



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 458 OF 2015

IN THE MATTER OF THE ESTATE OF MG (DECEASED)

JMG.....PETITIONER

R U L I N G

1. What is before me is the Summons for Confirmation of Grant dated 24th June 2019. When it came for hearing on 17th October 2019, I noted that among the listed beneficiaries was WM, daughter, described as disabled. I also noted that she had not been allocated any share of the estate. I raised the issue with the parties and directed the administrator to provide for her. The administrator sought for a date in February 2020.
2. On 17th February 2020, the matter came for mention, GM and JG were present. The former told the court that they had complied with the court's directions of 17th October 2019 via the administrator GM affidavit sworn and filed on 22nd January 2020.
3. He depones that the said sister has a mental disability, that she had been allocated a 50 x 100 ft. plot out of **Molo South/Kuresoi Block 4/281 (Mwaragania)** which he depones he disposed of to cater for her medication and needs.
4. However, he provides no evidence of the alleged allocation. He also provides no evidence of the sale, and the amount of the proceeds of the sale. Of more importance is that he, the administrator depones to having disposed of portions of the deceased's estate without a confirmed grant Contrary to **Section 82 (b) (ii)** which states:-

“No immovable property shall be sold before the confirmation of the grant”

5. On whose authority did he sell the said WM share of the estate? What was the value and urgency of her “medication and needs’? What remained of those proceeds? Will the proceeds of the sale take care of all her needs and medication? To whom did he sell that share? If he has been living with her since the demise of his parents and was taking care of her, why would he sell her share before the grant is confirmed? The questions are just too many and he provided no answers.
6. In my view, and which is the view of the law, that was obviously an unlawful act, and *ultra vires* the powers given to the administrator. If, for any reason he needed any part of the estate to be liquidated to take care of his sister, then he was required to seek the authority of the court so that the property would be sold for value and in the best interests of the mentally challenged beneficiary. **Section 82 (d)** allows the personal representative to appropriate part of the estate for specific purposes, subject to **(d) (ii)**. It states

(d) to appropriate, at any time after confirmation of the grant, any of the assets vested in them in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased or any other interest or share in his estate, whether or not the subject of a continuing trust, as to them may seem just and reasonable to them according to the respective rights of the persons interested in the estate of the deceased, and for that purpose to ascertain and fix (with the assistance of a duly qualified valuer, where necessary) the value of the respective assets and liabilities of such estate, and to make any transfer which may be requisite for giving effect to such appropriation:

Provided that except so far as otherwise expressly provided by any will—

(i) no appropriation shall be made so as to affect adversely any specific legacy;

(ii) no appropriation shall be made for the benefit of a person absolutely and beneficially entitled in possession without his consent, nor for the purpose of a continuing trust without the consent of either the trustees thereof (not being the personal representatives themselves) or the person for the time being entitled to the income thereof, unless the person whose consent is so required is a minor or of unsound mind, in which case consent on his behalf by his parent or guardian (if

any) or by the manager of his estate (if any) or by the court shall be required. (Emphasis mine)

7. The administrator acted without authority. The law expressly requires that either there will be a manager of the beneficiary's estate or the court be requested for the authority. In this case, the administrator acted outside the law.

8. All I am saying is that the fact that the administrator's sister is mentally challenged does not give the administrative power to ride roughshod on her share of the estate, there are processes put in place to protect her interest so that she is not disinherited in the name of assisting her and taking care of her needs. Hence, it is my view that the administrator had no authority to dispose of the sister's share, if he did.

9. Secondly, it is noteworthy from the administrator's affidavit that the said WM was only allocated a 50 x 100 ft. plot while others gave themselves large chunks of the estate which they are alleged to have disposed off. Well, the truth is none of the beneficiaries had any authority to dispose of the estate before the grant was confirmed. Any such sale can only be null and void.

10. WM is entitled to an equal share of her parent's estate, in fact, even a bigger share because her parents apart from having the property they had, they also took care of her, hence the distribution as set out by the administrator is unfair, unjust and a violation of Wambui's right to inheritance of her parent's property. That cannot be allowed to stand.

11. In addition, I noted from the same Summons for confirmation of Grant that one son of the deceased one JK is said not to have been traced. On that alleged fact, the administrator went ahead to disinherit him. Surely he ought to know he cannot do that as has no such authority. For as long JK has not been declared dead, as long as he is believed to be alive and has not been declared dead, his siblings cannot be allowed to simply wish him away. His share of the estate ought to be held in trust until it can be determined that he cannot be traced at all. This court cannot preside over the kind of mismanagement of the estate, amounting to disinheriting one who is most vulnerable and the one who is lost. It is astonishing that the administrators are dealing with the estate as if it is their personal property. One of them is even heard to say, "I now propose to cede my share". He has NO share until the shares are confirmed when the grant has been confirmed.

12. Thirdly, it is not true that as deponed by GM that all the dependants had a share out of Molo South Kuresoi Block 4/28/(Muraragia), because only four names appear there;

JGM

DKM

ECB

Yet there are seven (7) beneficiaries. Hence for the beneficiaries who have consented to the distribution as it is, that is okay for them, but for the two (2), W and K, their equal shares must be protected.

To that end, each of the assets of the estate will be shared equally among the beneficiaries:

1. MOLO SOUTH /KURESOI BLOCK 4/281(MWARAGANIA) (seven (7) equal shares with one share each for WM and JK)
2. KTDA SHARES (4 (four) equal shares Include JGM, MG, WM and JK)
3. PYRETHRUM BOARD SHARES (4 (four) equal shares JGM, MG. WM and JK)
4. KENYA FARMERS ASSOCIATION SHARES (4 (four) equal shares JGM, MG WM and JK)
5. PLOT NO. 0718-AGRICULTURAL AND INDUSTRIAL (LAIKIPIA) (4 (four) equal shares JGM, MG, WM and JK)

Meanwhile, both W and K share to be held in trust by both administrators.

In re Estate of Ndi Ituga (Deceased) [2016] eKLR *Mabeya J* dealing with a similar issue directed that the alleged mentally challenged beneficiary be assessed and a report filed with the court to enable the court make the appropriate orders under the Mental Health Act.

It is necessary in this matter that the court gets to know the extent of Wambui's disability so as to make appropriate orders. The administrators to avail her for disability assessment/ or avail to court the assessment report that was used to register her as a person with disability.

This to be availed 30 days hereof.

Dated, at Nakuru this 19th day of March, 2020.

Dated, delivered and signed at Nakuru this 30th April day 2020 .

Mumbua Matheka

Judge

In the presence of: Via Email By consent of Counsel

Court Assistant: Edna

Mention on the 3rd of June 2020 electronically unless otherwise directed, to confirm compliance.

The Deputy Registrar to serve the Order herein on the parties for compliance

The Deputy Registrar to make the appropriate arrangements for the mention.

Mumbua T Matheka

Judge