



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Coram: D. K. Kemei - J

P&A CAUSE NO. 603 OF 2010

**IN THE MATTER OF THE ESTATE OF THE LATE STENSLOUS MUTUA KAWEA Alias STENLOUS MUTUA Alias KAWIA
(DECEASED)**

PHILOMENA STANSLOUS MUTUA (now deceased).....1ST PETITIONER

SERAPHINE MUTUA.....2ND PETITIONER

VERSUS

FINTAN MUKUTI MUTUA.....PROTESTOR

AND

HOMEWARD AGENCIES LTD.....INTENDED 1ST INTERESTED PARTY

ESTHER MUTHONI KARIUKI.....INTENDED 2ND INTERESTED PARTY

JOSEPH MAINA KARIUKI.....INTENDED 3RD INTERESTED PARTY

RULING ON DIRECTIONS

1. Vide this court's ruling dated 21/01/2020 the grant issued to the Petitioners herein Philomena Stanslaus Mutua and Seraphine Mutua on 28/10/2010 and confirmed on 20/01/2012 was revoked and that the family members of the deceased were directed to sit down and come up with names of proposed administrators not exceeding four within thirty ((30) days from the date of the said ruling failing which the court would proceed to appoint administrators for the estate.
2. The 2nd Petitioner together with some interested parties have filed applications which are now pending determination. It has been agreed by the parties herein that those applications be put on hold pending the appointment of Administrators for the estate.
3. Mrs Nzei for the 2nd Petitioner and some Beneficiaries namely Theresia Kaswii Nzili, Juliana Kaveke Mutua, Flotia Kalunde Mutua and Paul Mwanzia Mutua submitted that majority of the family members have proposed three persons to be appointed as administrators namely:- Seraphine Kithia Mutua, Paul Mwanzia Mutua and Flotia Kalunde Mutua. Learned counsel added that the name of the Protestor herein was opposed by the family members since he had earlier sold some properties of the estate before confirmation of grant a situation which will lead to him facing conflict of interest when the administrators will be seeking to recover the properties so sold by him to third parties.
4. Mr. Fintan Mukuti Mutua the protestor herein submitted that the family had earlier sat and agreed on four names to be appointed as administrators and that he was to be among the said proposed administrators. He confirmed that during the alleged sale of the family property alluded to by the 2nd Petitioner he had only acted as a broker and that the transaction was to go through after the succession had been finalized. He added by urging this court that he should be made an administrator and that he promised to ensure that fairness in the distribution of the estate will be observed.
5. I have noted the sentiments of counsel for the 2nd Petitioner and some beneficiaries. I have also considered the views of the Protestor herein. It is not in dispute that the estate of the deceased currently does not have an administrator and therefore the need to appoint one as soon as possible so as to ensure that there is no vacuum. An estate without an administrator stands the risk of being interfered with and or wasted to the prejudice of those entitled to benefit thereunder. The issue for determination is whether the Protestor should be included among the names proposed for appointment as administrators.

6. It is noted that the Protestor had earlier waged a spirited battle against the 2nd Petitioner culminating in the ruling dated 21/01/2020 in which the grant was revoked. Both the Protestor and 2nd Petitioner seem not to see eye to eye and that their spat or differences appear to be far from over. The 2nd Petitioner has presented some family deliberations made before the area chief wherein the three names were proposed whereas the Protestor did not present any evidence of family meetings in which his name was also fronted. The 2nd Petitioner swore an affidavit and annexed the chief's letter containing majority members of the family while the Protestor did not file anything to that effect. It appears to me that the 2nd Petitioner has managed to sway a majority of the family members to her side while the protestor appears to be a lone ranger. From the arguments of both the 2nd Petitioner and the Protestor as well as the conduct of the family members who have sided with the 2nd Petitioner, there is a feeling of some fear that the Protestor is likely to rock the boat from within due to irreconcilable differences. There is indication that the proposed administrators intend to pursue third parties who had bought land from the protestor before confirmation of the grant and which will create conflict of interest on the part of the protestor should he be appointed as an administrator. The protestor on his part maintain that the 2nd petitioner had disposed of some assets of the estate prior to and after the confirmation of grant and therefore she is also tainted. However, majority of the family members appear to have faith in the 2nd Petitioner and have thus tipped the scales against the Protestor. Indeed, where there are wrangles amongst administrators, nothing meaningful can be achieved by the estate of the deceased and that the beneficiaries stand to suffer delay and prejudice owing to non-distribution of the estate. The main role of administrators is to distribute the estate to the beneficiaries and hence a conducive atmosphere is paramount.

7. After considering all the issues, I find that it is proper to appoint the three persons fronted by a majority of the family members as administrators for the estate. Even though the grant that had been issued to the 2nd administrator was revoked pursuant to a protest by the protestor, majority of the family members have proposed the 2nd petitioner's name to be among the administrators. This court will not fault the family members for their decision since there are stringent conditions imposed and implied upon administrators to adhere to while administering the estate and therefore they are always kept under leash and that they cannot do things without the involvement of the beneficiaries. They also render accounts to court as when required. No prejudice will be suffered by the protestor as he will still be consulted and engaged in the administration of the estate as a beneficiary. He is still at liberty to keep a watchful eye and to checkmate the new administrators in their duties of administering the estate. It is also noteworthy to state that the role of an administrator is fiduciary in nature without any attached benefits and who are to work solely for the welfare of the beneficiaries and further to be answerable to both the beneficiaries and the court. The Protestor or any beneficiary is at liberty to call upon the administrators to render accounts of their duties as and when called upon. Hence, the protestor's concerns will be taken into consideration even if he is not appointed as an administrator of the estate.

8. In the result, I proceed to issue the following directions: -

(a) This court hereby appoints Seraphine Kithia Mutua, Paul Mwanzia Mutua and Flotia Kalunde Mutua as administrators of the estate of the deceased.

(b) A fresh grant be and is hereby issued in the names of the new administrators and that upon the issuance of the same the administrators to proceed to file the requisite summons for confirmation of grant within sixty (60) days.

(c) Parties to proceed to take directions on the disposal of the pending applications dated 21/05/2020, 25/06/2020 and 18/09/2020 once responses thereon have been filed and exchanged.

It is so ordered.

Dated and delivered at Machakos this 16th day of October, 2020.

D. K. Kemei

Judge