



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 36 OF 2005

IN THE MATTER OF THE ESTATE OF DANIEL MUIRURI GATUATI (DECEASED)

RULING

1. The deceased herein died on 27th May 2004. Representation intestate was obtained to the estate on 18th April 2005 by John Nduati Muiruri, Joseph Thairu Muiruri and James Ngugi Muiruri in their respective capacities as sons of the deceased. The grant was confirmed on 4th July 2016, on an amended application dated 15th June 2016, and a certificate of confirmation of grant has been issued dated 4th July 2016.

2. The application for determination is dated 4th January 2017. It seeks orders against the administrators and the advocates on record for them. The prayers sought are for accounts, prohibitions against dealings with certain properties, deposit of original documents in court and orders to compel preservation of a grave site. The application is brought at the instance of Anna Wairimu Muiruri, a daughter of the deceased. She avers that she had asked for accounts from the administrators but the account rendered was not satisfactory. She complains that although the administrators accuse them of delaying completion of administration the administrators are really the ones responsible for the delay on account of their failure to account. She states that developments are being done without their knowledge on Dagoretti/Mutuini/206. She complains that no effort was being made to preserve the deceased's grave.

3. The response to the application is vide grounds of opposition dated 13th January 2017. It is argued that there is no need to file an inventory of the assets as all the assets are listed in the certificate of confirmation of grant, and there are no other assets that the administrators are aware of. The provisions sought are said to be untenable for the estate is yet to be distributed. On deposit of title documents, it is stated that the applicant has not indicated the documents that she would like to be deposited. The issue of the graveyard is said to be a matter beyond the mandate of the administrators. It is also argued that the applicant has not provided funds to facilitate distribution yet the estate has no other funds for that purpose as the property that was to be sold for that purpose is yet to be sold as purchasers are yet to be found.

4. Directions were given that the application be disposed of by way of written submissions. Both sides complained, and there are written on record. I have read through them and noted the arguments advanced therein.

5. The application before me is premised on section 83(e)(f) of the Law of Succession Act, Cap 160, Laws of Kenya, which, for avoidance of doubt, states as follows –

(e) within six months from the date of the grant 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;

(f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets

remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be.'

6. Rendering of accounts by administrators is a statutory requirement. There should no argument about it. Any person appointed as an administrator acquires a burden to account for their dealings with the assets of the estate. The root of that statutory duty is section 79 of the Law of Succession Act, which vests the estate in the administrator. That means that the administrator steps into the shoes of the deceased so far as the assets are concerned. He becomes legal owner of the property, but subject to account. The property does not belong to him absolutely. He holds in trust for others. He is bound to account to those on whose behalf he holds the property.

7. There is clear duty under section 83(e) for the administrator to account within the first six months of his appointment. He is required to produce to the court a full and accurate inventory of the assets and liabilities, and a full and accurate account of all dealings with those assets and liabilities.

8. I have scrupulously perused through the file of papers before me, and I have not come across a document that indicates to me that there has been compliance with section 83(e). I would concede that the confirmation application does contain an inventory of the assets, and therefore the administrators do not have to produce another. However, there is no inventory of the liabilities of the estate. More crucially, there is no account of the administrators' dealings with the assets and liabilities of the estate from the date of the grant up to the date of the account. What is required is 'a full and accurate account of all dealings' with the assets and liabilities. Administrators cannot run away from this obligation.

9. The law treats rendering of accounts by trustees and administrators as such a crucial matter to the extent that default exposes the grant to revocation. It is not a trifling matter. One of the grounds for revocation of a grant under section 76 is the failure to account when required to do so. Section 76(d)(iii) states –

'A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion –

(a)...

(b)...

(c)...

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either –

(i) ...

(ii)...

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provision of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in material particular; or

(e)...

10. The duty to account under section 83 does not require a court order. It is in the statute. If it has not been complied with, the administrator would be in breach of a statutory obligation. The applicant is no doubt within her rights to bring the breach to the attention of the court. She is an heir of the estate. She is not an administrator. She does not have the information that the administrators ought to have regarding the estate, and she is entitled to such information from the administrators. They owe it to her. They should

provide the information without prompting and the necessity of court intervention. This is a matter in respect of which the administrators need not be in defensive mode.

11. The applicant prays for prohibitory orders with respect to certain assets, and also for deposit of certain documents in court. I agree with the administrators, the applicant has not made out a proper case for the prohibitory order. The property of the estate vests in the administrators. They are the persons entitled to have possession of documents of title relating to the assets. This is more critical especially in such case as the present where the grant has been confirmed, and the administrators are expected within six months thereafter to complete administration. A good case must be made out before documents that are meant to be in their hands are withdrawn from them. No such case has been made out. Similarly a case has been made out for prohibitions, for that would inhibit their efforts to implement the certificate of confirmation of grant. There are no orders stopping them from implementing the confirmation orders, and no case has been made out for such inhibition.

12. On the issue of the graveyard, I would agree with the administrators. It is matter which is now beyond them. It is a matter that ought to have come up at the confirmation of the grant. It should be a matter that the applicant should pursue with the person entitled to the property where the grave is located.

13. In the end, I shall allow the application dated 4th January 2017 in terms of prayer 1 thereof, the inventory and account to be filed in court within thirty (30) days. In default, the grant shall stand revoked. Matter shall be mentioned after thirty (30) days for compliance.

DATED, SIGNED and DELIVERED at NAIROBI this 29TH DAY OF SEPTEMBER, 2017.

W. MUSYOKA

JUDGE