



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISC. APPLICATION NO. 87 OF 2019

GAKERE MWANGI.....APPLICANT

VERSUS

ADMINISTRATOR OF THE ESTATE OF MBUTHIA GATHUU ALIAS

SAMSON MBUTHIA GATHUO.....1ST RESPONDENT

ADMINISTRATOR OF THE ESTATE OF

MUTHEE GORO.....2ND RESPONDENT

ADMINISTRATOR OF THE ESTATE OF

RHODA MWIHAKI KAMBI3RD RESPONDENT

ADMINISTRATOR OF THE ESTATE OF

KARUA KARAKURU.....4TH RESPONDENT

ADMINISTRATOR OF THE ESTATE OF

STEPHEN KINYUA.....5TH RESPONDENT

ADMINISTRATOR OF THE ESTATE OF KAMAU

GAKUNGU ALIAS CHARLES KAMAU GAKUNGU....6TH RESPONDENT

RULING

1. Through a Chamber Summons dated 22nd May 2019 and filed on 24th May 2019 under Section 47 of the Law of Succession, Cap 160 of the Laws of Kenya, the applicant sought orders as follows:

1. That the honourable court be pleased to order that the funds held by the Interested Party, Kenya Commercial Bank Limited Moi Avenue Branch Account Number 11072XXXXX in the name of Njoguini Rwathia Hotel Bar be released to the Administrators of the Estates of:

i. Estate of Mbuthia Gathuu alias Samson Mbuthia Gathuo – Kshs.1,993,613.00

ii. Estate of Kamau Gakungu alias Charles Kamau Gakungu – Kshs.883,935.00

iii. Estate of Muthee Goro – Kshs.7,379,457.00

2. That the honourable court be pleased to order that the funds held by the Interested Party, Kenya Commercial Bank Thika Branch Account Number 10022XXXXX in the name of Rwambogo Bar & Restaurant be released to the Applicant as

Administrative Fees (including legal fees and management of accounts) through execution of the necessary documents by the applicant as the sole surviving signatory.

3. That this honourable court be pleased to give such further or other directions as it may deem fit and just to grant.

4. That the costs of this application shall be in the cause.

2. The application is premised upon grounds set out on the face of it and an affidavit sworn on 22nd May 2019 by Gakere Mwangi.

3. It is the applicant's case that he is the sole surviving signatory to Kenya Commercial Bank Ltd Thika Branch account No. 11022XXXXX and Moi Avenue Branch account No. 11072XXXXX held in the names of Rwambogo Bar and Restaurant and Njoguini Hotel Bar respectively.

4. That the said accounts were opened sometime 1960s jointly for purposes of depositing proceeds realized out of a joint business partnership established by the deceased persons whose estates are the subject of this suit.

5. The applicant stated that, it was the partners' agreement that at least two of the authorized signatories could transact bank business. Among the joint business undertaken were Njoguini Rwathia Bar and Hotel and, Rwambogo Restaurant. As time went by, a number of the authorized signatories died. Sometime the year 2008, the applicant was appointed as a signatory to the accounts together with Githaiga Gathaga and John Muchiri Wanyeki who later on died.

6. That sometime 2015, the deceased persons' families decided to dissolve the group (partnership) and shared out the remaining investments of the group to the families of the initial owners.

7. It is the applicant's averment that as the sole signatory, he could not continue distributing the estate as the bank could not allow him to withdraw the money in the two accounts. He therefore prayed for authority to withdrawal the money for distribution to the beneficiaries as follows:

(a) Estate of Mbuthia Gathuu alias Samson Mbuthia Gathuo – Kshs.1,199,613.00

(b) Estate of Kamau Gathungu alias Charles Kamau Gathungu Kshs.883,713/=

(c) Estate of Muthee Goro – Kshs.7,377,457/=.

8. He therefore prayed for an order directing the bank to allow him withdraw the money for distribution to the respective beneficiaries.

9. By its replying affidavit sworn on 2nd July 2019 by Celestine Mboi the manager service quality and compliance of the interested party (KCB), it was confirmed that the applicant was the sole surviving signatory of the two accounts held by their institution and that they can only allow withdrawal by a single signatory upon receiving a court order

10. All the six respondents appeared in court in person in their capacities as administrators to the deceased persons' beneficiaries estates and confirmed that they had no objection.

11. I have considered the application herein seeking authorization by the court to enable the applicant the only surviving signatory to the affected bank accounts for purposes of withdrawing the money in those accounts for distribution to the beneficiaries. I have also perused the grants issued in respect of the beneficiaries' estates interalia:

(a) Estate of Mbuthia Gathuu alias Samson Mbuthia Gathuo

(b) Estate of Kamau Gakungu alias Charles Kamau Gakungu

(c) Estate of Muthee Goro

12. According to the certificates of confirmation of the grants attached in respect of the beneficiary estates to the money in the affected, accounts, it is not the administrators who are the sole and direct beneficiaries. The shares in the two businesses have specifically been assigned or distributed to individual beneficiaries. It therefore implies that, the money to be withdrawn must be paid directly to the respective beneficiaries after the applicant signs the necessary withdrawal documents. He can only get authorization to sign the necessary withdrawal documents with payment cheques directly payable to the individual beneficiaries as per the grants.

13. Where the confirmed grants have not stated the specific share, the administrators of those estates can move the court for rectification to specify the actual shares payable to each individual beneficiary to enable the signatory execute relevant withdrawal documents to facilitate transfer of the shares (money) to the individual and specific beneficiaries as per the confirmed grants in respect of each estate.

14. To release money to administrators directly where they are not

beneficiaries would cause unnecessary wrangles in the event the money is not fully accounted for hence opening a pandora box for fresh litigation by seeking furnishing of statements of accounts yet the administration of the affected estates is 99% complete.

15. The prayer to distribute a share of the property being money in KCB bank account in Thika to the applicant as being administrative and legal fees expenses cannot apply under this misc. file. This court cannot distribute estates' property under a misc. file in the manner prayed by the applicant. Legal expenses are specifically dealt with by individual estates and not through a separate misc. application. That prayer is therefore disallowed.

16. For those reasons, the application is allowed with orders that:

(a) The applicant is hereby authorized as a single signatory to execute necessary withdrawal documents to facilitate withdrawal of funds held in KCB Thika Branch account No. 10022XXXXX in the name of Rwambogo Bar and Restaurant and KCB Moi Avenue Branch account No. 11072XXXXX in the name of Njoguini Rwathia hotel Bar for onward payment to individual beneficiaries as per their shares indicated in their respective certificates of confirmation.

(b) That the applicant (signatory) shall cause the transfer to the beneficiaries directly either by money transfer to their accounts or by cheque.

(c) That the interested party (bank) shall only authorize and direct payment to the individual beneficiaries as per the shares specifically indicated in the certificates of confirmation less the bank charges.

Order accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER, 2019.

J.N. ONYIEGO

JUDGE