



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1835 OF 2011

IN THE MATTER OF THE ESTATE OF MOSES MBUGUA MWANGI alias MBUGWA MWANGI alias MBUGUA MWANGI (DECEASED)

DANIEL MWANGI MBUGUABENEFICIARY/APPLICANT

RULING

1. The Application coming for consideration in this Ruling is the one dated 17th June, 2019 seeking the following orders.

(i) THAT this Application be certified urgent and heard on priority basis.

(ii) THAT this Court be pleased to compel ISAAC GICHIA MBUGUA, JOSEPH MBAI MBUGUA, ELIZABETH WANJIKU and ELIUD NGANGA the Administrators to produce to Court within 14 days a full and accurate inventory of all assets and liabilities of the deceased including the deceased's parcels of land and location, bank accounts, shares held by the deceased, the deceased's motor vehicle and all the deceased's businesses.

(iii) THAT this Honourable Court be pleased to compel the Administrators to deposit into Court all the title documents which they are holding in respect of Property forming part of the Estate of the late MOSES MBUGUA MWANGI and CHRISTINE MITHIRI MBUGUA.

(iv) THAT this Honorable Court be pleased to compel the administrators of the Estate of the Deceased to render a true, proper and comprehensive account of their administration of the Estate including funds received by and spent by themselves from the date of their appointment to date.

(v) THAT the Administrators be ordered to provide within one month full detailed and accurate accounts of all the dealings and status of the moveable and immovable properties and all assets held by the deceased including the sales of such immovable and movable property that have been carried out from the date of death of the deceased to date.

(vi) THAT this Honorable Court be pleased to order the Administrators to produce or avail in court Bank Statements in respect of all the deceased's bank accounts and current status report of deceased's motor vehicles from the date of their appointment to date.

(vii) THAT the said Administrators be ordered to give an account of all the proceeds and/or income collected from the deceased's business known as MBUCHIA INVESTMENTS LIMITED and MBUMI COFFEE ESTATE MILLS from the date of death of the deceased to date.

(viii) THAT the Administrators be ordered to given an account of rental income collected from all the Commercial and Residential Properties located in Nairobi, Mombasa, Malindi and Kilifi.

(ix) THAT in default of providing accounts above, the Administrators be held personally and criminally liable as provided by law.

(x) THAT the default of providing accounts above, the Administrators be held personally and criminally liable as provided by law.

(xi) THAT the Honorable Court be pleased to issue an Order of Injunction restraining the administrators of the Estate of the deceased from collecting rent into their personal Bank Accounts with Respect to the Estate or in any other way interfering with the Deceased's estate pending the hearing and determination of this application.

(xii) THAT this Honorable Court be pleased to enjoin MR. DANIEL MWANGI MBUGUA as a co-administrator to the Estate of the Deceased for effective administration of the Estate and for the protection of all the beneficiaries' interests especially for purposes of collection and preserving of rental income.

(xiii) THAT this Honourable Court be pleased to issue an order that a joint estate account be opened in the joint names of DANIEL MWANGI MBUGUA, ISAAC GICHIA MBUGUA, JOSEPH MBAI MBUGUA, ELIZABETH WANJIKU MBUGUA for purposes of collecting and preserving rental income accruing from the following properties:

(a) L.R. No. 1870/IX/112 – Commercial Building located at Woodvale.

(b) L.R. No. 1870/IX/113 – Commercial Building also known as Mbuichia

(c) LR. No. 209/4385 – Commercial Property is Kariokor within Nairobi.

(d) LR. No. 209/233/2 – Commercial Property on Landhies Road within Nairobi

(e) L.R. No. XVII/107- Residential Apartments in Mombasa.

(f) L.R. No. XVII/88- Residential Apartments in Mombasa.

(xiv) THAT this Honorable Court be pleased to issue an order that an independent valuation be undertaken on all the deceased's movable and immovable properties to determine the actual value of the estate for purposes of equal and fair distribution among the beneficiaries.

(xv) THAT this Court be pleased to order that an ESCROW account be opened in the joint names of C. B. MWONGELA & CO. ADVOCATES and MUNYASYA & CO. ADVOCATES and DANIEL MWANGI and another co-administrator for purposes of receiving proceeds of government compensation with regard to the portion of the estate comprising of land in Kilifi known as PLOT NO. 14/IV/MN Mwapa.

(xvi) THAT the administrators be compelled to avail to the applicant all documents relating to intended purchase from the deceased's estate of land in Kilifi known as PLOT NO. 14/IV/MN Mwapa by the Government of Kenya which documents the applicant has been denied.

(xvii) THAT the Costs of this Application be in the Cause.

2. The Application is supported by the Affidavit of the Applicant DANIEL MWANGI MBUGUA who states that he is the first born son of the deceased herein and a beneficiary of the Estate of the Deceased MOSES MBUGUA MWANGI alias MBUGWA MWANGI alias MBUGUA MWANGI (Deceased).

3. The 3rd Administrator ELIZABETH WANJIKU MBUGUA filed a Replying Affidavit dated 17/7/2019 in response to the application dated 17.6.2019 in which she stated that the allegations raised in the said Application against the Administrators are not true.

4. The parties filed written submissions in the Application dated 17.6.2019. I find that the Applicant who wants the Administrators to account for the Administration of the Estate is seeking to be added as an administrator in his Affidavit and his submissions.

5. The Administrators on their part are accusing the Applicant of intermeddling with the Estate of the deceased and collecting Ksh.400,000 per month and also staying in one of the houses without authority.

6. **Section 45** of the Law of Succession Act. Section 45 of The Law of Succession Act provides:-

“45. (1) 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.

(2) Any person who contravenes the provisions of this section shall-

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

7. In the case of **Gitau and 2 others – Vs – Wandai & 5 others(1989) KLR 23**, Tanui J, as he then was stated as follows:-

“According to Section 45 of The Law of Succession Act, Cap.160 intermeddling with the property of a deceased man consists of taking possession, disposing or otherwise intermeddling with any free property.”

8. The following four administrators were issued with letters of Administration intestate on 30/1/2012.

(i) ISAAC GICHIA MBUGUA

(ii) JOSEPH MBAI MBUGUA

(iii) ELIZABETH WANJIKU MBUGUA and

(iv) ELIUD NGANGA NJOROGI

9. The Law requires that the Administrators file a Summons for Confirmation within 6 months of issuance of the Letters of Administration Intestate.

10. No such Summons for Confirmation have been filed and there is an avalanche of Applications which are derailing the entire process.

11. The four Administrators do not seem to be in control of the Estate and the same is likely to waste unless swift action is taken.

12. I direct that the Administrators file a summons for confirmation within 30 days of this date. The said summons to contain a list of all the assets and liabilities of the Estate and the proposed mode of distribution.

13. The summons to be served upon all the beneficiaries of the Estate who are required to appear in court for confirmation of the summons.

14. The issues arising from the Applications filed herein will be handled at the Confirmation stage.

15. All the beneficiaries to appear in Court within 30 days of this date for Confirmation.

16. The Application dated 17.6.2019 is deferred pending filing of summons for Confirmation and if the Administrators have already filed the summons all parties to appear in Court for the hearing of the same so that the process can move forward.

17. Mention on 3.3.2020 for compliance.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 31ST DAY OF JANUARY, 2020

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.