



REPUBLIC OF KENYA

IN THE HIGH COURT KENYA AT MERU

SUCCESSION CAUSE NO. 567 OF 2015

IN THE MATTER OF THE ESTATE OF THE LATE MOSES KELLY MARETE - DECEASED

TITUS KINOTI MARETE1ST PETITIONER

LUCY MUTHONI MARETE.....2ND PETITIONER

VERSUS

GRACE MOSES MARETE.....PROTESTER

RULING

1. In Application dated 5.9.2016 the widow of deceased prayed that Yetu Sacco Ltd be directed to release Kshs 1,030,077.31 being the deceased persons shares/member deposit and investment to her for purposes of clearing Estate Debts.
2. That Kelvin Boss Marete be ordered to release 29 bags of fertilizer held by him for purposes of applying on Tea Bushes on LR. Nkuene/Uruku/1764.
3. That an order do issue re-opening workers houses on LR Nkuene/Uruku/1764 to facilitate picking of Tea growing therein as ordered on 15.6.2016. The application is supported by grounds as the face of application and by affidavit sworn at 5.9.2019.
4. Application dated 16.2.2016 Lucy Muthoni Marete and Titus Kinoti Marete sought that being legal representatives to the estate of the deceased, the court should direct the Manager Imenti Tea Factory to transfer to them the tea buying Registration No. 1M – 6400934 during pendency of the cause to cater for hospital bills of 2 beneficiaries who are ill and require specialized treatment.
5. That Grace Moses Marete be restrained from Trespassing into Nkuene/Taita/492 registered in the names of petitioners because Grace Moses Marete had Tea bushes transferred to her by deceased vide no. 1M 6400216 before he died.
6. In application dated 14.6.2016 which ruling was rendered on 2.8.2018, the widow of the deceased was given orders on 15th June 2016 to pluck the tea leaves growing on LR Nkuene/Uruku/1764 and sell the said plucked tea leaves to Imenti Tea Factory Ltd vide Tea Growers no. 1M -640034.
7. That order was not vacated when the riding in application dated 14.6.2016 was delivered except that the applicant therein and applicant in application dated 5.9.2016 is supposed to give an account of proceeds. So far of the delivered plucked tea leaves.
8. Whether the widow of the deceased benefitted intervivos from another delivery No. 1M 6400216 is a matter of evidence to be provided by the applicants in application dated 16th February 2016.
9. By an order made on 6.9.2016 the Judge ordered Yetu Sacco Ltd to provide to the court details of the number of shares registered in the name of the deceased and whether the shares are subject of any statutory nomination and if so the nominees thereto.
10. By a letter to Deputy Registrar dated 26.9.2016 Yetu Sacco Ltd CEO John M'rukaria wrote and said that the deceased shares as at 26th September 2016 were:-

Shares/Members Deposits – Kshs 824,779.61

Investment shares (Housing) – Kshs 210,000.00

Total

Kshs 1,034, 779.61

11. The CEO also wrote and said that the deceased had nominated his wife Grace Moses Marete as the next of Kin.
12. In consideration of the above this court finds and agrees with the widows counsels submissions that the shares/Deposits/Investment shares in the said Sacco in the name of the deceased are not liable and/or open to the court for administrative as assets in the intestate estate as the deceased person. The deceased person's wish is clearly recorded that his widow is to benefit from his shares in the Sacco. Yetu Sacco Ltd is therefore ordered to deal with the deceased person's interest in the according to section 39 of the Co-operative Societies Act cap 490 Laws of Kenya.
13. Regarding application that an order issues re-opening the workers houses on LR Nkuene/Uruku/1764, the parties herein are directed to ensure orders made on 15th June 2016 is complied with and that any obstruction to compliance will earn the offending party a penalty for contempt of court orders.
14. Allegations that fertilizer meant to be applied on tea leaves on LR Nkuene/Taita/1764 was taken by Kelvin Boss Marete is a fact that requires evidence to be adduced and an order cannot be made for a fact that has not been proved to the required standards.
15. If the fertilizer comes from the tea factory then same should be delivered directly and personally to the widow who for the time being has been authorised by the court to tend to, pluck and deliver the tea leaves in the factory using the deceased person's delivery No. 1M-640034.
16. Concerning LR Nkuene/Taita/492 which the court is being asked to restrain Grace Moses Marete from trespassing into, this court has not been provided with any title, certificate of search and/or Green card that could help establish if the said parcel is registered in the name of the deceased and therefore open to distribution in the deceased persons estate. The court's hands are therefore tied and cannot decide whether to restrain the protester from trespassing thereto.
17. The take of this court is that the applications that have been filed by parties in this matter since 2016 have not been able and cannot resolve the disputes as to validity of will that protester relies on as Executrix of the Estate; they can't resolve dispute as to intermeddling with the assets of the deceased and they can't resolve allegations of forgery that are being claimed by the parties.
18. Directions have to be taken how the substance of the cause is to be dealt with. Application dated 5th September 2016 succeeds to the extent that the shares of the deceased in Yetu Sacco Ltd should be released to the widow of the deceased who was nominated as next of kin.
19. Application dated 16th February 2016 is dismissed for reasons stated above. There shall be no orders as to costs.

HON A. ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON

23rd DAY OF MAY 2019.

In the presence of :

C/A:Japhet

Petitioners: Mr Mwirigi

protester:-Mr Kithinji holding brief for Kiome for petitioners.

HON A. ONG'INJO

JUDGE

Mr Mwirigi

We propose that we have time limit within which protester will file application for Grant of probate.

Mr Kithinji

No objection

Order: The Administratrix to file summons for confirmations of the will and serve within 21 days. Upon service on all the beneficiaries and anyone objecting should respond within 21 days.

Mention 25.7.2019 to confirm compliance.

HON A. ONG'INJO

JUDGE