



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 4 OF 1986

IN THE MATTER OF THE ESTATE OF JOSPHAT DAUTI KIBANGA (DECEASED)

JOSEPHINE IGOKI KIBANGA.....1ST RESPONDENT

VERSUS

JANE KAIMURI MWANGI 1ST RESPONDENT

JOYCE TIRINDI KIBANGA..... 2ND RESPONDENT

REBECCA GACHOGA MUTEGLI..... 3RD RESPONDENT

LEONARD MUTHEE KIBANGA.....4TH RESPONDENT

AND

IMELDA KARENDI MBURUGUADMINISTRATRIX

RULING

1. **Josphat Dauti Kibanga (“deceased”)** died at Nairobi on 27/2/1963. After various objections and counter-objections, a grant of Letters of Administration for the estate of the deceased was issued to **Imelda Karendi Mburugu (the Administratrix”)** on 6/5/2010 jointly with **Joseph Mutegi Kibanga** (now deceased).
2. On 25/5/2012, the administratrix applied for the confirmation of that grant which was confirmed vide a consent of the parties on 3/4/2013 and the Certificate of Confirmation issued on 20/4/2013.
3. Despite as aforesaid, the administratrix dragged her feet in having the administration of the estate concluded which resulted in the 2nd and 4th respondents applying for the revocation of the grant on 17/11/2017.
4. In a ruling by this Court, on that application amongst others which was rendered on 7/6/2018 (which is two years ago), the Court expressed its displeasure in the slow manner in which the administratrix was administering the estate as follows: -

“It is not in dispute that this matter has been in court for the last 32 years having been filed in 1986. ... No doubt 7 years is a long period for the estate to remain still under administration. I am unable to accept the explanation given by the administratrix for the delay. There is no evidence on record to show that she had approached the court for assistance after the applicants or when she faced resistance or difficulties in effecting the confirmed grant. An administrator of an estate is duty bound to move with speed after confirmation of grant to effect the grant. Indeed, the administration of the estate is expected to be completed within six months of the confirmation of grant. In this regard, 7 years is not only inordinate but unacceptable. ...

If the court was to revoke the Grant at this point, it could lead to a further delay than hastening of the conclusion of this matter”.

5. It is clear from the foregoing that the Court was not happy with the snail’s speed at which the administratrix was administering the estate. The Court refrained from revoking the grant in order to give the administratrix a chance to redeem herself by having the administration concluded as quickly as possible.
6. In the said ruling, the Court declined to allow the sale of one of the properties as proposed by the administratrix as the majority of the beneficiaries wanted that property to be retained for themselves. That property is **L.R NO. Meru Municipality Block/II/30**. The Court

stated as follows as to the administratrix's position that the shares for that property could not be achieved: -

“Looking at the report I have referred to, with the greatest respect to the maker thereof, the report is shallow and pedestrian to say the least. In law, properties can be subdivided to the bare minimum possible without touching the property itself or the ground. ... The so called bare minimums will be met if the administratrix had bothered to consult a fully qualified and experienced planner. For her to have stuck to such a deplorable and substandard report, casts her competence as an administratrix or her bona fides”.

7. The end result was that the Court was of the view that the administratrix was not being vigilant enough in having the administration of the estate concluded. She was consulting suspect planners who were unable to give her proper advise on how to effect the shares in the subject property. The Court therefore ordered that the parties agree on who was to buy whose share in the property so that each beneficiary is left free to deal with his/her own share.

8. Subsequently, it was agreed that **Jane Kaimuri Mwangi and Joyce Tirindi Kibanga** do purchase the administratrix's share in that property for KShs.8,000,000/-. The consent was recorded on 9/4/2019. The time lines for the payment of the said sum was given as 30/1/2020.

9. On 9/3/2020, the parties appeared before me and it was disclosed that the last payment of KShs.1,500,000/- was not paid on 30/1/2020 but as agreed instead, **Jane Kaimuri Mwangi and Joyce Tirindi Kibanga** paid a sum of KShs.3,203,333/ on 20/2/2020. That they withheld a sum of KShs.796,667/- allegedly as monies that the administratrix should have paid to **Josephine Igoki** or monies held by her.

10. The Court was concerned that the administration of the estate was taking rather long to be concluded. It is then that **Mr. Murango**, Learned Counsel for the administratrix informed the Court that the Lease for the property known as **L.R NO. Meru Municipality Block/II/30** had expired and had not been renewed.

11. Before the Court could give any directions on the issue of the delayed payment and the issue of the alleged balance, if any, it directed as follows: -

“In view of the disclosure that the Lease in respect of the property has expired: -

1) The administrator (sic) to provide the Court with the details when the Lease expired.

2) The effort and steps taken to have the same extended or re-issued.

3) Details of what is required for the said Lease to be extended.

M on 31/3/2020”.

12. When the matter came up for mention on 8/6/2020, **Ms. Mbogo**, held brief for **Mr. Murango Mwenda** and informed the Court that because of **Covid-19 pandemic**, no steps had been taken in terms of the courts directions of 9/3/2020. That they had written to the Lands Office requesting for the renewal of the Lease. That they had informed the firm of **Kiautha Arithi & Co.** of that fact.

13. It is clear from the foregoing that the administratrix did not comply with the express directions of this Court. She did not disclose to Court when the Lease expired. She also did not inform the Court when she discovered of the said expiry. There was no evidence that she had taken any step whatsoever to safeguard the interests of the estate in so far as the said property is concerned.

14. All the Court wanted to establish from the administratrix in giving the directions it gave on 9/3/2020 was; *when did the Lease expire? When did the administratrix discover the fact of such expiry? When she so discovered, did she inform the beneficiaries or the Court? If not, why yet she is a trustee of the beneficiaries on behalf of the Court? What steps did she take upon discovering that the subject property may be lost of the estate? What was required of her, the Court or the other beneficiaries to safeguard the said property?*

15. In failing to answer any of the foregoing questions, the fears expressed by **Jane Kaimuri Mwangi and Joyce Tirindi Kibanga** in their application of 17/2/2017 were well founded. The reservations of the Court, in its Ruling of 7/6/2018, as to the lack of seriousness and commitment of the administratrix were confirmed. Stating that a letter had been written to the Lands Office was not enough. The administratrix needed to do more to convince the Court that she is committed to efficiently and expeditiously undertake the administration of the estate.

16. It is not lost of this Court that in its Ruling of 7/6/2018, the Court had directed the administratrix to file accounts on the administration of the estate within 30 days. The document filed on 14/9/2018 cannot pass as an account. However, it disclosed that notwithstanding the administratrix been at the helm for now 7 years, by then, not a single property had been transmitted to any of the beneficiaries. Surely, that is but sheer dereliction of duty.

17. An administrator of an estate of the estate of a deceased person is a trustee of the beneficiaries on behalf of the Court. Once appointed by the Court, an administrator must move with speed to identify, collect and preserve the estate. After the confirmation of the grant, the administrator should expeditiously take steps to conclude the administration and file an account within a reasonable time. Any delay in so doing is dereliction of duty and will attract sanctions.

18. **Section 76 of the Law of Succession Act Cap 160, Laws of Kenya** provides that a grant whether confirmed or not can be revoked by the

Court either of its own motion or on application, if an administrator has, after due notice and without reasonable cause, failed to *proceed diligently with the administration of the estate*.

19. Even after expressing its displeasure on the slow speed in which the administration was taking in its Ruling of 7/6/2018, the Court gave the administratrix a chance to redeem herself. Two years later, nothing has happened. When the Court directed her to demonstrate her diligence vide its directions of 9/3/2020, the administratrix failed completely. Her conduct may probably be contributed by the fact that she is comfortable with the *status quo*.

20. In this regard, for the interests of justice it is imperative that those who are willing to move forward with the administration of the estate expeditiously be given an opportunity to do so. Under **section 47 of the Law of Succession Act**, I hereby remove **Imelda Karendi Mburugu** as the administratrix of the estate. In her stead, I appoint **Jane Kaimuri Mwangi and Joyce Tirindi Kibanga** as the joint administrators of the estate of the deceased. A fresh grant to that effect hereby issues accordingly and the Certificate of confirmation be rectified accordingly.

21. As regards whether the sum of Kshs.7,203,333/- paid by **Jane Kaimuri Mwangi and Joyce Tirindi Kibanga** to **Imelda Karendi Mburugu** is sufficient in respect of her share in **L.R NO. Meru Municipality Block/II/30**, let the parties file and exchange affidavits and submissions within 30 days for consideration by the Court.

22. On record is an application dated 19/5/2020 by **Josephine Igoki Kibanga** seeking two orders, viz, the rectification of the grant to include her interest in **Nthimbiri/Kiutha/104** and an injunction to restrain her eviction from that property.

23. When the matter came up for hearing on 8/6/2020, the parties were not agreeable to the rectification of the grant However, all parties were agreeable that the said **Josephine Igoki Kibanga** has been living on the subject property since time immemorial. They were agreeable that she be allowed to continue living on the said property for the rest of her life.

24. There being no objection to the prayer for injunction, I allow prayer 2 and permanently restrain all the respondents, their servants and/or agents from in any way whatsoever and howsoever interfering with her quiet possession and occupation of that portion in **Nthimbiri/Kiutha/104** where she is currently occupying. Prayer no. 1 is dismissed and there will be no order as to costs.

Orders accordingly.

DATED and **DELIVERED** at Meru this 11th day of June, 2020.

A. MABEYA

JUDGE