



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 52 OF 2015

IN THE MATTER OF THE ESTATE OF GEOFFREY KAMAU GITUERE – (DECEASED)

PAULINE WAMBUI KAMAU.....1ST APPLICANT

ANASTACIA WANJIKU KAMAU.....2ND APPLICANT

IRENE WANJIRUKAMAU.....3RD APPLICANT

VERSUS

LUCY WANJUHI KAMAU.....1ST RESPONDENT

FRANCIS NGUGI KAMAU.....2ND RESPONDENT

RULING

1. The deceased Geoffrey Kamau Gitwera died on 26th November 2014. In his life, he married Mary Wakonyo (who died) with whom he had five children:-

- a. Olive Wambui;
- b. Lucy Wanjiru Kamau;
- c. Leah Wangari;
- d. Marion Wanjiku; and
- e. Anthony Gitwera Kamau.

He then married the second wife Lucy Wanjuhi Kamau (the 1st respondent) with whom he got the following children:-

- a. Rose Nyambura Kamau;
- b. Pauline Wambui Kamau (the 1st applicant);
- c. Anastasia Wanjiku Kamau (2nd applicant);
- d. Irene Wairimu Kamau (3rd applicant);
- e. Alice Wanjiru Kamau;
- f. Damaris Njeri Kamau;

g. Francis Ngugi Kamau (2nd respondent); and

h. David Gituere Kamau.

2. The respondents were on 17th December 2015 issued with a grant of letters of administration intestate. There is on record an application for the confirmation of the grant. The applicants (and their brother) challenged the proceedings on the basis that the deceased had died testate, having left a valid written Will dated 28th October 2014. On 8th March 2018 this court directed that there be an oral hearing to determine whether or not the deceased left a valid written Will. This was after the said Will was challenged by the respondents.

3. One of the properties in the estate of the deceased is Muguga/Muguga/T.258 which is developed with tenants. It earns rental income which the respondents are in charge of. On 8th March 2018 the court directed that, within 30 days from that date, the respondents do provide an accurate account and inventory of the income from the property and how they have applied the same. It is not disputed that the deceased had taken a loan on the property from Equity Bank Limited. The account was to show how the loan was being serviced. It is clear that the respondents have since not filed the inventory and account.

4. On 15th March 2019 the applicants brought the present application in which they asked that the 1st applicant be made a co-administrator. This was because the respondents have intermeddled with the estate of the deceased to the extent that it was wasting away. They alleged that Muguga/Muguga/T.258 was not being renovated, and therefore the tenants had moved out; the respondents were collecting Kshs.450,000/= monthly from the 40 tenants but were not paying electricity, collecting garbage or maintaining the premises and this was what was causing the tenants to vacate. They alleged that the respondents were not servicing the Equity Bank loan which had accumulated arrears of Kshs.1,900,000/= and there was threat by the bank to exercise its statutory power of sale. Lastly, they stated that Alice Wanjiru Kamau and Damaris Njeri Kamau were each in the University and needed fees which the respondents were not paying.

5. The application was served but did not attract any response.

6. I accept the sworn evidence contained in the supporting affidavit. I find that the respondents are in breach of their fiduciary responsibility to the estate and the beneficiaries, as required under **sections 82 and 83 of the Law of Succession Act (Cap 160)**. They have allowed the property of the estate to go to waste, and have not provided for the beneficiaries. Their conduct has caused the plot to be threatened with sale by the bank.

7. Consequently, I allow the application and appoint Pauline Wambui Kamau as a co-administrator of the estate of the deceased, along with the respondents. The proceeds of the rent from Muguga/Muguga/T.258 shall be held in the joint account to be opened and operated by the three administrators. I recall the grant issued to the respondents, to enable the issuance of a fresh grant in the three names.

8. Costs of the application shall be borne by the respondents in their personal capacities.

DATED and DELIVERED electronically, following consent of the parties, at NAIROBI this 30TH day of APRIL 2020

A.O. MUCHELULE

JUDGE