



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 2051 OF 2007**

**IN THE MATTER OF THE ESTATE OF LAWRENCE REGERU WAMBAA (DECEASED)**

**RULING**

1. The application for determination is a Summons dated 23<sup>rd</sup> March 2017, brought at the instance of Edwin Wambaa Regeru (hereinafter the applicant) which seeks that a Mr. George Kimeu be appointed as receiver and manager of a commercial building on a property known as LR No. Mombasa Block XX/281, that the appointment of Emma Muthoni Wambaa (hereinafter the respondent) be revoked, that the respondent be ordered to render accounts of all the rents collected from LR No. Mombasa Block XX/281 since the removal of the former managers of the property, and that the costs of the application be paid by the estate.
2. The application is premised on the grounds that the respondent had breached her duties as administrator, that her lack of cooperation with the applicant had rendered their grant useless and inoperative within the meaning of section 76 of the Law of Succession Act, that the administration of the estate had been granted to the parties hereto jointly and the withdrawal of one from cooperation creates an impasse in the administration, and that as at the date the respondent ceased to cooperate with the applicant there were several tasks that awaited completion.
3. The applicant is a co-administrator of the estate with the respondent. He swore an affidavit on 23<sup>rd</sup> March 2017 in support of the application. In that affidavit, he avers that their grant has been confirmed. He accuses the respondent of working together with a beneficiary of the estate, called Winfield Ng'ang'a, who has been causing problems to the estate, instances of which he has enumerated. He states that the respondent has compromised a suit that was at Machakos High Court filed by the estate to recover property without involving him. He avers that the beneficiaries had agreed to form a company, in which they would all be shareholders, and to have LR No. Mombasa Block XX/281 transferred to them, but he now says that the respondent and Winfield Ng'ang'a took advantage of that to take over control of the management of the property, for they and other administrators colluded to forcibly evict the property managers. He complains that the respondent has turned to treating the said Winfield Ng'ang'a as an administrator. He complains that the two have resorted to demanding title documents from the estate's former advocates, Kamau Kuria & Company, Advocates. The respondent is also accused of colluding with beneficiaries to evade liabilities and responsibilities to the estate. He avers that there was delay in conclusion of the administration due to the litigation with Winfield Ng'ang'a. He says that the assets that were to be subdivided and distributed had not been so subdivided on account of lack of cooperation from the respondent. He states that there were also several suits that were pending conclusion.
4. The matter was placed before me on 3<sup>rd</sup> May 2017, whereupon I gave the respondent time to file replies to the application and directed both administrators to file accounts of their administration of the estate so far. I also directed the respondent to file accounts specific to her management of LR No. Mombasa Block XX/281.
5. I have carefully perused through the record before me, and I have been unable to find any response to the application by the respondent. I have however noted that the parties hereto did file accounts as ordered. It was after the filing of the accounts that the applicant sought to have the respondent cross-examined on the said accounts, which order I made on 26<sup>th</sup> July 2017.
6. The respondent took the stand on the same day. She explained that after Kinyua Koech ceased collecting rent from Syndicate Building on LR No. Mombasa Block XX/281 sometime in 2013, she and the applicant opened an estate account into which the rents collected were deposited. The money would then be utilized to settle the estate's outgoing, with the balance being shared out amongst the beneficiaries. Renovations were carried out on the building in 2015/2016 with the money therefor being withdrawn from the estate account in her name. Later the applicant began to return his share and that of his brother to the respondent, saying that he did not need the money. During cross-examination, she explained that she had not chased away Kinyua Koech, the property managers, saying that it was the firm itself which sued the estate first and thereafter withdrew from managing the property. She began to collect rent thereafter together with three other beneficiaries upon being asked to do so by the rest of the beneficiaries. She said that she was ready to cease to be an administrator.
7. At the end of the respondent's cross-examination, the applicant was cross-examined next. He asserted that he was the first born in the family and the eldest son of the deceased, who was even older than his stepmother, the respondent. He recounted the difficulties that they as administrators had with Winfield Ng'ang'a and the various suits they brought against him. He stated that he fell out with the respondent over the management of the building in Mombasa, and recounted the various incidents that he had with her over the Mombasa property and

others, and actions that she took as administrator without consulting him as a co-administrator. He confirmed that the grant had been confirmed, but the assets were yet to be distributed. He explained that the very many cases that they had at Mombasa hindered the vesting of the assets to the beneficiaries named in the certificate of confirmation of grant. He also complained that the respondent had not cooperated. He confirmed that he had been receiving his share of the proceeds of Mombasa property but he was returning the same as he did not approve of the manner in which Kinyua Koech was removed as the management agent of the property. He said that he had signed the transfer documents for some of the assets and he could not explain why the transfers did not happen, while in respect of other assets the transfer documents had not been given to him to sign. He stated that the title documents were with their former advocates, Kamau Kuria & Company, Advocates, saying that the said firm did not have his instructions to hold on to the said documents. He confirmed that some of the original titles were held by the banks. He said he had no objections if the said advocates surrendered the documents to the court for the purpose of facilitating the transfers. He also said that he had no objection to the transfer documents being brought to court so that they could be given to the beneficiaries. He said that he wanted to be the sole administrator of the estate, saying that he would be able to represent both houses. He conceded that he had sued all the beneficiaries in several cases because they had not been toeing the line. He said that as a first son he had the feeling of a parent.

8. Prior to the application dated 23<sup>rd</sup> March 2017 being lodged in court, various other applications had been filed and various orders made thereon. There was an application dated 15<sup>th</sup> May 2014, brought at the instance of the beneficiaries, who sought to have the Deputy Registrar directed to execute transfer documents to vest the assets allocated to them on behalf of the applicant herein. I declined, on 26<sup>th</sup> September 2014, to grant the orders sought. The other application was dated 11<sup>th</sup> February 2015, it was at the instance of the beneficiaries, who sought that the applicant herein be directed to execute relevant transfer documents to facilitate the vesting of the assets of the estate to their respective names. I allowed the application on 15<sup>th</sup> February 2016.

9. The record before me reflects that after the orders of 15<sup>th</sup> February 2016 were made, the advocates for the beneficiaries, lodged a bundle of applications for consents for land control board for execution by the Deputy Registrar. They were forwarded to the Deputy Registrar vide an undated letter lodged herein 4<sup>th</sup> August 2016. There is also another bundle of documents, being Forms RL7, transfer by personal representative to person entitled under will or intestacy, in respect of several assets. It is not clear how these documents came to be placed on record.

10. I have made mention of the processes and orders referred to in paragraphs 8 and 9 here above as a background to the application that I am now considering. I get the sense that the application dated 23<sup>rd</sup> March 2017 is a reaction by the applicant to the activities of the beneficiaries after the making of the orders of 15<sup>th</sup> February 2016. It appears to have dawned on the applicant that the vesting of the estate would happen without his input rendering him irrelevant. It is clear that he has lost the confidence of a majority of the beneficiaries. I get the sense that he has an overbearing and domineering attitude driven by the fact he is the 'first born son of the deceased, who is even older than his own stepmother'. He feels that he is the natural head and leader of the family on account of that and that all the other members of the family ought to bow to him. From the material before me it would appear that he would like to justify his position by blaming his co-administrator for the failure on their part to complete administration of the estate. Yet, it would appear that it is his attitude that is responsible for the impasse.

11. Clearly, the two administrators cannot work together, and that that stalemate has stalled the completion of administration. In my view, none of the administrators can now be trusted to complete the administration of the estate. Administration ought to be committed to a neutral party. The grant was confirmed in 2009, there was an amendment in 2013, yet to date the administration has not been completed and no plausible reasons have been advanced therefor. It is claimed that there multiple suits, but these suits only affect a fraction of the assets, the rest have no issues, and there is no explanation as to why the same have not been vested in the beneficiaries.

12. The orders that I feel I should make in the circumstances are –

- (a) That the grant made herein on 28<sup>th</sup> July 2008 to the applicant and the respondent is hereby revoked;**
- (b) That I appoint the Public Trustee the administrator of the estate herein to complete administration thereof in terms of the certificate of confirmation of grant dated 1<sup>st</sup> October 2009 and amended on 23<sup>rd</sup> October 2013;**
- (c) That a grant of letters of administration intestate shall issue accordingly to the Public Trustee;**
- (d) That to facilitate the work of the Public Trustee I hereby direct the applicant and the respondent herein to handover all the documents relevant to the administration of the estate to the Public Trustee;**
- (e) That I also direct the firm of Messrs. Kamau Kuria & Company Advocates to comply with the orders made herein on 5<sup>th</sup> February 2016;**
- (f) That the Deputy Registrar shall serve a copy of this ruling on the Public Trustee;**
- (g) That the matter shall be mentioned before the Presiding Judge of the Family Division on a date to be given at the delivery of this ruling for compliance and for further directions;**
- (h) That each party shall bear their own costs; and**
- (i) That any party aggrieved by the orders made herein has leave of twenty-eight (28) days to challenge the same at the Court of Appeal.**

**DATED and SIGNED at KAKAMEGA this 19<sup>th</sup> DAY OF OCTOBER, 2018.**

**W. MUSYOKA**

**JUDGE**

**DELIVERED, DATED, SIGNED at NAIROBI this 25th DAY OF October, 2018.**

**M. MUIGAI**

**JUDGE**