



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CAUSE NO. 83 OF 2020

IN THE MATTER OF THE ESTATE OF MARY WAITHERA MUGO (DECEASED)

RULING

1. This Ruling relates to the summons dated 25th March, 2021. It is filed by **Muchiri Mugo (Muchiri)**. He seeks orders for the purpose of preserving the estate of his Late mother **Mary Waithera** deceased to which this succession cause relates to. He prays, by that summons that pending confirmation of grant of letters of administration of the estate of **Mary Waithera**, deceased, that he be appointed as the sole manager of the deceased's estate.

BACKGROUND

2. The petition for grant of letters of administration intestate, in this matter, was filed by **Muchiri and Peter Kimani Mugo (Peter)** on 29th November, 2018. In that petition, Muchiri and Peter listed those who surviving the deceased as:-

- *Muchiri Mugo – Son*
- *Ruth Wanjiru Mugo – Daughter*
- *Peter Kimani Mugo – Son*
- *Lilian Muthoni Mugo - Daughter*

3. The petition was filed first before the Kiambu Chief Magistrate's court on 29th November, 2018. A grant was issued to both Muchiri and Peter on 24th April, 2019. On 20th November, 2019, on the application of Muchiri, the Kiambu Chief Magistrate's court transferred the succession cause to this Court, Kiambu High Court.

SUMMONS DATED 25TH MARCH 2021

4. Muchiri swore an affidavit dated 25th March, 2021 in support of the summons under consideration. In that affidavit, Muchiri deponed that one of the estate's property namely, KOMOTHAI/GATHUGU/473 has coffee and bananas. On the said property, there are rental homes. That all the coffee proceeds and the rental income are being "diverted" by Peter for his own benefit to the exclusion of other beneficiaries. That as consequence of those actions by Peter, Muchiri applied before Kiambu Magistrate for the proceeds of the estate to be deposited into a joint bank account of himself and of Peter. The court granted that order but that Peter had refused to adhere to that court order. Muchiri deponed further:-

“That since my co-administrator (Peter) is the only person beneficiary (sic) from the estate he is reluctant having the matter confirmed and influencing (sic) some beneficiary (sic) to delay the matter.

That since the death of the deceased he has never accounted for the coffee proceeds and other income emanating from the estate.”

5. Peter by his affidavit dated 26th April, 2021 terms the summons as incompetent and an abuse of this Court he did not elaborate on why he so termed the summons.

6. Peter further deponed that he and other beneficiaries objected to the mode of distribution proposed by Muchiri in a pending summons for confirmation of grant. Peter denied the allegations of mis-management of the estate and deponed:-

“... I have always acted in the estate’s best interest and state that the application is tainted with falsehoods and meant to mislead this honourable Court.”

7. Peter further depend that Muchiri was solely benefiting from the estate property that is, L.R. NO. 82/395 SUNRISE and also was receiving dividends of the estate’s share in HURUMA KIBICHOI KUGERIA. That Muchiri has also entered and taken possession of property GATIMAIYU/NYANDUMA/1862 which has coffee and gum trees and that he has cut and sold the said trees for his sole benefit.

ANALYSIS

8. As stated before Muchiri and Peter jointly petitioned for grant of letters of administration for the estate of their Late mother, in this case. At the time of petitioning both Muchiri and Peter were acting in person and seemed to be of one accord. However, before the grant was issued Muchiri filed a summons dated 6th February, 2019 seeking an order that all monies and proceeds generated from the estate of the deceased in respect to the coffee in land KOMOTHAI/GATHUGU/473 and rental income of KIGUMO PLOT NO. 16 and GATAMAIYU-NYANDUMA NO. 1862 be deposited into the joint names of Muchiri and Peter. Peter did not file any documents in opposition to that application nor did he attend the hearing of the same. It was after an order was issued by the court, on 3rd April, 2019 that Peter filed an application, summons dated 20th June, 2019 seeking to set aside the order for joint account of the two administrators to be opened. That application by Peter has not been prosecuted to date. It follows that the order of 3rd April, 2019 requiring Muchiri and Peter to open the joint account is still operative and despite Muchiri deponing that Peter had refused to co-operate in opening of the joint account, Peter did not respond to that deposition.

9. The court will therefore deem it to be true that Peter has refused to co-operate in the opening of the joint account of the administrators. It is difficult then for Peter who has failed to co-operate in the opening of that account to be heard to state that Muchiri has been solely benefiting from the coffee and rental proceeds of the estate properly. If indeed Muchiri is benefiting Peter would have been more than willing to open the account.

10. It does seem that there is possibly, intermeddling by either of the administrators of this estate. Intermeddling with a deceased’s person’s estate is a criminal offence and if indeed it is going on, the court takes very serious view of the same and this Court will certainly not allow it to continue.

11. Muchiri acts in person while Peter is represented by a counsel. It follows that although he sought to be appointed sole manager of the deceased’s estate, the order that however ought to be granted and which commends itself to me is for Muchiri to be appointed a sole administrator. It is clear to this Court that the appointment of Muchiri and Peter as joint administrators is not working for the good of the estate of the deceased. This Court will not countenance that state of affairs. This Court will exercise the discretion donated under Section 66 of the Law of Succession Act, Cap 160, and will appoint Muchiri Mugo to be the sole administrator of this estate. **Section 66 of Cap 160** provides:-

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) the Public Trustee; and

(d) creditors”(underlining mine)

12. Further, in my consideration of this matter, I have noted that it is deponed by Muchiri that Peter took possession of all original title documents of the deceased’s estate’s property and allegedly handed them to the law firm of Kibera & Associates Advocates. This is the law firm representing Peter. I will require that law firm to surrender those original title documents to this Court on a date to be set at the reading of this Ruling.

13. Because of the dim view, this Court has taken with regard to mis-management of the deceased’s estate the court shall fix the hearing of the summons for confirmation of grant dated 23rd November, 2020 together with the affidavits of Peter dated 22nd March, and 26th April, 2021, which the court shall treat as protest to the confirmation of grant. The hearing of the summons dated 23rd November, 2020 and the affidavits of Peter shall be by *viva voce* evidence on a date to be fixed by this Court.

DISPOSITON

14. In view of the above determinations, I make the following orders:-

(a) The summons dated 25th March, 2021 is merited and accordingly the grant dated 24th April, 2019 in the joint names of **MUCHIRI MUGO** and **PETER KIMANI MUGO** is hereby revoked.

(b) A grant of letters of administration intestate in the estate of **MARY WIATHERA MUGO** deceased is hereby granted to **MUCHIRI MUGO**.

(c) The summons of confirmation of grant dated 23rd November, 2020 and the affidavits of **PETER KIMANI MUGO** dated 22nd March and 26th April, 2021 shall be heard by viva voce evidence on 5th July, 2021.

(d) On 5th July, 2021 the Law firm of Kibera & Associates shall surrender **to the court** all the original title documents in their possession of the property/properties of the deceased's estate.

(e) The costs of the summons dated 25th March, 2021 shall be borne by **PETER KIMANI MUGO**.

Orders accordingly.

RULING DATED AND DELIVERED AT KIAMBU THIS 23RD DAY OF JUNE, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Ndege

Muchiri Mugo(in person): Present

For Peter Kimani Mugo: Ms. Mutegi H/B Mr. Kibira Maina

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE