



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1848 OF 2008

IN THE MATTER OF THE ESTATE OF PETER NJENGA KIMARI (DECEASED)

OKONGO KIMARI.....1ST APPLICANT

JANE WANJIKU NJENGA.....2ND APPLICANT

VERSUS

JAMES KAMAU NJENGA.....1ST ADMINISTRATOR/RESPONDENT

LYDIA MUTHONI NJENGA..2ND ADMINISTRATOR/RESPONDENT

PHILIP KAMUYU NJENGA...3RD ADMINISTRATOR RESPONDENT

RULING

1. The deceased Peter Njenga Kimari died intestate on 5th August 2005. On 5th August 2008 the respondents James Kamau Njenga, Lydia Muthoni Njenga and Philip Kamuyu Njenga (all being some of the deceased's children) petitioned the court for the grant of letters of administration intestate. The other children were Sarah Wairimu Macharia, Jane Wanjiku Njenga (the 2nd applicant), Martha Gathoni Njenga, Beth Mumbi Njenga and John Kamari Njenga. The grant was issued to them on 23rd February 2009, and confirmed on 21st September 2016. The estate comprised Dagoretti/Kangemi/1198, Dagoretti/Kangemi/1199, Dagoretti/Kangemi/T.254, Kijabe/Kijabe Block 1/160, shares with Kiambu Dairy and Pyrethrum (Githiga Muiru Company) Coop Union Limited – Kiambu Branch. The family agreed on the distribution of the estate.

2. The sharing that is of interest to this application relates to Dagoretti/Kangemi/1199. It was agreed that the parcel be shared equally among the respondents, the 2nd applicant, John Kimari Njenga and Betty Mumbi Njenga, and that the developments therein be valued and compensation for them be paid to Okongo Kimari (the 1st applicant), Njenga Orlale and Lydia Muthoni Orlale.

3. The applicants filed the instant application on 13th March 2019 in which they made several complaints. The 1st applicant stated that he had on Dagoretti/Kangemi/1199 erected a bungalow house comprising two residential units (Unit A and Unit B) that had 2 bedrooms each and which had been rented out to tenants. They were on a garden which he had landscaped. He had between February 2014 and 13th July 2016 spent over Kshs.2,556,936/= on the construction. He had borrowed the money from a Sacco. The respondents were to value these developments and compensate him. The respondents had instead failed to share the estate and enable him receive his compensation. He blamed the respondents, and in particular the 2nd respondent and her son Njenga Orlale, for the failure to honour their obligations under **section 83(a) of the Law of Succession Act (Cap160)**.

4. On her part, the 2nd applicant's case was that since the confirmation of the grant the respondents, as administrators of the estate of the deceased, had intentionally failed and/or neglected to distribute the estate in accordance with the certificate, or at all. She blamed the 2nd respondent and her son Njenga Orlale for demolishing her seven shops she had constructed on Dagoretti/Kangemi/1198 after evicting her tenants. She has spent Kshs.700,000/= on the development. She further alleged that the deceased had erected rental houses on both Dagoretti/Kangemi/1198 and 1199 and that the respondents were collecting rent from the houses and not accounting for them to the rest of the beneficiaries.

5. The applicants sought the revocation of the grant issued and confirmed to the respondents. In the alternative, they sought an order that the

respondents be compelled to complete the distribution within 90 days. Further, it was sought the respondents do provide a full and proper account of their dealings with the deceased's estate within 14 days, the 2nd respondent be ordered to personally compensate the 2nd applicant for the lawful and illegal demolition of her property, and costs.

6. The response was filed by the 2nd respondent on behalf of the others. It was conceded that the distribution had not been done. She stated that they had taken steps and got the estate transferred into their names with a view to distributing. The distribution, however, had been delayed by circumstances beyond their control. The 2nd applicant had declined the portion on which the main house was; the 2nd applicant had refused to surrender all the original title deeds to the lawyers to enable transfers; the 2nd applicant and other beneficiaries had been asked to submit the nominees to represent the family in cooperative societies but had not; two beneficiaries (Martha Gathoni Njenga and Sarah Wairimu Macharia) had failed to submit their ID cards when requested by the Land Control Board; the Nairobi City County City Planning Committee had delayed to meet regularly to approve the demarcation of the parcels; and some beneficiaries had failed to submit themselves to sign distribution documents. Regarding the demolition of the property of the 2nd applicant, she stated that this followed notice as the structures were on road reserve and were built without the permission of the administrator. In any case, the demolition was subject of another case that was pending before the court. Further, the 2nd applicant had been appointed by the family to manage the developments on Dagoretti/Kangemi/1198 and 1199, had received rent and had neither banked nor accounted for it. She was in occupation of Dagoretti/Kangemi/T.254 on which was rental property. She was collecting rent and not accounting, said the 2nd respondent. Regarding the property on Dagoretti/Kangemi/1199, the 2nd respondent stated that the developments were done before the deceased died, and the certificate of confirmation had decreed on the compensation.

7. Written submissions were filed by Mr. Farrah for the applicants and Mr. Kamau for the respondents. I have read them.

8. It is clear to me that the respondents have not completed the administration of the estate as ordered in the certificate of confirmation issued on 21st September 2016. Under **section 83(g)** of the **Act**, the respondents were required, within six months from the date of confirmation, to complete the administration of the estate in respect of all matters, and to produce to the court a full and accurate account of the completed administration. It took over two years for the applicants to lodge this application to complain that the respondents had not completed the administration of the estate of the deceased. It is common ground that the respondents, as administrators of the estate of the deceased, had not, within six months or at all, completed the administration. They had not filed any account of their dealings with the estate. If the applicants, or any other beneficiary, had stood in the way of the distribution of the estate, the respondents had not approached the court for any appropriate orders. Even where the administration had not been completed, the respondents had statutory obligation, after six months, to account to the court regarding the efforts done to administer the estate; to state what had been done and what was outstanding, and what the reasons made it impossible to complete. In **Re Estate of Adam Haji Ali Talib [2019]eKLR**, the High Court stated as follows:-

“The production of accounts is a key component of the administration process of a deceased person’s estate. From the moment a grant is issued to a personal representative of a deceased person, the grant holder becomes responsible to the Court in the carrying out of the duties of administrator. Accounts are an accountability tool that will tell the Court whether the administrator has been faithful to the role entrusted to him or her. When an administrator fails to file accounts as required, questions as to the integrity of the process are bound to arise as in the present case.....”

The court was discussing **section 83(e)** of the **Act** that deals with the role of the administrator before the grant is confirmed, but I find the observations are still relevant to the administrator’s role after the confirmation of the grant.

9. Under **section 76(d)(ii)** and **(iii)** of the **Act**, where the administrator has failed to proceed diligently with the administration of the estate, or has failed to provide such inventory or account as required under **section 83(g)**, the aggrieved beneficiary or party may apply for account or, in extreme case, seek for the revocation of the grant (In **Re Estate of Joseph Njenga Gathii (Deceased) [2016] eKLR**).

10. I find that the respondents have not been diligent in the administration of the estate of the deceased, and have failed in their obligations under **section 83(g)** of the **Act** by not providing account to the court within six months, or at all.

11. I consequently allow the application in the following terms:-

- (a) the respondents have 90 days from today to complete the administration of the estate of the deceased by distributing the estate as ordered in the certificate of confirmation;
- (b) in the meantime, the respondents shall within 30 days provide a full and accurate account to the court of all their dealings with the estate of the deceased, including the complaints raised by the applicants on the instant application;
- (c) the applicants have an obligation to cooperate with the respondents to enable the sharing of the estate as ordered in the certificate of confirmation;
- (d) the cooperation includes releasing all original title deeds and providing all information necessary;
- (e) if the applicants, or any beneficiary, fail to provide their consent or signatures to enable any land transfers within 7 days of any written request, the deputy registrar of this court shall sign on their behalf;
- (f) if any of the orders in (a) or (b) is not honoured, except for non-cooperation on the part of the applicants, the grant to the respondent shall stand revoked and the certificate of confirmation set aside; and
- (g) the respondents shall personally and severally pay the costs of this application.

DATED and DELIVERED at NAIROBI this 23RD day of SEPTEMBER, 2019.

A.O. MUCHELULE

JUDGE