



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 307 OF 2008

IN THE MATTER OF THE ESTATE OF PETER CHARLES NDERITO (DECEASED)

ANGELA WAMBUI NDERITO.....APPLICANT

VERSUS

JOHN KANGETHE NDERITO.....1ST RESPONDENT

FLORENCE AUMA NDERITO.....2ND RESPONDENT

ELIZABETH WARIARA NDERITO.....3RD RESPONDENT

RULING

1. Before this Court for determination is the Amended summons for confirmation of Grant dated **18th August 2015** and amended on **15th May 2020** filed by **Angela Wambui Nderito** as Administratrix of the estate of **PETER CHARLES NDERITO** (hereinafter the **Deceased**).

2. In said summons the following orders were sought:-

“1. That the Grant of letters of Administration Intestate made to the said ANGELA WAMBUI NDERITO on the 28th August be confirmed.

2. That the deceased’s estate be distributed as per the proposal in the supporting Affidavit of Angela Wambui Nderito filed herewith.

3. That costs of this application be costs in the cause”.

3. The summons which was premised upon **section 71 of the Laws of Succession Act, Rule 40 (1)** of the **Probate and Administration Rules** and other enabling provisions of the law was supported by the Affidavit dated **13th May 2020** sworn by the Administratrix.

4. The Interested Party **FLORENCE AUMA NDERITO** had opposed the summons for confirmation of Grant through her objection dated **14th June 2016** in which she raised the following grounds.

“1. That the former administrator, Elizabeth Wariara Nderito has not filed in court a full and accurate inventory of the Estate from 2006-2015 as per the orders of the Honourable Court dated 28th August 2015.

2. That the new administrator has left out some properties of the estate previously available for distribution according to the Affidavit of Elizabeth Wariara Nderito, the former administrator, in unclear circumstances.

3. That the new administrator has not sought the consent of the said FLORENCE AUMA NDERITO w/o MARTIN MATHENGE NDERITO (deceased), a son and beneficiary of the estate of the late Dr. PETER CHARLES NDERITO.”

5. The **1st** Respondent **JOHN KANGETHE NDERITO** a beneficiary to the estate of the Deceased did not oppose this summons for confirmation of Grant. He submitted that the children of the Interested Party are now of age and that the Interested party’s sole intention is to

delay this matter as much as she can. He proposes a mode of distribution, which is similar to that proposed by the Administratrix.

6. The summons was canvassed by way of written submissions. The Administratrix filed submissions dated **18th August 2020** and Further submissions dated **14th July 2021**. **John Kangethe Nderitu** (a beneficiary) filed written submissions dated **14th July 2021**. The Interested Party did not file any written submissions nor infact did the Interested party file any reply to the Amended summons dated **15th May 2020**.

BACKGROUND

7. This succession cause concerns the estate of the Deceased **PETER CHARLES NDERITO** who died intestate on **9th February 1999**. The Deceased was survived by the following:-

(a) **Elizabeth Wariara Nderito – Widow**

(b) **Angela Wambui Nderito – Daughter**

(c) **Martin Mathenge Nderito (now deceased and survived by a widow Florence Aumo Nderito and two children Tanya Wariara Nderito and Wambui Nderito – now adults)**

(d) **John Kangethe Nderito – son**

8. **The estate was said to comprise of the following properties:-**

(a) **L.R. No. 3734/707 Nairobi Lavington – Matrimonial Home**

(b) **L.R. No. 7741/286, Kitisuru, which is a 1.25 acre parcel of land.**

(c) **L.R. No. IMS/316 Mainland South Mombasa**

(d) **Githurai Plot: share certificate No. 229, 025 acre parcel of land.**

(e) **Githurai Plot; share certificate No. 232 which is 0.25 acre parcel of land.**

(f) **1283 ordinary shares, standard chartered, account No. 46352, valued at approximately Kshs 256,000/- together with the Dividend cheques from the shares amounting to Kshs 196,000 which are listed at the unclaimed financial assets authority.**

9. Letters of Administration in respect of the estate of the Deceased were initially issued to the widow **Elizabeth Wariara** on **8th November 2006**. However vide a judgment delivered on **28th August 2015** **Hon Lady Justice M.W. MUIGAI** appointed **Angela Nderito** the current Administratrix to the take over as Administrator of the estate. The letters of Administration issued to **Angela** remain unconfirmed to date.

10. This matter has had a long and convoluted history. I have perused the previous Ruling and Judgments delivered in this cause.

11. In order to confirm the Grant and in order to give directions on the mode of distribution of an estate, it is essential that an inventory of **ALL** the assets comprising the estate be made available. Indeed one of the duties of an Administrator is to receive and collect the estate of the Deceased.

12. The court needs to know what assets are available for distribution. I am mindful of the fact that in her judgment **Hon Justice Muigai** found and held that the property known as **L.R. No. 774/285** was **not** part of the estate of the Deceased and was therefore **not** available for distribution.

13. However it is important to note that in said judgment **Justice Muigai** also made the following orders:-

“2. The new Administrator (Angela Nderito) shall trace and confirm properties comprised of the deceased’s estate available for distribution.”

14. Similarly, in a Ruling delivered by **HON LADY JUSTICE ASENATH ONGERI** on **29th November 2019** the Judge reiterated the orders made by the court on **28th August 2015** and directed that an accurate inventory be filed in court to show the properties available for distribution.

15. Courts it is said do not make orders in vain. The above orders have **not** been complied with. The Administratrix has not provided the court with an up to date inventory of all the assets available for distribution. In the premises this court cannot sanction the proposed mode of distribution.

16. Accordingly, I decline at this point to confirm the Grant and order that the Administratrix file in court an inventory of all the assets of the estate available for distribution. The said inventory to be filed and served on all parties within **forty (40)** days of todays date.

17. I further direct that the Amended summons for confirmation of Grant be served upon the objector who is at liberty to file a Reply to the same within **21 days**. This being a family matter I make no orders on costs.

DATED IN NAIROBI THIS 26TH DAY OF NOVEMBER 2021.

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MAUREEN A. ODERO

JUDGE