



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 2581 OF 2011

IN THE MATTER OF THE ESTATE OF ESTHER WAMBUI MAINA (DECEASED)

MICHAEL ALFRED MAINA.....APPLICANT

VERSUS

JANE WAIRIMU OKUMU.....1ST RESPONDENT

ALEXANDER KARIUKI MAINA2ND RESPONDENT

RULING

1. The late Esther Wambui wife of John alias Esther Wambui Nyamu (hereinafter referred to as the deceased) died intestate in Kenya on the 26th of October, 2003.

2. It is not in dispute that during her life time she sired 6 children, three sons and three daughters namely;

i) David Munyui Maina (deceased)

ii) Jane Wairimu Okumu

iii) William Nyamu (deceased)

iv) Alexander Kariuki

v) Gloria Njoki (deceased), and

vi) Claire Wanjiku (deceased)

3. Four of the deceased children are since deceased. It is not clear when the deceased other children died save for David Munyui Maina who died in 2017 having been appointed the initial administrator in this estate.

4. The contestation in the matter is mainly between Jane Wairimu Okumu a daughter (Jane) and Michael Alfred Maina (Michael) a grandson; son to David Munyui Maina and administrator of his father's estate.

5. This ruling is subject of three related applications filed by the parties.

The **first Application** (1st application) is dated 14th February 2019 and was filed by **Jane** and **Alexander Kariuki Maina**(Alex) who seek to replace their deceased brother David Munyui Maina (deceased) as the administrator of the estate of their mother for the reason that the administrator had not by the time of his death transmitted the estate to the beneficiaries.

6. The said application was objected to by Michael on behalf of his family on grounds the same was tainted with fraud and illegality, the Applicants neither candid, or truthful as they had failed to disclose relevant and material facts; they intermeddled with the estate to benefit persons other than the beneficiaries of the said David Munyui Maina.

7. The **2nd application** is by **Michael and Raymond Njoroge** (Njoroge) dated 12th March, 2019. The same seeks to rectify the certificate of confirmation of grant herein dated 19th November, 2012 so that the only property therein reflected being **L.R. No. Kiambaa/Ruaka/9** measuring 0.96 Ha do devolve to David Munyui Maina exclusively; to have the entries on the title reflect the same by deleting names of all other named beneficiaries, and for the respondents to be restrained from collecting rent from the Block of 12 apartments situate on the said property and for rent to be paid to counsel on record for Michael.

8. The **third application** (3rd application) is by Michael and dated 21st June 2019. The same seeks an order for opening of an Escrow Account in the joint names of counsel on record who will hold the rent pending further orders, and for orders restraining Jane from collecting the same, and for revocation of the grant issued to Jane and Alexander Kariuki on 19th November 2012.

9. The 2nd and 3rd applications were opposed through the replying affidavit of Jane.

10. From the various applications and affidavits for and against; the case for the parties may be summarised as follows; Jane and Alex's case is that as children of the deceased they ought to be appointed in place of David Munyui their deceased brother to conclude administration of the estate of the deceased mother in accordance with the confirmed grant that was issued on 19th November, 2012. It is their case also that Jane and one Elaine have been collecting rent and using the same to manage the estate and to assist members of the deceased family. Further that that according to their mother's wish the property was to benefit all her children and their off springs including Michael and his family. They do not wish to have the money placed in an Escrow account. Annexures of extract from text messages from Jane to Michael they do not trust Michael's advocate and fear that he may bribe the court. Those messages were not disclaimed.

11. On the part of Michael his case is that the property subject matter exclusively belongs to his father as the administrator of the estate. That his father and his siblings did not share a father and since the said siblings had inherited from their father, the property in question was to go to Michael's father alone. Michael does not appear to dispute the wish of his grandmother but maintains that the wish exclusively bequeathed the property to his father. In seeking to revoke that grant it is his contention that at the time the same was being confirmed his father was not in the country, and that Jane and Alex are out to disinherit his family.

12. Having summarised the two positions, the issues for consideration are as follows:

a. Whether or not to set aside the confirmed grant issued on the 19th of November, 2012.

b. Who should replace David Munyui Maina.

c. If a. is to the affirmative how is the estate to be distributed.

13. From the record no grant was issued nor confirmed to Jane or Alexander on the 19th of November 2012.

14. The application for confirmation of grant was filed on the 15th of November, 2012 by David Munyui Maina. In the said application he proposed that the properties be shared between him, Jane and Alex. He annexed a copy of his passport showing he was in the country between 10th November and 30th November 2012, 2nd November 2010 and 1st November, 2012. The petition for grant of administration was signed by David Munyui on 18th November 2011.

15. Michael does not have a problem with filing of the petition. He seems to have a problem with the application for confirmation and the affidavit thereof of David of 9th November, 2012. The said application was filed in court on 12th of November, 2012 and placed before Hon. G.B.M. Kariuki J (as he then was). The judge noted the presence in court of the administrator who requested to amend his application to have children left behind by his deceased siblings added as beneficiaries. The court directed the administrator to include the said children in the distribution list. The next day the 15th November, 2012 the court declined to certify the matter as urgent. It appears as if the administrator appeared before the judge seeking to have the matter treated as urgent.

16. Four days later the administrator appeared to have convinced the registry to list the matter and he appeared before court and had his application heard and the grant confirmed.

17. Nothing in the record as enumerated above in my view smacks of fraud. Indeed, the administrator's passport which for some reason was attached to the application indicated his presence in the country at the time, the haste in which he pursued the application is reminiscent of someone who wanted to finish the business quickly. Could this be because he was briefly in the country?

18. In my view the position taken by Michael that the judges notes of the proceedings have serious discrepancies is ill advised and unfounded as no discrepancies whatsoever are evident. And having said the above the court takes great exception to Jane's undisputed allegation that Michael's lawyer is likely to bribe judges. Jane is an applicant in this court. Why would she be in court and expect justice when judges are bribed? For Jane and those of her persuasion speaking for majority of judicial officers, we are not in the business of taking bribes but dispensing with justice in accordance with the law and facts placed before us. Jane's utterances are outrageous and despicable.

19. It is not clear whether David was aware of his mother's wishes giving him one side of the Ruai property or not. If he did he must have overlooked the same as he applied for confirmation of the grant and sought for the estate to be shared equally.

20. The document referred as the deceased wish was neither executed nor attested by two witnesses and cannot qualify as a will. Certainly, therefore the Law of **Succession Act, (Act) Chapter 160** of the laws of Kenya dealing with intestate estates comes into operation.

21. Section 38 of the Act provides as follows:

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

22. A grand child does not directly inherit but does so through its parents so that Michael and his cousins rightly claim their parent’s share in the estate so that the estate will in accordance with the law devolve equally to the following:

a. Estate of David Munyui Maina

b. Jane Wairimu Okumu

c. Estate of William Nyamu

d. Alexander Kariuki

e. Estate of Gloria Njoki

f. Estate of Claire Wanjiku

23. The confirmed grant herein is in accordance with the law and there would be no need to set aside the same.

24. The parties need to appreciate the fact that any of the deceased children who helped her build her empire as it is acknowledged that son David did, and Jane claims to have assisted where David could not, cannot use the assistance given as basis for claiming a larger share of the estate.

25. Left for the court is to appoint administrators so as to conclude distribution and for preservation of the estate meanwhile. There is no proof that any of the deceased children or her grandchildren were dependent on her for their day to day life during her life time as such, to ensure order and fairness in the administration of the estate, and since Jane and others are on one side and Michael and his family on the other I direct and order as follows:

i. Jane Wairimu Okumu, Alexander Kariuki Maina and Michael Alfred Maina are the new administrators of the estate.

ii. All rent collected from the 12 block of flats, the garage and/or any other unit or portion rented out will be paid into the Escrow account opened in the names of counsel on record and only outgoings to be approved by **all** the administrators will be paid out pending further orders of the court.

iii. The administrators will with the consent of all other beneficiaries cause to be subdivided and equally distributed the property subject matter among the 6 identified beneficiaries within the next 90 days of the date hereof.

26. This being a family matter each party will bear its own costs.

Dated and Delivered in Nairobi on this 19TH day of DECEMBER, 2019.

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ALI-ARONI

JUDGE