

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1298 OF 2011

IN THE MATTER OF THE ESTATE OF GERISHON KAMAU KIRIMA (DECEASED)

RULING

1. Anne Wangari Kirima, hereinafter referred to as the applicant, one of the administratrixs of the estate of the deceased, filed an application by way of summons dated 20th February 2019, seeking that the court authorizes the Deputy Registrar to sign on behalf of Teresia Wairimu Kirima, to be referred to as the respondent, who is also an administratrix of the estate, all documents necessary to give effect to the distribution of the shares used by the estate in line with the consent order made on 16th December 2013. The applicant relied on various grounds together with the matters averred in a supporting affidavit that she swore on 20th February 2019.

2. She contends that the respondent had frustrated efforts to have the shares transferred or distributed to all the beneficiaries as had been ordered by the court. She adds that the respondent had failed, declined ignored or neglected to sign share distribution forms prepared by Dyer and Blair Investment Bank, which were in line with the respondent's undertaking in court on 17th October 2014. She states that the respondent's willful refusal came even after efforts by Dyer & Blair Investment Bank, who, numerous times, sent the share transfer forms to the respondent for execution. To that end, the applicant states that the respondent had failed in her administration duties in respect of the share distribution and will not do so, whether by court order or otherwise.

3. The respondent replied to the application by way of a replying affidavit, sworn on 27th February 2019, where she states that she was opposed to the application, which, according to her, was intended to ensure that she did not undertake her role of collecting and preserving the estate for the benefit of all beneficiaries. She avers that she was aware of the court order but says that the partial distribution of the shares had not taken place because Dyer & Blair Investment Bank had neglected or refused to comply with the said order. She contends that each time Dyer & Blair Investment Bank sent the share transfer forms to be signed, she found that some of the beneficiaries or their estates have been left out despite her advocates and herself, on several occasions, pointing out the errors. She states that that was a maneuver to disenfranchise certain beneficiaries, and more specifically her children. She adds that her advocates could not advise her to sign the faulty share transfer forms as the forms did not comply with the court order. She asserts that she was the only administratrix interested in ensuring a just and proportionate distribution of the shares to all the beneficiaries.

4. The main issue for determination is whether the respondent has been frustrating the implementation of the court order made on 13th December 2013.

5. The respondent is categorical that she could not sign any share transfer form unless the same was signed by and included all the fifteen beneficiaries and not just eleven of them. A look at the correspondence between Dyer & Blair Investment Bank and the respondent's advocates, S. Musalia Mwenesi Advocates indicates that the respondent had voiced concerns, in a letter dated 26th April 2018 that Dyer & Blair Investment Bank had indicated nine beneficiaries and not fifteen. Dyer & Blair Investment Bank then replied, in a letter dated 15th May 2018, listing all the beneficiaries, including the estates of the departed children of the deceased, and stated that the forms for six of the beneficiaries had been inadvertently left in their custody following a handover from Caroline Nyawira. The respondent's advocates then wrote back expressing their dissatisfaction, and saying that the shares of the deceased beneficiaries listed as numbers 12 to 15, that is of the estates of Fredrick Kamau Kirima, Samuel Ndei Kirima, Elizabeth Wanjiku Kirima and Agnes Waruguru Kirima, in Dyer & Blair Investment Bank list, should be given to their legal representatives.

6. Dyer & Blair Investment Bank replied through a letter dated 7th September 2018, forwarding the transfer forms for the beneficiaries listed as numbers 1 to 11, and stating that the remaining shares for the beneficiaries listed as numbers 12 to 15 would be held by registrars until succession had been finalized by the respective families. The respondent's advocates then replied, in a letter dated 19th September 2018, stating that the respondent would not be signing the share transfer forms because they only contained eleven and not all fifteen beneficiaries. This is where the stalemate is.

7. The applicant had similarly annexed some of the aforementioned correspondence, together with others between her advocates and the advocates for the respondent, seeking execution of the transfer forms by the respondent.

8. The court order did not indicate that the transfers of the shares had to happen at the same time with respect to all beneficiaries. I do not see how the respondent will be prejudiced, or injustice occasioned to her, if she executed the share transfer forms for the surviving spouses and children of the deceased pending presentation of the share transfer forms for the estates of the children of the deceased who have since passed on, left out by Dyer & Blair Investment Bank as she claimed. I hold the view that the respondent is being unnecessarily paranoid to the detriment of the other beneficiaries, and I find her refusal to execute the transfer forms unreasonable and amounting to holding the other beneficiaries at ransom. The court cannot impute improper motives on Dyer & Blair Investment Bank as they are not party to this application, nor even the main cause, and as such they cannot be said to be at fault.

9. In the foregoing, I find the application dated 20th February 2019 to be merited, and as such the same is hereby disposed of in the following terms:

(a) That Teresia Wairimu Kirima is hereby ordered to sign all documents necessary to give effect to the distribution of the

subject shares in line with the court order made on 16th December 2013 within fourteen days (14) of the ruling; in default of which the Deputy Registrar shall execute the same on her behalf;

(b) That the matter shall be mentioned after thirty (30) days to confirm compliance; and

(c) That costs shall be in the cause.

DATED AND SIGNED AT KAKAMEGA THIS 17th DAY OF October, 2019

W. MUSYOKA

JUDGE

DELIVERED, DATED AND SIGNED IN OPEN COURT AT NAIROBI THIS 24th DAY OF October, 2019

A. ONGERI

JUDGE