



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 157 OF 1992
IN THE MATTER OF THE ESTATE OF MWANGI KIRAGU JOSEPH (DECEASED)
RULING

1. Kimaru J delivered a ruling on 21st March 2014 directing the parties to make presentations on who was to be authorized to collect rent in respect of Plot No. 371 Mathare North. Further directions were made by Muigai J that the parties file statements of the witnesses that parties wished to present at the hearing.

2. The formal hearing started on 12th June 2017. The first on the witness stand was Peter Kiragu Mwangi. He described himself as a child of the deceased. He said he was a co-administrator of the estate with James Maina Kiragu. They were granted representation in 1999, which grant has since been confirmed. He stated that an order was made on 21st March 2014 that Damaris Ng'endo should cease collecting rent. He said that as administrator he should be allowed to collect rent from the said premises. He further stated that the said property did not belong to the deceased, but was a property of the Nairobi City government.

3. James Kiragu Mwangi testified next. He said he was a son of the deceased by his third wife, Damaris Ng'endo. He stated that it was his mother who had been collecting rents for the said property, and that she had paid city authority rates for the property. He said that he took over collection of rent after his mother passed on. He said that he was ready to render an account of the rents that he has been collecting. He further stated that he had renovated the Mathare property. He conceded that he had not petitioned for representation to his father's estate.

4. At the conclusion of the hearing, it was directed that that the parties do file written submissions. Only the administrator complied with the direction by filing his respective written submissions, inclusive of the authorities that he proposed to rely on. I have read through the submissions and authorities and noted the arguments made therein.

5. This matter is fairly straightforward. It is about who ought to collect rents for a certain estate property.

6. Section 79 of the Law of Succession Act, Cap 160, Laws of Kenya, vests the property of the deceased in personal representatives. The provision states as follows: -

'The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.'

7. The import of section 79 is that grant of representation confers the rights of an owner of the estate property on the personal representative. This is intended to facilitate exercise of the powers conferred on

personal representatives by section 82 and the duties imposed thereon by section 83 of the Act.

8. Representation with respect to the estate of the deceased was made on 8th April 1992 by the court to Peter Kiragu and James Maina Kiragu. Their grant was confirmed on 12th November 1992 where the Mathare property devolved upon the administrators in trust for other beneficiaries.

9. James Kiragu Mwangi who testified herein admitted that he was not one of the administrators of the estate, even though he was collecting rent from estate property. By virtue of section 79 of the Law of Succession Act, the said property did not vest in him, and by virtue of the certificate of confirmation of grant dated 12th November 1992 the property was not devolved upon him by the court. There is therefore no legal basis whatsoever for him to handle estate property. Indeed, his conduct of handling estate property without authority emanating from a grant of representation, or some other court paper, amounts to intermeddling with the estate contrary to section 45 of the Law of Succession Act. He should account for his intermeddling, and he stands liable to prosecution for contravening section 45 which creates an offence. I need not say more. The rent accruing from the Mathare property ought to be received by the administrators of the estate,

10. In the end I shall make the following final orders: -

a. that I direct that with effect from the date of this ruling the rents accruing from Plot No. 371 Mathare North shall be collected by the administrators of the estate herein, that is to say Peter Kiragu Mwangi and James Maina Kiragu;

b. that James Kiragu Mwangi shall forthwith cease to collect rent from Plot No. 371 Mathare North and shall handover all the records relating to the said property to Peter Kiragu Mwangi and James Maina Kiragu;

c. that James Kiragu Mwangi shall render an account, within sixty (60) days of this order, of all the rents that he has collected from Plot No. 371 Mathare North effective from the date of the death of Damaris Ng'endo to date;

d. that the matter shall be mentioned thereafter for compliance; and

e. that the costs of these proceedings shall be borne by James Kiragu Mwangi.

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

W. MUSYOKA

JUDGE