



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

SUCCESSION CAUSE NO. 3 OF 2017

IN THE MATTER OF THE ESTATE OF JOSEPH NDERITU KINGORI (DECEASED)

MARIANA NJERI GATHENYA.....PETITIONER

CONSOLIDATED WITH

SUCCESSION CAUSE NO. 4 OF 2017

IN THE MATTER OF THE ESTATE OF JOSEPH NDERITU KINGORI (DECEASED)

GEORGE NDUNGU KIMANI.....EXECUTOR

AND

MARIANA NJERI GATHENYA.....OBJECTOR

JANE WANGARI NDERITU.....BENEFICIARY/INTERESTED PARTY

R U L I N G

1. For my instant consideration and determination are two issues related to:-
 - a. the management of the estate of the deceased.
 - b. the maintenance of the widow of the deceased namely, **Mariana Njeri Gathenya**.
2. There are two Succession Causes, one Probate, the other Intestate in respect of the deceased's estate.
3. The Petitioners in both matters and one of the beneficiaries, **Jane Wangari Nderitu, (JWN)** have sworn affidavits in respect of the above matters. The parties herein were also involved in **High Court Miscellaneous Civil Case Number 2 of 2016**, filed before the death of the deceased and who at the time suffered from a debilitating illness. Therein an estate agent **Peter King'ori t/a Snowwhite Commercial Agencies** was appointed by consent, on 11/5/2016, to manage some identified properties of the deceased. Further, the court authorized **Mariana Njeri Gathenya** to withdraw a sum of Shs 300,000/= monthly to cater for the upkeep and medical expenses of the deceased.
4. From her present affidavit, it seems that the widow, perhaps in light of her status, perceives her role as the person with the responsibility for the management of the estate. Some of the expenses itemized in her present affidavit clearly relate to that role, rather than to her own maintenance. She has no complaint against the present agent, however and proposes he be retained as the estate Manager of the deceased's property.

5. On the other hand, the Executor of the deceased's disputed will and **J.W.N.** complain that the above agent, appointed in 2016 by consent of the parties, is ineffective and operates under the directions of the widow. Further, they assert that the sums claimed by the widow for her maintenance are exorbitant and misplaced. They demand the appointment of one of the estate agents they have proposed as per the court's earlier direction.

6. Having carefully reviewed the material before me, it is clear that no party disputes the right of the widow to maintenance, and the only question is the appropriate figure to be paid to her. Secondly, the need for the professional management of the estate pending the resolution of the succession dispute is evident to all. It would appear that up until now the estate agent appointed by this court in **High Court Miscellaneous Civil Case Number 2 of 2016** has continued to manage the estate of the deceased. No accounts have been rendered to the court to-date, however.

7. I believe that in the circumstances of this case, it would be imprudent to appoint a new agent before such accounts are rendered, but more importantly, none of the estate agents/firms now proposed by the respective parties have tendered evidence that they meet all of the following criteria:-

a. they are duly incorporated.

b. they are duly registered and licensed under the Estate Agents Act to carry out estate agency work, both as individuals and/or as firms.

c. that they are tax compliant.

d. they have solid experience in the business.

8. The need to have a reputable professional firm manage the vast estate of the deceased has become more acute now that there is an ongoing dispute in respect of the succession. The dispute may take some time to resolve. The court would be failing in its duties if it were to allow the dissipation of the estate through the appointment of less than demonstrably reputable estate agents in this regard.

9. While I am not satisfied with the proposed agents touted by **J.W.N.** and by the Executor, I do not think that it will be a good idea to retain the estate agent appointed in **Miscellaneous Civil Case No. 2 of 2016**, and whose profile does not seem to meet the professional level required at this point in this matter. This is not to say that I agree with the suggestion by the Executor and the beneficiary **J.W.N.** that the said agent is a mere lackey of the widow. Rather, it is a reflection of the peculiar, need of the moment.

10. In the circumstances, I will make the following orders:

a. **Peter Kingori t/a Snowwhite Commercial Agencies** will continue to manage the estate of the deceased, pending the appointment of an estate agent/firm which meets the criteria I have set out earlier in this ruling **AND** one that can demonstrate long experience in managing estates on behalf both corporate and private clientele.

b. Within 30 days of today's date **Peter Kingori t/a Snowwhite Commercial Agencies** will file into court audited accounts in respect of the estate for the period starting 11/5/2016 to the filing date.

c. The parties will present two new proposals as to the estate agents they would prefer to manage the deceased's estate, and who meet the criteria set out herein, within the period stated in (b) above, to enable the court make a fresh appointment.

d. Effective from end of May, 2017, the widow of the deceased **Mariana Njeri Gathenya** is hereby authorized to continue drawing for the deceased's Barclays Bank account which was the subject of my order of 29th June, 2016 in **Miscellaneous Civil Case Number 2 of 2016**, the sum of Shs 200,000/= (Two Hundred Thousand) per month for her maintenance, pending further orders of this court.

e. With regard to order (b) and (c) above, this matter is stood over to 20th June 2017.

Delivered and signed at Naivasha this **19th** day of **May, 2017**.

In the presence of:-

Mr. Waigwa for the Petitioner in Petition No.3 of 2017

Mr. Obino holding brief for Mr. Gachiengo for J.W.N. (Interested Party) in Petition No. 3 of 2017

And for Mr. Chebii for the Executor in Petition No. 4 of 2017

Court Assistant – Kamau

C. MEOLI

JUDGE