



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2945 OF 2008

IN THE MATTER OF THE ESTATE OF JOSEPHAT NGAMAU alias JOSEPHAT NGAMAU KARUTHI – (DECEASED)

ALICE NUNGARI KARUTHI.....1ST APPLICANT

MARGARET WAMBUI NGINYA.....2ND APPLICANT

VERSUS

JOHN KARUTHI.....1ST RESPONDENT

FRANCIS KARUTHI KINGE.....2ND RESPONDENT

RULING

1. The deceased Josephat Ngamau alias Josephat Ngamau Karuthi died intestate on 9th January 2008. On 19th December 2008 his sisters Alice Nungari Kinuthia and Margaret Wambui Nginya petitioned for the grant of letters of administration intestate. The grant was issued to them on 1st July 2009. The deceased's nephews Francis Karuthi and John Karuthi (on their behalf and on behalf of all other nephews) filed an application to revoke the grant. The two are the respondents herein. On 4th October 2010 the parties recorded a consent in which the two nephews and the applicants became the joint administrators of the estate of the deceased. The parties were asked to propose the distribution of the estate. The application for confirmation was heard and a judgment delivered on 30th June 2011. The court decided that:-

“Other than ancestral piece of land known as Tile No. Ndumberi/Riabai/1579 and Ndumberi/Riabai/1580 which the deceased's sisters conceded are ancestral pieces of land, I hold that the rest of the pieces of property in the deceased's name belonged to himall other properties of the deceased should be valued and be shared equally among the deceased's sisters and his late brother's families with each being taken as a unit. If the parties will not agree on the mode of distribution after valuation of the properties, I direct that they all be sold and the proceeds thereof be shared equally among the deceased's siblings as stated above. The parties have liberty to apply.”

2. There is no dispute that the properties have neither been valued nor distributed. There has been no agreement. The properties have not been sold. The judgment has not been reviewed, varied or reversed.

3. On 28th June 2018 the applicants filed the present summons and asked that the court assists in the valuation and selling of the properties so that the proceeds of the sale can then be shared equally among the beneficiaries in pursuant to the court's judgment delivered on 30th June 2011. They asked that David Chege Kariuki of Tuliflocks Ltd be appointed to value the properties. In their affidavit in support of the application, the applicants stated that there is need for the court to compel the valuation and distribution of the estate, because they had severally requested, and written to the respondents seeking that they agree on the valuation but the latter had failed to take any action. The applicants have proposed valuers to the respondent but the latter had not sought to have the properties valued. The various letters were annexed.

4. The 1st respondent John Karuthi filed a replying affidavit to oppose the application. He stated that the choice of David Chege Kariuki of Tuliflocks was not acceptable as they (the respondents) had not participated in his choice. He suggested a government valuer, or a valuer acceptable to them. He denied that they had frustrated the realisation of the fruits of the judgment, or that they had failed to attend meetings as deponed by the applicants. He stated that they were keen to have an amicable resolution of the matter of distribution of the estate.

5. Mr Amendi for the applicants and Mr Ireri for the respondents filed written submissions on the application. I have considered them.

6. Nine years is a long time. If the parties have not shared the estate on their own, it is incumbent upon the court to intervene, at least for the benefit of all the beneficiaries of the estate of the deceased. The applicants and the respondents are joint administrators of the estate of the deceased. Under **section 83(f), (g), (h) and (i)** of the **Law of Succession Act (Cap. 160)** they were jointly and severally under a duty to complete the administration of the estate of the deceased by distributing to the beneficiaries their respective entitlements as was ordered by the court, and to recount to the court for that distribution. As was ordered in this case, they were under duty to value the properties of the estate and distribute it equally as directed in the judgment, or sell the property and share the proceeds equally as stated. For 9 years this has not been done.

7. It is clear that they could not agree on the mode of distribution. It is clear they could not agree on the values, now that the sale of the property was the left option.

8. Parties who come to court are entitled to an effective remedy. Where there is a decree, it is expected that there be an effective and expeditious realisation of the fruits of that decree. Court orders are not issued in vain. Once issued, parties have to comply with them.

9. It is for these reasons that I allow the application in the following terms:-

(a) within 60 days from today, the estate of the deceased shall be valued by David Chege Kariuki of Tuliflocks Limited whose valuation shall be binding;

(b) based on the valuation, the applicants and the respondents shall distribute the properties as ordered in the judgment delivered on 30th June 2011;

(c) if the distribution shall not have been done as in (b) above, the properties shall be sold and the proceeds shared equally as ordered in the judgement; and

(d) the valuation costs and the sale costs shall be borne by the estate.

10. I make no orders as to costs.

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

A.O. MUCHELULE

JUDGE