



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 28 OF 2011

IN THE MATTER OF THE ESTATE OF PETER KAMAU GATUNDU (DECEASED)

JOHN KINUTHIA.....APPLICANT

VERSUS

PINA WAITHIRA KAMAU.....ADMINISTRATOR/RESPONDENT

BETRUDA WAIRIMU MIGWI.....ADMINISTRATOR/RESPONDENT

RULING

1. The issue for determination herein is the manner in which the rental proceeds from the building known as “Partners” on L.R. No. 36/I/232 should be dealt with pending the confirmation of the grant of the estate of the deceased herein.
2. At the hearing of this cause on 25th November, 2019 the parties expressed different views with regard to how the rental proceeds should be preserved.
3. Mr. Wabuko learned Counsel for the Applicant suggested that an account be opened in the joint names of the Counsels. That there is a building which generates a sum of Kshs. 400,000/- monthly hence the need to preserve the estate pending the confirmation of the grant.
4. Mr. Wabuko was categorical that the Administrators have been mismanaging the deceased’s estate and have also failed to render true and accurate accounts. Counsel pointed out that there are pending land rates to the tune of Kshs. 1.6 million which remain unpaid to date and that the estate suffers high penalties. That from the figures, it is most likely that the rates have never been paid during the Administrators’ tenure. That there is therefore a danger that the estate will collapse unless the court intervenes.
5. In support, learned Counsel Mr. Kiptoo submitted that the beneficiary Mr. Migwi was not opposed to a joint account in either the names of the three Counsels or in the names of the Administrators and the Applicant. Mr. Migwi was however apprehensive of how an account in the names of the latter parties would operate given the pronounced animosity between the Applicant and the Administrator Pina Kamau.
6. Mr. Kiptoo pointed out that Mr. Migwi had previously had a challenge accessing his share of the rental proceeds from the Administrator Pina, stating that the monies are disbursed in installments or paid to Mr. Migwi’s Step-mother who fails to release the funds. Counsel urged the court to direct that the amount due to Mr. Migwi should be paid directly to him as unanimously agreed by the parties at their meeting.
7. Learned Counsel Mr. Mwaura for Mr. Kinyanjui Advocate opposed the joint account in the names of the Counsels and stated that the Administrators were not comfortable with the suggestion as it would only delay the conclusion of the matter and accrue additional charges. Counsel further noted that the availability of Counsels would be a challenge in the month of December, during which time they normally close their offices.
8. Mr. Mwaura suggested a joint account in the names of both Administrators and the Applicant, with the three as signatories. He urged that in any event, the Administrators can file statements of accounts prepared by a Certified Auditor and any party not agreeable to the report can do their independent report.
9. It was Mr. Mwaura’s submission that the contest concerns one asset being a building known as “Partners” on L.R. No. 36/I/232. Counsel suggested that a joint account be opened in the names of Pina Waithira, Martha Wanjiku and John Kinuthia, all three of whom receive a share of the rental proceeds from the property. Counsel urged that the three (3) have the capacity and ability to collect the rent proceeds and to account for it.
10. Mr. Wabuko opposed the suggestion made by the Administrators stating that the parties had opened such an account before but which only worked for a short period of time until the Administrators stopped depositing money into it. Counsel noted that the rental proceeds

being in the hands of the administrator is the Achilles heel of this cause. That a joint account in the names of the Counsels therefore represents a better opportunity to monitor the rental proceeds and its distribution. He urged that if the administrators are averse to the opening of a joint account in the name of Counsels, then the monies be deposited in court.

11. According to Mr. Wabuko, the costs to be incurred in opening the joint account are minimal as compared to the task of preserving the estate. He asked the court to order the Administrators to provide an accurate and verifiable statement of accounts on or before the 20th day of each month, and grant the Applicant police assistance from Pangani Police Station as and when he sends someone on the ground to ascertain the accounts given.

12. Mr. Wabuko alluded to an agreement by the parties that the Applicant was to be appointed as an administrator of the deceased's estate. I note however that the Applicant's application for appointment as administrator, which was dated 29th July, 2019 is spent. The application came up for hearing on 28th October, 2019 where by consent of the parties, the court ordered that Pina Waithira Kamau and Betrudah Wairimu Migwi be appointed as Administrators of the deceased's estate. As such, I will not belabor the argument.

13. From the submissions of the Counsels and from the record, it is evident that the beneficiaries of the estate and their Counsels have made strides towards the conclusion of this matter by convening meetings geared towards finalizing on the mode of distribution of the deceased's estate. The parties are however yet to finalize on a proposed mode of distribution in order to apply for confirmation of grant.

14. From the submission by Mr. Mwaura, and which was not opposed, the court gathers that the rent proceeds from the "Partners" building on L.R. No. 36/I/232 are shared between three (3) parties: the 1st Administrator Pina Waithira, Beneficiary Martha Wanjiku and the Applicant John Kinuthia. Both Martha and Pina are for a joint account in the names of the two Administrators and the Applicant. The Applicant on the other hand is for a joint account in the name of the Counsels or that the rent proceeds be deposited in court.

15. Mr. Mwaura also confirmed the allegations raised by the Applicant that there have been instances of late submission of monies to beneficiaries, but attributed this to renovations which are being undertaken on the rental properties.

16. It is noteworthy that there is no evidence that the Administrators have rendered accounts of the deceased's estate to show the monies realized from the estate and what they have spent in line with **section 83(h)** of the **Law of Succession Act**. As such, the Applicant's mistrust in the Administrators' continued dealings with the rental proceeds is not misplaced especially since at the hearing date on 25th November, 2019 the Applicant had not received his share of rental proceeds for the month of October 2019.

17. While I am alive to the fact that the property of a deceased person should vest in their personal representative as stated under **section 79** of the **Law of Succession Act**, such personal representatives are also duty bound to administer such property in the manner contemplated under the **Law of Succession Act** and the **Probate and Administration Rules**.

18. In the absence of a statement of accounts, it is my considered view that the prudent thing to do is to direct as I hereby do that the rent proceeds from the building known as "Partners" on L.R. No. 36/I/232 shall be deposited in a joint account to be opened in the joint names of the three Counsels on record. The proceeds are to be deposited pending the confirmation of grant. To do justice in the circumstances, I direct that the hearing of confirmation of grant shall proceed on a priority basis.

19. The 1st Administrator Pina Waithira shall prepare and file statements of accounts showing her dealings with the estate since April 2019 when her co-administrator Rossalia Migwi died to date within a period of 45 days from the date of this order.

SIGNED DATED AND DELIVERED IN OPEN COURT THIS 27TH DAY OF NOVEMBER, 2019.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence ofAdvocate for the Applicant.

In the presence ofAdvocate for the Administrators/Respondents.

In the presence ofAdvocate for the Beneficiary Peter Migwi.