its ruling directed that the petitioners do attach proof of ownership of the motor vehicles as well as the manager of Barclays Bank Nakuru to confirm the holder of the account.

5. The certificate of grant issued on 28th March 2014 was rectified on 16th May 2016.
6. The respondent **Erick Charles Mutero** was served with the application herein but he failed to file response to the application and the same proceeded ex parte.
7. The applicant averred that the respondent has brazenly violated and acted in utter disregard of the letters of administration by misappropriating funds and mismanaging the estate of the deceased. And she has been excluded from deliberations and decision making concerning the estate of the deceased.
8. She cited the case of **Re estate of David Kyuli Kaindi (deceased) 2016**, where the Court addressed the responsibilities of a personal representative and further stated the duties of personal representatives over the estate of a deceased person are set out in **Section 83 of the Law of Succession Act**; that he has failed to render a full and accurate account of the assets and liabilities of the estate, and the income received from the property and further that despite being a co-administrator the respondent has failed, and or ignored to jointly administer the estate, and the respondent is treating the estate of the deceased as his property; that the respondent is dishonest in administering the estate of the deceased and urged this Court to remove him as an administrator and she be appointed as the sole administrator of the estate of the deceased.
9. She submitted that the estate of the deceased is wasting away and debts and liabilities are piling up and beneficiaries who are entitled to financial support from the estate of the deceased have not received any financial support since the demise of the deceased.

ANALYSIS AND DETERMINATION

10. I have considered averment and submissions by the applicant herein and consider the following as issues for determination.
 - i. **Whether the respondent should be compelled to render a full account of the deceased estate?**
 - ii. **Whether the applicant should be made the sole administrator of the estate of the deceased?**
 - i. **Whether the respondent should be compelled to render a full account of the deceased estate?**
11. The duties of of administrator of the estate of the deceased are provided under **Section 83** as follows:-
 - (a) **to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;**
 - (b) **to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;**
 - (c) **to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);**
 - (d) **to ascertain and pay, out of the estate of the deceased, all his debts;**
 - (e) **within six months from the date of the grant, to produce to the court 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;**
 - (f) **subject to Section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be; [Rev. 2012] CAP. 160 Law of Succession 33 [Issue 1]**
 - (g) **within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;**
 - (h) **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;**
 - (i) **to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.**

12. From the above provision, there is no doubt that one of the duties expected of an administrator is to render a full and accurate account of all dealings up to the date of the account. The applicant herein has averred that despite being one of the administrators of the deceased, she has not been involved in any dealings in respect of the estate. Her averments were not challenged by the respondent. He failed to file response despite service. I therefore have no reason to disbelieve the applicant and see merit in her prayer to have the respondent render accounts in respect to dealings in the deceased estate.

ii. Whether the applicant should be made the sole administrator of the estate of the deceased?

13. There is no dispute that the applicant and the respondent were appointed as joint administrators in this matter. They are siblings and they are administrating the estate for themselves and in trust for 2 minors. From the averments they do not seem to be working together in managing/administering/running the estate corporately. The two administrators are expected to be transparent in running the estate and they should consult each other in decision making.

14. A party who is found to waste estate of a deceased person is liable to being removed from the role of administrator. The applicant has however failed to give tangible prove of wastage of the deceased's estate and at this stage I find it inappropriate to discontinue the respondent from administrating the estate of the deceased but direct that he involves the applicant in administration of the estate pending further direction after full and accurate account has been given in respect to running of the deceaseds estate. The two administrators are obligated by **Section 83 of the Succession Act** to ensure that they properly administer the estate of the deceased.

15. **FINAL ORDERS**

1. **That the respondent do file a full and accurate account of the estate of the deceased within 14 days from the date of this ruling.**
2. **The applicant and respondent to work as joint administrators as per grant issued, confirmed and rectified.**
3. **This matter to be mentioned after 14 days for further directions.**

Ruling dated, signed and delivered via zoom at Nakuru

This 11th day of February 2021

.....

RACHEL NGETICH

JUDGE

In the presence of:

Schola/Jeniffer - Court Assistant

Ms.Odhiambo Counsel for Appellant

No appearance for the Respondent