



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 51 OF 1989**

**IN THE MATTER OF THE ESTATE OF JOHN CHEGE NDUATI (DECEASED)**

CHARLES NDUATI CHEGE.....1<sup>ST</sup> APPLICANT

JENNIFER MUMBI CHEGE.....2<sup>ND</sup> APPLICANT

LUCY WAMBUI KIMANI.....3<sup>RD</sup> APPLICANT

IAN GITAU CHEGE.....4<sup>TH</sup> APPLICANT

SAMUEL KIMANI CHEGE.....5<sup>TH</sup> APPLICANT

**V E R S U S**

MARYANNE WANJIKU CHEGE.....1<sup>ST</sup> RESPONDENT

GEOFFREY MBUGUA KAMAU.....2<sup>ND</sup> RESPONDENT

**RULING**

(1) Before this Court is the Chamber Summons dated **20<sup>th</sup> March 2018** filed by the Applicants seeking orders as follows:-

(i) Spent

(ii) That the Administrators of the estate of the Deceased be compelled to submit a true and accurate inventory of the deceased assets and liabilities and a full accurate inventory of all the dealings.

(iii) That the leave be granted to the 5<sup>th</sup> Applicant, SAMUEL KIMANI CHEGE to be substituted as an administrator in place of both MARYANNE WANJIKU CHEGE and GEOFFREY MBUGUA KIMANI the Respondents herein.

(iv) That the Certificate of Confirmation of Grant be amended accordingly.

(2) The Summons which was premised upon **Section 76(d), (ii), 83(e), (h)** of the **Law of Succession Act, Cap 160, Laws of Kenya, Order 37 Rule 12** of the **Civil Procedure Rules 2010, Section 37(1), 42(1)** of the **Trustee's Act** and all other enabling provisions of the law was supported by the Affidavit of even date sworn by **SAMUEL KIMANI CHEGE** (the 5<sup>th</sup> Respondent).

(3) The Administrators/Respondents opposed the Application and filed the Replying Affidavit dated **3<sup>rd</sup> May 2018** sworn by the 1<sup>st</sup> Respondent **MARYANNE WANJIRU CHEGE**. The Application was canvassed by way of written submissions. The Applicants filed their written submissions dated **20<sup>th</sup> November 2020**, whilst the Respondents relied upon the written submissions dated **9<sup>th</sup> February 2021**.

**BACKGROUND**

(4) This Succession Cause relates to the estate of the late **JOHN CHEGE NDUATI** (hereinafter "**the Deceased**") who died intestate on **21<sup>st</sup> June 1988**. The Respondents herein **MARYANNE WANJIKU CHEGE** and **GEOFFREY MBUGUA KIMANI** together with one **PAUL GITAU CHEGE** (who is not a party to the present suit) were issued with a Grant of Letters of Administration to the estate of the Deceased.

On **12<sup>th</sup> October 2011** a Certificate of Confirmed Grant was issued. That Confirmed Grant was subsequently amended on **31<sup>st</sup> May 2017**. A copy of the Amended Confirmed Grant is annexed to the Replying Affidavit dated **3<sup>rd</sup> May 2018** (Annexure 'MAW '1').

(5) It is not in dispute that the Applicants are all beneficiaries of the estate. The Applicants aver that the Respondents being Administrators of the estate of the Deceased have failed, neglected and/or refused to distribute the assets of the Deceased to the beneficiaries as directed in the Confirmed Amended Grant. That as a result the estate has been in limbo for the past **seven (7) years**.

(6) That the Respondents/Administrators have failed and / or refused to disclose to the other beneficiaries their dealings in the estate of the Deceased and as a result the Applicants are apprehensive that the Respondents intend to take possession of the estate of the Deceased to their own benefit to the exclusion of the other beneficiaries. That as a result of this apprehension the 5<sup>th</sup> Applicant **SAMUEL KIMANI CHEGE** went to the Land Registry in **Kiambu** and caused a restriction to be placed against the properties forming the estate of the Deceased and in particular against **LIMURU/BIBIRIONI/1537** pending the hearing and determination of the main suit. The Applicants further state that they have all consented to having the Applicant **SAMUEL KIMANI CHEGE** replace the 1<sup>st</sup> Respondent **MARYANNE WANJIKU CHEGE** and the 2<sup>nd</sup> Respondent **GEOFFREY MBUGUA KIMANI** as Administrators of the estate and pray that the Grant be amended accordingly.

(7) As stated earlier the application was strenuously opposed. In the Replying Affidavit the 1<sup>st</sup> Respondent gave out a lengthy narrative of all the steps that have been taken by the Administrators to distribute the estate. She also set out a list of all the properties which had been sold and proceeds distributed to the beneficiaries as per the Confirmed Amended Grant. The 1<sup>st</sup> Respondent indicated that to date only **three (3)** of the properties forming the estate of the Deceased are yet to be sold being:-

- **Limuru/Kamirithu/587/64**
- **Tigoni Mabrouke/2213**
- **Embakasi Ranching Plots**

(8) The 1<sup>st</sup> Respondent averred that the Administrators are actively seeking purchasers for the above properties in which efforts she states have been hampered by the downturn in the economy in Kenya as a result of the **Covid Pandemic**. However the Administrators undertake that given time those **three (3)** remaining properties will also be sold and the proceeds distributed to all the beneficiaries. The Respondents urge the Court to dismiss the present application in its entirety.

#### **ANALYSIS AND DETERMINATION**

(9) I have carefully considered the Summons dated **20<sup>th</sup> March 2018**, the Replying Affidavit dated **3<sup>rd</sup> May 2018** as well as the submissions filed by both parties. The two issues which arise for determination are:-

**(i) Whether the 5<sup>th</sup> Applicant should be substituted as Administrator to replace the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.**

**(ii) Whether the Respondents should be ordered to submit an inventory and account of their dealings in the estate to date.**

#### **(i) Substitution of Administrators**

(10) It is common ground that the Applicants and the Respondents are all beneficiaries to the estate of the Deceased. The Applicants claim that the current Administrators have failed to administer the estate in an open and transparent manner. That they are apprehensive that the Respondents will utilize the assets of the estate to their own benefit and exclude the other beneficiaries. It is averred that the beneficiaries have all consented to have the 5<sup>th</sup> Applicant substituting the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as Administrators.

(11) It is trite law that he who alleges must prove. It is one thing to **allege** that the current Administrators have acted improperly, it is quite another thing to prove such improper and/or illegal activity on the part of the said Administrators. Whilst the Applicants claim to be apprehensive that they may be denied their rightful inheritance, no evidence has been adduced to prove that this apprehension is warranted. There is no evidence that the current Administrators have misused or abused their position as Administrators in any way.

(12) To the contrary the Replying Affidavit has provided a lengthy and detailed narrative of how the Respondents have proceeded with the Administration of the estate. Clear evidence is provided regarding which properties have been sold and clear evidence is provided on how the proceeds of sale of those assets have been distributed. None of the averments in the Replying Affidavit have been challenged and / or controverted by way of a Supplementary Affidavit.

(13) Indeed from the Replying Affidavit it is evident that the estate has been largely distributed. I do not doubt the Respondents claim that the estate has been distributed by about **80%**. The assertion by the Respondents that there are only **three (3)** properties remaining to be sold has not been disputed. Therefore the claim by the Applicant that the estate has been in limbo for the past **seven (7) years** cannot be true.

(14) **Section 66** of the **Law of Succession Act** authorizes the Court to appoint the Administrators of any estate. In order to have an Administrator removed and / or substituted cogent reasons must be given. Mere innuendos and vague apprehensions will not suffice. Sufficient basis must be laid for the removal of an Administrator. The mere fact that one may not like the Administrator (which seems to be the case here) will not amount to proper justification for their removal.

(15) There is evidence that the Applicants approved and authorized the transactions (sales) conducted by the Administrators of the assets of the estate. At page 13A to 13d of the Replying Affidavit is a hand written Memorandum regarding the sale of **five (5)** of the assets of the estate. This Memorandum was signed by the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Applicants amongst others as well as by the 1<sup>st</sup> Respondent. None of the Applicants has denied having signed this document. Similarly vide a letter dated **17<sup>th</sup> September 2013** (see page 27A of the Replying Affidavit) the Applicants including the 5<sup>th</sup> Applicant indemnified the Administrators in respect of their dealings in the estate property and went on to state thus:-

**“... We do not have any complaints against the trustees and are happy and content with the agreed mode and manner of distribution ...” [own emphasis]**

(16) Once again no party has denied their signature on this document. There are several documents dated **24<sup>th</sup> January 2012** (page 27 of Replying affidavit), dated **6<sup>th</sup> February 2012** (pages 28-30) in which the Applicants including the 5<sup>th</sup> Applicant have given instructions regarding where their share of the proceeds of sale were to be deposited. None of the Applicants has filed an Affidavit denying receipt of the proceeds as per their instructions.

(17) Likewise vide a letter dated **27<sup>th</sup> February 2014** the Applicants including the 5<sup>th</sup> Applicant confirm having received from the Administrators the sum of **Kshs. 823,250.00** each being their share of the proceeds from the sale of plots L.R. No. **2208, 2209, 2205 and 2212** whose sale they had authorized (page 42 of the Replying Affidavit). Additionally there are two letters dated **10<sup>th</sup> January 2014** by which the Applicants authorize the sale by the Administrators of **Karanjee Plots 2213, 2212 and 2209** (pages 43 45).

(18) In short a close perusal of the Annexures to the Replying Affidavit dated **3<sup>rd</sup> May 2018** reveals that the Applicants and in particular the 5<sup>th</sup> Applicant (who swore the Affidavit in support of this application to have the Administrators removed) did give authority for the sale by the Administrators of various assets of the estate and acknowledged receipt of their share of the proceeds. Having so authorized the sale of said properties it is duplicitous for the Applicants to turn around and allege that they were being kept in the dark regarding the manner in which the Deceased's assets were being dealt with. The evidence clearly shows that the Applicants have at all times been kept in the loop regarding the manner in which the estate was being dealt with. I find the Respondents have proceeded with diligence and in transparent manner.

(19) Finally on this point it must be noted that a Confirmed Grant is in effect a certificate issued to an Administrator. The Grant **cannot** be transferred to a different person. In order to remove and substitute the name of an Administrator it is required that the Confirmed Grant be **revoked** in line with **Section 76, Law of Succession Act** and a fresh Grant be issued in the name of a different party. An Administrator cannot be removed through an **Amendment** to a Grant. Based on the above I find no justification for the prayer seeking to remove the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as Administrators of the estate of the Deceased and I decline to grant prayers (iii) and (iv) of this Summons.

#### **(ii) Inventory**

(20) The duties of an Administrator are clearly set out in **Section 83** of the **Law of Succession Act**. **Section 83(e) (f) and (g)** provide as follows:-

**“83 (a) ....**

**(b) ....**

**(c) ....**

**(d) ....**

**(e) 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 dealing therewith up to the date of the account.**

**(f) Subject to Section 55 to distribute or 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.**

**(g) 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.” [own emphasis]**

(21) Therefore the requirement to render accounts is a statutory duty imposed upon the Administrator [s] of an estate. The Court may **‘suo moto’** order that accounts be submitted or any interested party may apply in Court for the same.

(22) In their written submissions the Applicants state that on **31<sup>st</sup> July 2018** the court directed the Respondents to submit a true and accurate inventory of all their dealings in the estate and serve the same upon the applicants within **thirty (30) days**. The Applicants allege that the inventory was served upon them on **25<sup>th</sup> September 2020**. Thus it is clear that the Respondents did prepare and serve an inventory as

directed by the Court. The Applicants only complaint is that the said inventory was served on them late.

(23) In my view the Administrators have by the Replying Affidavit dated **3<sup>rd</sup> May 2018** provided a detailed account of their dealing with the estate property. They should be allowed to complete distribution of the estate upon which final accounts may be submitted.

(24) Finally I find no merit in this application. The Summons dated **20<sup>th</sup> March 2018** is dismissed in its entirety. I make no orders on costs.

**DATED IN NAIROBI THIS 25TH DAY OF JUNE, 2021.**

.....

**MAUREEN A. ODERO**

**JUDGE**