



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1324 OF 2009

IN THE MATTER OF THE ESTATE OF HARRISON KARANA NG'ANG'A (DECEASED)

JOSEPH MBUGUA KARANJA.....APPLICANT

VERSUS

SALOME NJOKI KARANJA.....1ST RESPONDENT

MARY NJERY.....2ND RESPONDENT

STEPHEN KIURU KARANJA.....3RD RESPONDENT

RULING

1. The deceased Harrison Karanja alias Karanja Ng'ang'a died intestate on 10th September 2018 at Nairobi. On 2nd October 2009 a grant of letters of administration intestate was granted to Salome Njoki Karanja (a widow), Mary Njeri Karanja (a widow), Stephen Kiuru Karanja (son in the house of Salome) and Joseph Mbugua Karanja (son in the house of Mary). On 27th November 2011 Salome and Stephen filed an application for the confirmation of the grant in which they proposed the distribution of the estate. The grant was confirmed on 26th October 2016 vide the ruling of the court.

2. Mary filed an application dated 21st March 2017 seeking the court to vary its ruling to include, in the list of undisputed assets to be shared, monies held in Barclays Bank A/c No. 0673542123 and Equity Bank A/C No. 0820192970653. Her case was that the court had failed to include the accounts in its ruling when they had been listed in the petition. The other request was that the court does specify the accounts held by the deceased at Standard Chartered Bank. Lastly, the court had erroneously given LR No. 209/8274/101 Pioneer Estate to one house. She wanted this corrected.

3. Judge Musyoka heard the application and delivered a ruling on 11th May 2018. He noted that upon being served with the application, the other administrators had entered into negotiation to settle the matter. All the administrators except Joseph Mbugua Karanja had filed a consent on 21st January 2018 in the matter. In the consent the Barclays Bank and Equity Bank account numbers were indicated and the proceeds of each were to be shared equally between Salome and Mary. The Standard Chartered Bank accounts were specified and were to be shared equally between Salome and Mary. Further, the consent indicated that LR No. 209/8274/101 was to be equally shared between Salome and Mary. The court granted the application on the basis that Joseph Mbugua Karanja had not opposed it. Infact, the court noted that Joseph Mbugua Karanja had filed a replying affidavit sworn on 24th November 2017 in opposition but the same had not in substance challenged the application. That was why it was deemed that the application had not been opposed.

4. Secondly, the ruling indicated that the distribution of LR No. 97/1970/030 Tassia II and LR No. 209/8274/101 Pioneer Estate was outstanding.

5. In the application dated 18th June 2018 by Mary she asked that the court does review its ruling to indicate that the distribution of LR No. 209/8274/101 Pioneer Estate was, according to the consent, agreed upon. Instead, the consent that the court adopted showed that the property was going to be equally shared between Salome and Mary. There is therefore, I find, an error on the face of the record.

6. In the application dated 17th May 2018 by Joseph Mbugua Karanja he asked for the review of the ruling on the basis that it proceeded on the basis that the application in question was not opposed (and the court erroneously referred to his replying affidavit sworn on 24th

November 2017) when infact the same had been opposed by his replying affidavit sworn on 8th November 2017 and filed on 9th November 2017. I have seen the annexed replying affidavit. He swore it on 8th November 2017 and filed it on 9th November 2017. I agree that it was in response to the application dated 21st March 2017. To that extent, there was an error on the face of the record. In paragraph 4 of the affidavit, Joseph Mbugua Karanja wanted the proceeds of all these bank accounts to be shared equally to all the beneficiaries of the estate of the deceased, and not only to Salome and Mary. In paragraph 5 of the affidavit, he wanted the properties in paragraph 6 of Mary's affidavit to be shared in accordance with the ruling that confirmed the grant.

7. In **Yani Haryanto v ED and F. Mann (Sugar) Ltd Civil Appeal No. 122 of 1982** it was held that the facility of review under **Order 44** (now **Order 45**) of the **Civil Procedure Rule** is available to a person who is aggrieved by an order or decree which is appealable but from which no appeal has been preferred or from which no appeal is allowed, and who from the discovery of new and important matter or evidence or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review.

8. Both Mary and Joseph Mbugua Karanja have separately shown that the ruling of 11th May 2018 had an error on its face.

9. It is also material that Joseph Mbugua Karanja did not participate in the distribution contained in the consent dated 21st January 2018. He was a beneficiary whose agreement and/or participation was required before the consent was filed. When it was filed without his participation he was required to be heard on the same. This is the more reason why the ruling of 11th May 2018, which was based on the consent, should be reviewed.

10. Lastly, Joseph Mbugua Karanja filed an application dated 24th July 2018 which asked, against the three other administrators, that the money kept in account No. ***** as ordered by the court on 21st July 2011 be divided among the beneficiaries; that Salome do release Plot No. 574 Dandora and Korogocho as ordered on 20th October 2011; and that Tassia Plot money which was collected since 2002 be divided equally and the same be considered as part of the estate of the deceased as per the order dated 27th June 2011. A look at the application would show that Joseph Mbugua Karanja is substantially complaining about how his mother (Mary) is dealing with the property allocated to her in the confirmation. He is saying that she and her other son James Mwaura Karanja have connived to benefit to his exclusion and to the exclusion of the other children in the house. I will adjourn this application, and direct Joseph Mbugua Karanja to serve James Mwaura Karanja and the other siblings in the house with the application so that they can respond within 30 days of service. The application can then be set down for hearing.

11. In conclusion, I review and set aside the ruling of the court that was delivered on 11th May 2018, and ask that the application dated 21st March 2017 by Mary be mentioned on **19th February 2019** for directions on hearing. In the meantime, that application should be served on all the beneficiaries of the estate of the deceased for response within 30 days of service.

12. This is a family dispute. I make no orders as to costs.

DATED and SIGNED at NAIROBI this 18TH day of DECEMBER 2018

A.O. MUCHELULE

JUDGE