



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 579 OF 2006

LUCY WANGUI KIMERIA.....APPLICANT

VERSUS

MARY NYAMBURA MWANIKI.....RESPONDENT

RULING

Letters of administration intestate in respect of the estate of the late Carrie Nyagaceru Mwaniki (the deceased) were granted to Lucy Wangui Kimeria (Lucy) and Mary Nyambura Mwaniki (Mary) in their joint names.

The deceased had died intestate on 26th December, 1997 aged 74; she was then domiciled in Kenya and resided in Murang'a. Lucy happens to have been her only child surviving her.

On 27th November, 2006, Mary, who described herself as the deceased's daughter-in law cited the deceased's daughter to accept or refuse letters of administration of the deceased's estate. Lucy responded to the citation and not only entered appearance but she also petitioned for grant of the letters.

Meanwhile, although Mary had prompted Lucy to petition for letters of administration she filed an objection to the Lucy's petition and also filed a cross-application for the grant to be made to her. It is against this background that the court made the grant in the joint names of Lucy and Mary. The joint grant was made on 25th October, 2006.

The record shows that the grant was confirmed on 17th July, 2014 and subsequently rectified on 14th December, 2012. It is worth noting at the very outset that the grant was confirmed with consent of both the administratrixes.

The rectification of the grant was prompted by an application dated 1st August, 2012 by Lucy so as to include other assets which had apparently been omitted from the list of the assets comprising the deceased's estate. The application was allowed by this court and these new assets were subjected to the same ratio of apportionment as the rest of the assets amongst the list of the beneficiaries which both administratrixes had all along acknowledged as the rightful beneficiaries of the deceased's estate.

With the confirmation of grant, the administration of the estate ought to have been completed and the estate distributed amongst these beneficiaries. However, to date the estate has not been transmitted as earlier envisaged apparently because Mary has declined to co-operate with Lucy and conclude the transmission exercise.

Lucy now seeks to be allowed to complete the administration of the estate without any further reference to her co-administratrix; this, she has sought through a summons dated 23rd July, 2015, and filed in court on the same date. It is this summons that is the subject of this ruling.

According to the applicant's affidavit sworn and filed in support of the summons, Mary, who in this case is the respondent, withheld all the title documents necessary for execution of the certificate of confirmation of grant or otherwise for subdivision and transmission of the estate to the intended beneficiaries. She has also declined to execute the transmission documents for that purpose. In the meantime, the respondent is disposing of part of the estate to the detriment of the rest of the beneficiaries. Accordingly, apart from seeking to administer the estate on her own, the applicant seeks a restraining order directed at the respondent seeking to stop her from intermeddling with the estate; she also seeks to have the respondent ordered to release the documents necessary for transfer of the estate and also to execute the transmission documents for transfer of the respective shares of the estate to the intended beneficiaries.

The respondent opposed the summons and has filed a replying affidavit to that effect. All I gather from her affidavit is that some of the deceased's survivors who are also beneficiaries to the estate have not been catered for in the distribution of the estate. She has named them as 'Rose Wanjiku's' children.

I am skeptical of the reason given by the respondent for refusal to facilitate the completion of the administration of the estate. My skepticism

arises from the fact none of the alleged children presented himself or herself to lay any claim on the deceased's estate either in their own right or in as a representative of the estate of the said Rose Wanjiku. Secondly, the grant was confirmed with the consent of the respondent; she agreed to the distribution of the estate as proposed by the applicant. It has not been demonstrated that she was not aware of the existence of the beneficiaries who she now alleges were left out when she consented to the applicant's proposal for sharing out of the estate.

I note that the respondent has also alleged, as a further reason for her non-co-operation, that the confirmed grant was rectified clandestinely. These allegations are also raised in her application dated 10th June, 2015 and filed in court on the same date seeking to revoke the grant. No action has been taken on that application since it was filed three years ago.

From what I gather, all that the rectification was intended to achieve was the addition in the list of the assets comprising the deceased's estate which had been left out. Those assets were shared out in the same scheme to which the respondent had consented and amongst the same beneficiaries of which the respondent is one. There is no evidence of omission of any beneficiary who was in the original list from the subsequent list of beneficiaries in the rectified certificate of confirmation of grant; neither is there any evidence of any additional name in the subsequent list of beneficiaries that was otherwise not in the original list. In short, the rectification of grant is not a reason enough for the respondent to decline, neglect or otherwise refuse to execute his responsibilities as an administratrix.

For the foregoing reasons, I allow the applicant's summons dated 23rd July, 2015 in the following terms:

1. The respondent Mary Nyambura Mwaniki is directed to release all the documents and execute such other documents as are necessary for transmission of the deceased's estate to the respective beneficiaries in accordance with the schedule to the certificate of confirmation of grant made on 17th July, 2008 and rectified on 14th December, 2012.
2. If the respondent Mary Nyambura Mwaniki shall not have complied with order (1) within fourteen (14) days of the date of delivery of this ruling, the applicant is at liberty to proceed to complete the administration of the estate as a sole administratrix and to this end the grant of letters of administration made in the joint names of the applicant and respondent will be deemed to have been revoked and as such, a fresh one will be issued in the sole name of the applicant.
3. Meanwhile, the respondent is restrained from disposing of or in any other way alienating the deceased's estate contrary to the scheme sanctioned by this court in the schedule to the certificate of confirmation of grant rectified on 14th December, 2014.
4. Parties shall bear their own respective costs.

Signed, dated and delivered in open court this 27th July, 2018

Ngaah Jairus

JUDGE