



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 1081 OF 2015

IN THE MATTER OF THE ESTATE OF JOHNSON MWANGI MAGONDU (DECEASED)

ESTHER NJOKI MAGONDU.....APPLICANT

VERSUS

CHARLES MWANGI MAGONDU.....1ST RESPONDENT

HEZRON NJOMO MAGONDU.....2ND RESPONDENT

R U L I N G

1. The deceased herein died on the 14th of March 2015 and was survived by 3 daughters and 3 sons.
2. One daughter **Esther Njoki Magondu** (applicant) and two sons **Charles Mwangi Magondu** and **Hezron Njomo Magondu** are embroiled in a contest which group; that of the daughters or the sons ought to control and take charge of the estate.
3. The disputes also included a debt owed to Esther by the estate being payment of the deceased last hospital bill and funeral expenses.
4. By consent of the parties, the 1st Respondent refunded the Applicant a sum of Kshs.2,004,570 I believe from funds belonging to the estate and at the same time the Applicant and 1st Respondent were appointed as joint administrators of the Estate.
5. Despite the consent herein above mention, the Applicant is aggrieved by the Respondents allegations that the deceased distributed his estate before his death, secondly by her co-administrator's continued collection and enjoyment of the proceeds of rent from the estate to the exclusion of other beneficiaries.
6. It is her case that since the demise of their father four years ago the Respondents have collected rent, failed to account and have used the same to the exclusion of other beneficiaries.
7. It is also her case that the deceased died intestate, and though a co-administrator she has been shut out of administration of the estate.
8. The Applicant as a result seeks appointment of a Realtor Company to collect rent and for the rent to be placed in a joint bank account of the administrators since the two are unable to administer the estate.
9. The case of the Respondents is that the estate was distributed by the deceased before his death, secondly the two reside in two of the properties, collect rent in what was gifted to them and are not aware of who collects rent in the other properties. They do not object to collection of rent for properties that were not gifted to them by a realtor.
10. The 1st administrator by consent refunded the Applicant monies owed to her from the Estate, he also at the same time offered to settle monies due and owing to the Kenya Revenue Authority on behalf of the Estate.
11. The above gesture clearly points to him as the one who has been in control of the Estate. By appointment of the two as administrators their duties include paying out debts, outgoings, collecting and preserving the Estate pending confirmation of the grant.
12. The 1st Respondent solely managed the Estate before the applicant was made a co-administrator, he is meant now to work with his co-administrator which he has failed to do, and cannot be heard to say that he does not know the on goings, this sounds unbelievable.

13. The deceased was not said to have left a written or oral will and the assertion that he gifted his properties as stated by the Respondents remains to be proved against the allegations that he died intestate.

14. In the above scenario both administrators have a duty in law to preserve the Estate and since they cannot work together the appointment of manager to manage the estate and depositing of funds in an account jointly operated by the administrators is the most reasonable way of running the estate for now.

15. In the circumstances therefore taking into account that the Respondents reside in **B 5 Metro Villa Estate Title No. Nairobi/Block 76/901** and **Title No. 78/876 Buruburu I** direct and order as follows:

i. Lead Realtors Limited be and is hereby appointed to collect income, pay any outgoings, generally manage the following properties and deposit such rent in a joint account of the administrators;

a. Plot No. 454 Kariobangi Light Industries comprising of 19 units and 1 warehouse.

b. Property No. 4A, Section I Umoja Innercore comprising of 7 rental units.

c. Plot No. 78/C-22, Sector 2 Umoja Innercore, comprising 18 rental units.

d. L.R. No. 36/II/295 Eastleigh, comprising two buildings with 28 rental units.

e. Penbal extension at Title number Nairobi/Block 78/876.

f. Plot No. C-2432 Dandora comprising of 36 units.

g. Property Nairobi/Block 76/962 Metro Villa.

h. L.R. No.15400/48 Sossion Estate.

i. Title No.Loc.10/Gatheru/553.

16. The administrators will forthwith open a joint account where all rent proceeds will be deposited. The rent will only be utilized with the consent of all beneficiaries and/or by order of the court.

17. Further **Charles Mwangi Magondu** the 1st respondent shall within the next 60 days file an account of all rents collected from the date of the deceased death to-date.

18. Costs to the Applicant.

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

ALI-ARONI

JUDGE