

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 1426 OF 2019

IN THE MATTER OF THE ESTATE OF NIKODEM MURIUKI MUGWANDIA (DECEASED)

RULING

1. Before me is an application by way of Chamber Summons dated 4th November, 2019 filed by the beneficiaries of the estate of the deceased under Section 70 of the Law of Succession Act (*Cap. 160*) and Rule 49 of the Probate and Administration Rules, seeking the following orders –

- 1. That the listing of the assets and liabilities and values thereof in the application for grant of probate be dispensed with.**
- 2. That the costs of the application be provided for.**

2. The grounds of the application are that the requested dispensation with the requirement for listing the assets, liabilities and values is in the best interests of the estate and beneficiaries, and that no prejudice would be caused to any third party if the orders sought were granted.

3. The application was filed with a joint affidavit sworn by the beneficiaries Virginia Woki Muriuki, Fiona Wangui Muriuki and Caroline Wangari Muriuki on 4th November 2019, in which it was deponed that the deceased's assets had grown steadily since the making of the Will dated 22nd December 2015 and that the listing of the deceased's assets in the application for grant of letters of administration would expose the family to undue publicity which would be prejudicial to the beneficiaries as it would expose them to unscrupulous persons wishing to cause them harm. It was also deponed that the beneficiaries were ready and willing to deal with any liabilities that might come to light upon publication of the Grant of Probate before distribution of assets, and that the beneficiaries of the Will had already entered into a deed of family arrangement in which the assets and liabilities and the manner in which the assets and liabilities would be dealt with was set out.

4. On the hearing date, Counsel for the applicants Ms. Payal Dave urged the court to grant the orders sought to enable the executors apply for the grant of probate in the matter.

5. I have considered the application and documents filed. I note that by a letter dated 27th July 2020 addressed to the Deputy Registrar, Counsel for the applicants indicated that the matter had come up for hearing before Ongeri J. on 4th March 2020, but was put off to 25th March 2020 to enable the beneficiaries appear in person "*in camera*" to give the background reasons for the application to the court, which did not take place because of the COVID-19 pandemic outbreak.

6. That notwithstanding, in my view, the law is very clear on what is to be disclosed in an application for grant of probate or letters of administration. In that regard, Rule 7(1)(d) of the Probate and Administration Rules provides as follows –

“7(1). Subject to the provisions of sub rule (9), where the applicant seeks a grant of representation to the estate of a deceased person to which estate no grant or no grant other than one under section 49 or a limited grant under section 67 of the Act has been made, the application shall be by petition in the appropriate form supported by an affidavit in one of Forms 3 to 6 as appropriate containing so far as they may be within the knowledge of the applicant, the following particulars –

(d) A full inventory of all his assets and liabilities at the date of his death (including such, if any, as may have arisen or becomes known since that date) together with an estimate of the value of his assets movable and immovable and his liabilities.”

6. It can be seen from the above that the words used in the rules are mandatory as the word “shall” was used. Thus unless in cases where a limited grant is applied for, an applicant for a full grant of probate or letters of administration must disclose the known assets and estimated value as well as the liabilities of the deceased as at the time of applying for the grant. Since this court has not been referred to any powers conferred upon it to dispense with the above mandatory statutory requirements under Rule 7 above, this application will fail.

7. Even if the law had granted such discretion to this court to dispense with the listing of the assets and liabilities of the deceased, the applicants have not disclosed any tangible reasons why the court should grant the exemption sought. Merely stating that the family will be exposed to undue publicity and unscrupulous persons in my view cannot be a sufficient reason for this court to grant the applicant's request, as the assets and the liabilities of the estate of the deceased are not of interest only to the beneficiaries but also to other parties such as creditors and the Government.

8. I find no merits in the application and dismiss the same.

Dated and delivered this 26th October, 2020.

George Dulu

JUDGE

Delivered virtually due to the COVID-19 pandemic and the Ministry of Health regulations.