



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 33 OF 2010

IN THE MATTER OF THE ESTATE OF BETH NYAMBURA WAGAKO (DECEASED)

JUDGMENT

1. The deceased herein Beth Nyambura Wagako died intestate and domiciled in Kenya on the 4th of November, 2009.
2. On the 14th of January 2000 one of the survivors of the estate Alice Wanjiru Wagako petitioned for grant of representation ad colligenda Bona for purposes of preserving the estate
3. The Petitioner listed 8 survivors namely:
 - a. Rachael Njeri
 - b. Alice Wanjiru
 - c. Nancy Wairimu
 - d. Grace Wangu
 - e. Susan Wambui
 - f. Jane Waitheroro
 - g. Irene Wamukore
 - h. John Mwangi
4. On 12th of June 2015 the said Alice Wanjiru Wagako petitioned for a full grant where she obtained consents from her sibling save for Rachael Njeri and John Mwangi. A grant was issued on the 3rd of November 2018.
5. The application subject of this judgment is summons dated 5th February, 2019 seeking for orders:
 - a. That the Grant of letters of Administration issued to Alice Wanjiru Wagako be revoked and /or annulled and the administration of the estate herein be vested on Nancy Wairimu Mungai and John Mwangi Wagako.
 - b. That Alice Wanjiru Wagako the said Administrator be ordered to produce to this court a full and accurate inventory of account of her administration of the subject estate.
 - c. That the said Alice Wanjiru Wagako the said Administrator be ordered to disclose how much she realized from the sale of No. L.R. NYA/Passenga/183, registered in the name of the Deceased, mature trees, and livestock.
 - d. That all proceeds of such sale be deposited in an interest-bearing Estate Account to be operated under the supervision of this honourable court.

e. That this honourable court do find that Alice Wanjiru Wagako, has seriously intermeddled with the subject estate and do penalize her accordingly under the provisions of Section 45 of the Law of Succession Act.

f. That the costs of this summons be met by Alice Wanjiru Wagako from her own resources.

6. The application is based on grounds that the administrator has not taken any steps to conclude the administration of the Estate since the grant issued, the administrator fraudulently failed to include amongst the estate assets L.R. No. NYA/PASSENGA/183 and NYA/NYAIROKO/143, she sold NYA/PASSENGA/183, farm animals, trees and has failed to account. That her inaction indeed caused the file to be close resulting in an application to reinstate the suit.

7. The application was opposed by the administrator by way of a replying affidavit dated 25th March 2019, wherein she denied having sold L.R. NO. Nyandarua/Passenga/183. She explained that all siblings had agreed at the intervention of a relative that the same goes to one of them Irene Wamukore. She is aware that Irene subdivided the said land and sold one portion in order to pay survey fees. She also denied selling any other assets. She averred further that all beneficiaries agreed to sell trees to raise legal fees.

8. As for property Nyandarua/Nyairoko/143 she was not aware that the same was in their mother's name.

9. The respondent further explained that a substantial part of the estate was to revolve to their mother and her children from their father's estate and the same is yet to be realised, save for an order of partial distribution which order was issued on the 27th of February, 2019.

10. Further the partial distribution of their father's estate to this estate is in the tune of Kshs.12,609,502 and she has sought for a partial confirmation in order to share the same amongst the 8 survivors.

11. The application referred to by the respondent is dated 25th March 2019 and seeks for partial confirmation in order to distribute Kshs.12,609,502 being a portion of rent yielded from L.R. No. 209/1496 Nyakio house River Road and L.R. No. 209/2211/2 2nd Parklands Avenue. The application further seeks for confirmation of the grant issued on 3rd November, 2015.

12. The Applicant filed a rejoinder on the 11th of September 2019 denying the averments contained in the replying affidavit of the Petitioner dated 25th March, 2019 and reiterating the inaction and unbecoming conduct on the part of the petitioner. And lack of good will to pursue administration of this estate to its conclusion.

13. Further the applicant deposed to the fact that the family is divided 2 camps 4 on each side and it may assist to have both camps represented in the administration of the estate.

14. Susan Wambui Wagako a beneficiary filed an affidavit dated 29th August, 2019 in which she denied the allegations made against the administrator suggesting that the application is meant to delay distribution of the assets as some of the heirs are unfairly benefitting to the exclusion of others and a part form benefitting their only brother on whose behest the application was made seem to expect a larger share of the estate.

15. Dorothy Wangui Njoroge another beneficiary swore an affidavit dated 29th August 2019 echoing the sentiments of her sister Susan Wambui Wagako.

16. The matter proceeded by way of oral evidence and submissions filed on behalf of the parties.

17. In evidence Nancy retracted some of her allegations against the applicant including sale of trees from Nyandarua/Nyairoko/143, she admitted that they had all had all agreed to sell the same in order to raise legal fees, she also retracted the allegation that the respondent had sold Nyandarua/Passengo/183 and had failed to account.

18. Section 76 of the Law of Succession Act provides for situations that may lead to revocation of grant of representation whether confirmed or not which include inter alia subsection (d) where the person to whom the grant was made has failed after due notice and without cause to apply for confirmation of the grant after 1 year of its issuance or any period that may have been prescribed by court, fails to diligently administer the estate and fails to account.

19. Having considered the evidence before court I form the opinion that the Respondent has been slow in bringing the application for confirmation. However, she has given an account of the circumstances surrounding this estate, which sufficiently explains the delay. She explained that the estate comprises not only the deceased personal properties but also substantial property bequeathed to her by her late husband and the fact that distribution of their father's estate has delayed due to controversy caused by a scrambles of the said estate by some members of his family some of whom have a claim in this estate. The closure of the file was also adequately explained.

20. In order to arrive at a reasonable conclusion the court takes cognisance of the fact there is serious rivalry amongst the 8 children of the deceased and secondly that an application for confirmation of the grant has been pending prosecution for close to 1 year and its prosecution may have been hampered by the application subject of this ruling. It is also my view that an additional Administrator is likely to complicate this matter further yet the same is near conclusion.

21. In the circumstances therefore and having arrived at a conclusion that the respondent has sufficiently explained herself and for the reasons remunerated in preceding paragraph above the application is declined in its entirety

22. The Respondent is directed to immediately set the summons for confirmation of grant dated 25th March 2019 for hearing forthwith.

23. Costs in the cause.

Dated and Delivered in Nairobi on this 12TH day of MARCH 2020.

ALI-ARONI

JUDGE