



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 941 OF 2014

IN THE MATTER OF THE ESTATE OF MARGARET WACHUKA WAITHERA (DECEASED)

MARY NYATHIRA KIMANI.....1ST APPLICANT

JANET WAMBUI.....2ND APPLICANT

VERSUS

JOHN KIMANI.....RESPONDENT

RULING

1. The applicants Mary Nyathira Kimani and Janet Wambui and the respondent John Kimani are children of the deceased Margaret Wachuka Waithera who died intestate on 14th May 2012 at the Kenyatta National Hospital. On 24th April 2014 they petitioned for the grant of letters of administration. The joint grant was issued to them on 24th November 2014, and confirmed on 21st June 2016. The estate comprised several properties each of which the parties and the family of their late brother Joseph Kinyua were to share equally. However, their dispute relates to the management of rent from Nairobi/Block 114/159 and Nairobi/Block 114/160. These are two of the three properties of the estate.

2. On 24th July 2018 the parties agreed to appoint an agent to be collecting the rent; to open a joint account into which the rent was to be deposited; the applicants to be receiving Kshs.66,000/= monthly from the rent; and so on. The respondent was upto the time the one collecting rent. The applicants were saying they were not benefitting from the rent.

3. An application was on 19th July 2018 made by the applicants to review the agreement. According to them, the respondent was not being cooperative. He refused to open the joint account and he was not sharing in the rent. The application was not successful.

4. On 13th June 2019 the applicants filed the present application seeking, among other things, the committal of the respondent into civil jail for wilfully disobeying the orders entered into by consent on 24th July 2018. The account had not been opened, and they blamed the respondent for not being available to come with them to the bank to open the account. They alleged that the respondent was unilaterally collecting and using the rent from the premises. They wanted the respondent to be removed as a co-administrator; he be restrained from collecting rent; an independent agent to be appointed to collect the rent; the respondent be ordered to vacate the plots; and so on.

5. The respondent opposed the application by denying the averments of the applicants. He also pointed out that the issues being raised had formed the basis of the application for review which had been dismissed by the court on 13th March 2019.

6. The application is materially similar to the application that the applicants filed on 19th July 2018 and which led to the consent that was recorded on 24th July 2017. The complaints are the same. There are accusations and counter-accusations between the applicants and the respondent in respect of the management of the rent from the two properties.

7. Once again, the grant herein was confirmed to the parties on 21st June 2016. Under **section 83(g) of the Law of Succession Act (Cap. 160)**, the parties were to complete the administration of the estate of the deceased within six (6) months, and to produce to the court a full and accurate account of the completed administration. Each of the three properties was to be shared equally to the beneficiaries. There is no indication that that has been done. There has been no extension of the statutory six months period. Instead, the parties are wrangling over rent from two of the properties. I will dismiss the applicants' application.

8. Instead, I revoke the grant issued on 24th November 2014, and recall the certificate of confirmation that was jointly issued to the applicants and the respondent on 21st June 2016. A fresh grant shall be issued to the Public Trustee to manage and administer the estate of the deceased for six months, following which he will apply for the confirmation of the same.

9. Each party shall be at liberty to apply.

10. I make no order as to costs.

DATED and DELIVERED at NAIROBI this 30TH OCTOBER 2019.

A.O. MUCHELULE

JUDGE