



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 116 OF 2006

IN THE MATTER OF THE ESTATE OF ISAAC CHEGE KAMAU (DECEASED)

RULING

1. On 18th December 2015 I delivered a judgment where I held that Mary Wambui Chege was a widow of the deceased, who was entitled, together with her children to a share in the estate of the deceased. I proceeded to have her included in the grant on record as co-administrator, and set aside the orders on record confirming the grant to allow for fresh confirmation of the amended grant.
2. The application that is before me for determination, dated 15th June 2016 and amended 4th August 2016, seeks to comply with the said judgment by proposing confirmation of the grant amended on 18th December 2015. The application is brought at the instance of Mary Wambui Chege, one of the administrators. According to the applicant, the deceased was survived by two widows, herself and Alice Njeri Chege, and nine (9) adult children, being Catherine Wanjiku, Andrew Kamau, Phillip Njoka, Ruth Muthoni, Rose Wanjiru, James Njue, Irene Ngoiri, Ann Wanjiru and John Kamau. He was said to have died possessed of Githunguri/Githunguri/1042, shares in Kenya Commercial Bank Limited and Standard Chartered Bank Limited, and death gratuity from the City Council of Nairobi. It is proposed that Githunguri/Githunguri/1042 and the shares in Kenya Commercial Bank Limited and Standard Chartered Bank Limited be shared out equally between the two widows and the nine children of the deceased. It is proposed that the gratuity be divided equally between the widows.
3. To the application, the co-administrator, the protestor, swore and filed on 14th September 2015 an affidavit of protest. Regarding Githunguri/Githunguri/1042, she avers that the same belonged to the deceased's father and was subject to proceedings in Nakuru HCSC No. 15 of 1984, in the estate of the late father of the deceased herein. She appears to argue that the said property is not available for distribution as the dispute has not been resolved, and in any event the applicant was not entitled to a share thereof as she had not expended any money on the dispute. She avers that the shares in Kenya Commercial Bank Limited and Standard Chartered Bank Limited no longer exist as they had been disposed of to fund the education of the children of the deceased. She says that the applicant had already received her half share of the gratuity. She urges that the gratuity ought to be shared out equally between the children with the widows being taken as additional units to the children. She also claims that there were liabilities to the estate totaling Kshs. 305,000.00 which ought to be paid first before the estate is distributed. She urges that the applicant meets half of the costs incurred by the estate in Nakuru HCSC No. 15 of 1984.
4. The protest affidavit by Alice Njeri Chege prompted the applicant, Mary Wambui Chege, to swear and file a further affidavit. She avers that her co-administrator had in the year 2013 withdrawn a sum of Kshs 246, 000.00 from the Manager of the deceased's pension scheme, and the said Manager decided to also pay to her a share equivalent to that paid to her co-administrator.
5. It was directed that the said application be disposed of by way of written submissions. There has been compliance, for both sides have filed detailed written submissions. I have perused through the same and noted the arguments advanced.
6. From the material before me it would appear that the assets listed are not available for distribution at this time. The landed asset, Githunguri/Githunguri/1042 is not registered in the name of the deceased but in that of his late father. The deceased's interest in it has not been determined and is subject to pending proceedings in Nakuru HCSC No. 15 of 1984. The shares in Kenya Commercial Bank Limited and Standard Chartered Bank Limited no longer exist for they were sold by Alice Njeri Chege. The said shares are therefore not available for distribution. The issue of the gratuity should not even be a matter for the probate court, for the same is not subject to succession to be distributed under the Law of Succession Act, Cap 160, Laws of Kenya. Gratuity falls under retirement benefits which are governed by the Retirement Benefits Act, Cap 197, Laws of Kenya. The said law sets out a whole procedure for dealing with such assets, and the funds are no doubt unavailable for distribution through succession proceedings. Any disputes relating to its distribution ought to be dealt with in terms of that law.
7. It is regrettable that the parties have not made an effort to inform the court how far the litigation in Nakuru HCSC No. 15 of 1984 has gone. The court can only distribute Githunguri/Githunguri/1042 after it has been determined whether the deceased herein was entitled to a portion therein. It would be premature and speculative to distribute the property before then. The protestor invited me to order the applicant to pay half of the costs in Nakuru HCSC No. 15 of 1984. That cause is not before me. Such an order can only be made by the court seized of the matter in Nakuru HCSC No. 15 of 1984.
8. The protestor has made reference to debts owing by the estate or liabilities of the estate which she says should be settled first before distribution. She has not disclosed or documented the alleged debts or liabilities. The court cannot act blindly. As administrator she is obliged

to identify the said debts and liabilities and to make provision for them. It is not enough for her to claim wildly that there are debts and liabilities, without stating to whom they are owed and what ought to be done to settle them.

9. She has also talked about having sold the shares in Kenya Commercial Bank Limited and Standard Chartered Bank Limited to pay school fees for her children. She has, however, not disclosed when the sale took place, how much money was realized and it is not indicated how the money was spent. It is not stated which children were in school, in which schools and how much was spent on their education. The shares in question made part of the estate of the deceased. The protestor ought not to have dealt with them as if they belonged to her. She ought to have obtained leave of court before disposing of them. She ought to account for them.

10. In the end the orders that I am moved to make in the circumstances are:-

(a) That the application dated 15th June 2016 and amended 4th August 2016 is hereby postponed to await the outcome of Nakuru HCSC No. 15 of 1984;

(b) That the protestor is given sixty (60) days to account for the sale and disposal of the proceeds of sale of the shares in Kenya Commercial Bank Limited and Standard Chartered Bank Limited;

(c) That the protestor has sixty (60) days to provide a breakdown of the debts and liabilities of the estate that she alleges to be owing;

(d) That the matter shall be mentioned thereafter for compliance;

(e) That I note that the estate constitutes of assets that are within Kiambu County, and I hereby order that the cause herein be transferred to the High Court at Kiambu for disposal; and

(f) That each party shall bear their own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 20TH DAY OF APRIL, 2018.

W. MUSYOKA

JUDGE