REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 72 OF 2016

(IN THE MATTER OF THE ESTATE OF FRANCIS MUIRI NGACHA alias HUDSON MUIRI NGACHA (DECEASED)

DAVID KARIUKI MUIRI.....ADMINISTRATOR/APPLICANT

VERSUS

SARAH WAMBUI MUIRI.....1ST ADMNISTRATOR/RESPONDENT

JOHN NGACHA MUIRI.....2ND RESPONDENT

GLADWELL WANJIRU MUCHERU.....3RD RESPONDENT

ANNE WANJIKU MUIRI.....4TH RESPONDENT

JANE WANJIRU MUIRI.....5TH RESPONDENT

ROSE WANJUGU MUIRI.....6TH RESPONDENT

STEPHEN IRUNGU MUIRI.....7TH RESPONDENT/ADMINISTRATOR

ELLEN WAMBUI MUIRI.....8TH RESPONDENT

CHARLES KAMAU MUIRI.....9TH RESPONDENT

MARTIN KABUI MUIRI.....10TH RESPONDENT

RULING

By a citation dated 28th July, 2016, the applicant cited the respondents to accept or refuse letters of administration in respect of the estate of the late Francis Muiri Ngacha alias Hudson Muiri Ngacha (deceased) who died on 27th day of June, 2013.

From what I gather, except for the 1st respondent who is the deceased's widow and 3rd respondent who is the deceased's daughter -in- law, the rest of the parties are the children of the deceased.

It would appear that none of the respondents entered appearance within the stipulated period after they were served with the citations and so on 11th October, 2016 the applicant petitioned this Honourable Court for the grant of letters of administration of the deceased's estate.

Prior to the petition and in particular on 18th August, 2016 the applicant lodged an application by way of summons general for what I understand to have been, inter alia, an order restraining the respondents from intermeddling with the deceased's estate. When this application came up for hearing on 12th October, 2016 both counsel for the applicant and counsel for the respondents (except the 2nd respondent who appears in person) agreed that subject to notification of the petition in the Kenya Gazette, the deceased's estate be administered by the applicant himself, the deceased's widow who is name as the 1st respondent and the 7th respondent. They also agreed that a bank account in the joint names of the two administrators and administratrix be opened for purposes of collecting the income due to the estate. The application was thus compromised to that extent.

The petition was eventually gazetted on 3rd February, 2017 and so, for all intents and purposes, the consent order took effect on the material

date.

On 28th February, 2017 the 1st respondent lodged an application seeking a review of that order to the extent that Gladwell Wanjiru Mucheru, the 3rd respondent be added as the 4th joint administrator and that a decision by any three of the four administrators on the administration or affairs of the testate be deemed as a valid decision.

In the affidavit in support of the application the applicant swore that the 2nd respondent was suffering from a mental illness and therefore his objection to the appointment of 3rd respondent as a co-administratrix was, in a way, impaired.

The applicant not only opposed the 1st respondent's application and filed a replying affidavit to that effect but he also filed his own summons in general form seeking amongst other things, the freezing of several tea factory and bank accounts operated in the name of the 1st respondent. He also sought for an order for accounts of what suppose is the assets and liabilities of the deceased's estate. The 1st respondent opposed the application by way of a replying affidavit which she swore on 25th July, 2015.

I directed both applications be disposed of simultaneously by way of written submissions and all the parties duly complied and filed their submissions.

I note that most of the facts that have been deposed to and to which the parties have submitted can be properly covered in confirmation proceedings and I need not dwell on them at this particular stage. All I need address at the moment is what, in my humble view, is relevant to the applications before me.

As far as the 1st respondent's application is concerned, it is true that before the consent order was made, counsel for the respondents had suggested that the 3rd respondent be appointed also as a joint administrator of the estate. The second respondent objected to her appointment on the ground that she was only a daughter-in-law to the deceased unlike the rest of the respondents who are the widow and children of the deceased. After taking into account that the consent between the parties, the objection raised by the 2nd respondent and more importantly considering the powers of this Honourable Court under section 66 of the Act and Rule 73 of the Probate and Administration, Rules I appointed the administratrix and the administrators to administer the deceased's estate jointly.

The applicant's assertion that the 2nd respondent's objection could have been informed by some mental illness does not appeal to me to hold water because first, this issue was not raised when the consent order was made and, in any event, there is no evidence that 2nd respondent has at any one time been certified as a person suffering from a mental disorder as defined under section 2 of the Mental Health Act, cap 248. And even if he was certified as such, he is not one of the administrators of the estate and neither has the alleged mental illness been demonstrated to affect the administration of the estate in any manner.

If there are any valid concerns on the administration of the deceased's estate, the Law of Succession Act, cap.160 provides legal mechanisms through which such concerns can be addressed. For instance, under section 83 (*e*), the administrator or administrators are required to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account within six months from the date of the grant. And once the grant is confirmed, they are required under section 83(g) to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration within six months from the date of confirmation of the grant, or such longer period as the court may allow.

According to section 83(h) they are required to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.

Where these provisions are not complied with, the Act provides that the grant may be revoked or annulled. In this regard section 76 (d)(ii) and(iii) of the Act specifically provides that a grant may be revoked or annulled if there is sufficient evidence that the person to whom the grant was made has failed, after due notice and without reasonable cause, to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or has failed to proceed diligently with the administration of the estate; or, has failed to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular.

My understanding of these provisions is that the administration of an intestate estate has little do with the number of administrators; regardless of whether they are the maximum four administrators or there is only a single administrator, they are all accountable and as the forgoing provisions of the law show, they can be brought to account.

For the foregoing reasons I reject the 1st respondent's application dated 28th February, 2017. For the same reasons and as far as the applicant's application dated 12th July, 2017 is concerned I hereby invoke section 83 (h) of the Act and direct the administrators and the administratrix to produce a full and accurate inventory of the assets and liabilities of the deceased's estate and a full and accurate account of all dealings therewith up to the date of the account. This must be done before the expiry of six months from 3rd February, 2018 when their appointment as administrators took effect. The rest of the prayers in the applicant's application are refused. The costs for both applications are in the cause.

Meanwhile, in order to avoid a multiplicity of applications and to bring this matter to a conclusion I direct the administratrix and the administrators or any of them to file the summons for confirmation of grant notwithstanding that six months have not lapsed since the grant took effect. It is so ordered.

Dated, signed and delivered in open court this 18th May, 2018

Ngaah Jairus

JUDGE