



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

SUCCESSION CAUSE NO. 4 OF 2015

IN THE MATTER OF THE ESTATE OF THE ESTATE OF MWAURA MAKURO (DECEASED)

FRANCIS MUIGAI.....APPLICANT

-VERSUS-

MICHAEL KINUTHIA MAKURO.....RESPONDENT

RULING

[1] Before the Court for determination is the Summons dated **4 June 2018**. It was filed herein on **12 June 2018** under **Rule 49, 59 and 73** of the **Probate and Administration Rules** for orders that:

[a] The Administrator be compelled to distribute the estate of the deceased as per the Certificate of Confirmation of Grant;

[b] Costs be in the cause.

[2] The application was premised on the grounds that the Court (Hon. Githua, J.) issued a Certificate of Confirmation of Grant on 15 April 2016; and that since then the Administrator, who is the Petitioner herein, has failed and or refused to distribute the estate of the deceased as required by the law; and therefore, that it is in the interest of justice for the orders sought to be granted. The application is supported by the averments set out in the affidavit of the Applicant, **Francis Muigai**, annexed thereto wherein it was deposed that the Court issued a Certificate of Confirmation on **15 April 2016** in respect of the estate of the deceased and that the said Certificate indicates the shares and properties each beneficiary is entitled to. It was therefore the contention of the Applicant that there is no reason why the Petitioner has not discharged his duty herein; and that it would be in the interest of justice that the orders sought be granted.

[3] The Petitioner, Michael Kinuthia Makuro, opposed the application. He relied on his Replying Affidavit sworn and filed herein on 25 September 2018 in which he deposed that it was always the wish of their deceased father that his estate be administered as a single unit to preserve the family fabric to maintain economic viability. He further averred that immediately after the death of the deceased in 2014, the Applicant started leasing and dealing with land No. Kakamega/Nzoia Plot No. 113 as if it were his property, to the exclusion of the other beneficiaries. He added that the other beneficiaries are in agreement that the estate be administered as a single unit for the benefit of all; to which end a company has been incorporated known as Makuro Holdings Limited. He therefore took the view that it would only be fair that the interest and view of the majority be upheld by dismissing the application.

[4] Another beneficiary, **Simon Mwaura Wanja**, also put in an affidavit sworn on **22 July 2019** on his own behalf and on behalf of two other beneficiaries, namely: **James Kimani Kabata** and **Patrick Njeru Munene**. His contention was that the limited liability company incorporated by the Petitioner is in the hands and exclusive control of the Petitioner and **Mary Wahu Kabara**; and is being used to lock out other beneficiaries from enjoying their share of the estate of the deceased. He further averred that the Respondent has hitherto not allowed any beneficiary to access any share entitlement while he continues to commit acts of *devastavit* against the estate. **Mr. Wanja** accordingly supported the application and urged the Court to intervene and compel the Petitioner to distribute the estate as per the confirmed grant.

[5] The application was urged on behalf of the Applicant by **Mr. Nyachiro**, whose basic argument was that, since a Certificate of Confirmation of Grant has been issued herein, there is no valid reason why the Petitioner has not distributed the deceased's estate two years down the line. He further submitted that there is no evidence to prove that the views of all the beneficiaries were taken into account before Makuro Holdings Ltd was incorporated as no resolutions were annexed to the Petitioner's Replying Affidavit. He also pointed out that, as it is, the Company is under the exclusive control of only two of the beneficiaries, namely: Michael Kinuthia Makuro (the Petitioner) and Mary Wahu Kibara. He urged the Court to find that there is no basis for either forcing the other beneficiaries to join the Company or to wait for five more years as proposed by the Petitioner to be given their rightful share of the estate.

[6] **Mr. Mwaura**, acting for the 2nd 5th and 10th beneficiaries as listed in the Certificate of Confirmation, was of a similar view as **Mr.**

Nyachiro. He referred to **Section 83** of the **Law of Succession Act** and submitted that the Petitioner was expected to give a full and accurate account about the administration of the estate within 6 months of confirmation; but had not. He urged the Court to find that the Petitioner has not only been indolent but has taken over the estate and is running it as if it were his own personal property; and that as some of the beneficiaries are orphans, the orders sought ought to be granted in the interest of justice and fairness.

[7] On his part, **Mr. Ngigi Mbugua**, learned Counsel for the Respondent submitted that the Law of Succession has to be interpreted within the backdrop of the Constitution. He pointed out that the Petitioner was appointed as the Administrator of the estate of the deceased in a consultative process that involved all the beneficiaries; and that it is therefore not novel for him to say that the deceased wished for his estate to be administered as a unit for the benefit of all his beneficiaries. He added that although the Company has been formed for that purpose, the Administrator is yet to transfer any property to it, basically because he was still rallying the other beneficiaries to this course of action. Counsel thus denied that the Administrator had been riding roughshod on the other beneficiaries; and urged that the Administrator be given five more years to pay all liabilities and complete his work as administrator.

[8] Having carefully considered the application in the light of the averments in the affidavits filed herein as well as the submissions by Counsel, it is manifest that most of the facts are not disputed. The deceased died on **22 July 2014** leaving behind ten dependants, the 10th of whom is a grandson. The beneficiaries consented to **Michael Kinuthia Makuro**, the Petitioner herein being appointed as the sole Administrator of the deceased's estate. Accordingly, he petitioned for Grant of Letters of Administration Intestate on **12 January 2015**; and the record shows that the Grant was issued on **14 May 2015**. The parties thereafter agreed on the mode of distribution as shown in the application for Confirmation of Grant dated **7 December 2015**. They were to share all the assets comprising the estate equally. The Grant was subsequently confirmed and a Certificate of Confirmation of Grant issued herein on **15 April 2016**, listing all the assets and showing that they were to be shared equally amongst the beneficiaries.

[9] That being the case, the Petitioner was expected to comply and undertake the distribution in terms of the Schedule of Distribution as appended to the Certificate of Confirmation of Grant. The Petitioner was further expected to furnish the Court with accounts within 6 months as required by **Section 83** of the **Law of Succession Act**. That provision states that the duties of the personal representative of a deceased person includes:

“...within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration...”

[10] In the premises, a period of over three years having gone by since **15 April 2016** when the Grant herein was confirmed, there is no justification for any further delay in the completion of the administration. A pitch was made by the Petitioner for a unified approach in terms of management of the estate by means of a limited liability company in the name of **Makuro Holdings Ltd**. My view is that that is well and good; and looking at it, it is not antithetical to distribution and finalization of accounts. Ultimately, each share of the beneficiaries would have to be ascertained and a smooth change-over made. Then there is the issue of consent of some of the beneficiaries who are yet to buy into the idea. They are entitled to make their own decisions on the matter and cannot be compelled to take shares in the Company. I therefore find absolutely no justification for the Petitioner's prayer for five more years to enable him complete administration.

[11] In the result, I am satisfied that the Applicant's application is meritorious. The same is hereby allowed and orders granted in the following terms:

[a] That the Administrator be and is hereby ordered to distribute the estate of the deceased as per the Certificate of Confirmation of Grant; and to complete the administration of the deceased's estate within six months from the date hereof.

[b] That a full and accurate inventory of the assets and liabilities of the deceased be filed along with an accurate account of all dealings therewith up to the date of account.

[c] That costs be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 24TH DAY OF OCTOBER 2019

OLGA SEWE

JUDGE