



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO 932 OF 1989

**IN THE MATTER OF THE ESTATE OF KARIITHI KINUTHIA ALIAS KARIITHI MWANGI
KINUTHIA (DECEASED)**

RULING

1. The deceased died testate on 31st October 1988 at Nairobi leaving a valid written will. In the said will, the deceased had appointed Peter Mburu Gathinjaga and Stephen Mwangi Gichori as his executors to the said will. Subsequently the executors applied for grant of probate of written will, and were granted on 1st November 1989. They were issued with a certificate of confirmation of grant on 19th July 1991.
2. On 1st April 2014, Salim Gichohi Kariithi, a son to the deceased made an application seeking court orders to compel the executors to complete administration of the deceased estate and to give full and accurate accounts of the deceased estate. He stated in his supporting affidavit that one of the executors, Stephen Mwangi Gichori had since passed away and hence only one executor is left. He avers that L.R No. 209/2716 and 209/783/17 known as Thuru Thuru/Waranga House and L.R 209/697/33 Known as Three New Eden Hotel have not been transferred to the beneficiaries. He also stated that the executor continues to receive rent from Plot No. 209/2716 and 209/783/17 and has refused to give the rent received to the beneficiaries.
3. The application was opposed by Peter Mburu Gathinjaga who filled a replying affidavit dated 18th June 2014 where he pointed out that the applicant's only concern relates to three properties and not the entire estate.
4. The application was heard and this court gave a ruling on 24th April 2015 giving the following orders;
 - i. The respondent should within 45 days of this ruling compile a comprehensive list of properties distributed so far and an acknowledgment of the same by the concerned beneficiaries.
 - ii. The respondent to liase with Gimco Limited, who is the said to be managing the properties in issue, obtain the relevant statements and records and convene a meeting with the concerned beneficiaries and a representative from the said Gimco Company to scrutinize the same with a representative from the said company to clarity and issues that may arise. The same should be done within 30 days of this ruling.
 - iii. The executor will also tender documentary evidence of the expired leases and the said application that has been lodged for the extension of the said lease.
 - iv. The executor is further ordered to upon clarification of the above to render a true account of the estate of the deceased so as to facilitate the conclusion of this matter.

v. Parties shall take a mention date at the close of the 45 days to confirm compliance and obtain further directions from the court.

5. In compliance with the courts orders the, the executor filed an affidavit dated 30th July 2015 and filed on 21st October 2015. He avers that the deceased estate has been distributed in accordance with the will of the deceased as follows,

i. Title No Loc 14/Kagumoni/676 was distributed to Wanjiku Kariithi and Lincoln Munene Kariithi. The property was subdivided into two portions and separate titles were registered in the names of Wanjiku Kariithi and Lincoln Munene Kariithi.

ii. Title No. Ngong/Ngong/2001 was distributed to Gachohi Kariithi. The title was registered in the name of the said Gichohi Kariithi. Motor Vehicle KAQ 347 was distributed to Gichohi.

iii. Plot No. 209/5389/10 was distributed to the sons, John Irungu and Lincoln Munene Kariithi and was subsequently transferred in favour of them.

iv. Plot No. 18 Kagumoini Trading centre was distributed to Wanjiku Kariithi who took possession of the same.

v. Plot No. 5 Kagumoini Trading centre was distributed to Julius Githuku Kariithi.

vi. Shares in Plot No. 209/2716 and 209/785/17 were distributed to the beneficiaries and eight partners. The properties are managed by Gimco for and on behalf of the beneficiaries, the eight partners and the estate of Jerald Wachira Macharia.

vii. All shares in BAT Kenya Limited and Kenya Breweries Limited were distributed and transferred in favour of Dedan Gikonyo.

viii. Interest in Muranga Company House were distributed and transferred to John Irungu, Dedan Gikonyo and Mukami Kariithi.

ix. Interest in L.R 209/697/33 Nairobi was distributed to the benefiocaires and the deceased's partners. The property is registered in the names of the late Abed Salim, the late Karama Ahmed and the late Kariithi Kinuthia. The terms of the lease of the property expired and were renewed by the firm of Ali and Company advocates

x. Cash held in current accounts and saving accounts at Barclays Bank Kenya Ltd. River Road Branch were distributed to the beneficiaries.

6. Salim Gishohi Kariithi filed a replying affidavit dated 5th November 2016. He avers that the executor has failed to comply with the orders given in court on 24th April 2015. He states that the timelines given by the court have been ignored and that no documents in support of the transfer of properties have been exhibited and no acknowledgment of transfer by the concerned beneficiaries has been exhibited save for three beneficiaries. He further states that one of the beneficiaries, Julius Githuku Kariithi has never received the deceased share of the property in question being Plot No. 5 Kagumoini Trading centre. The executor is under a legal obligation to provide accounts for the said properties commencing from the date of the deceased that is 31st October 1988 as opposed to the records filed from Gimco Ltd from the year 2007 to 2015. He further states that no documents have been given to show proof of the extension of the lease and that with regard to L.R No. 209/697/33 the title document shows that the property is registered in the names of Karama Ahmed, Abed Salim and Kariithi Minutia. The deceased share has yet to be transferred to the beneficiaries. He states that he made payments of Kshs 180,000.00, Kshs 45,000.00 were paid to Ali & company Advocates for purposes of extension of the lease. He also paid 300,000 as council fees.

7. The executor in turn filed a supplementary affidavit dated 26th August 2016 where he avers that the deceased only held one half undivided share in L.R No. 209/276 and 209/783/17 in trust for himself and eight partners as was capsulated in the partnership deed dated 11th June 1976. The deceased share in L.R 209/276 and 209/783/17 was distributed to the beneficiaries as named in clause 3 (vi and vii).

8. He further states that upon the request of the partners, the executors of the deceased, took up management of the partners interest. The executors collected rent from 1989 to September 1990 when Keriesek & Co. were appointed the managing agents of the property. He states that in November 1991 the executors and the partners appointed Gichohi Kariithi to join Hezekiah Wambugu Wachira of the estate of the late Jerald Wachira Macharia in the management of the partners one half undivided interest in the property.

9. That in January 1993, the partners appointed Abeid Salim to join Ruth Wanjiku Wachira in the management of the property and when Mrs. Ruth Wanjiku Wachira di her daughters joined Abeid Salim in the management of the property up to 2001 when Abeid Salim died. In 2001, the partners appointed Gichohi Kariithi to join Anne Knot in the management of the property

10. The applicant and the respondent filed written submissions on 6th April 2017 and 05 May 2017. I have read and considered them. The issue for determination is compliance with court orders as to accounting for transaction in L.R 209/2716 and 209/783/17 (transfer to the beneficiaries and rent collected prior to 2007). The applicant submitted that the greatest area of non-compliance by the executor relates to the period prior to Gimco taking over from the executor. He states that the executor ought to account for money received, money spent on account of the property and money given to the beneficiaries. He pointed out that although formal transfers were made for the transfers of properties to other beneficiaries, no formal transfer document was tendered to show that the executor had handed over Mohamed Mohaa's share in the property L.R no 209/2716 and 209/783/17 and that the executor ought not to deal with the property in his capacity as executor.

11. The respondent in turn submitted that the Mohamed Mohaa was a partner long before the demise of the deceased and as such was aware of the partners dealing. He submitted that if any money is claimed by him, then such a claim ought to be before a commercial court and not in a succession court.

12. I have considered the applicants and respondents affidavits, and submissions and draw the following; Section 83 (h) provides that a personal representative has a duty to *".....produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, 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"*.

13. Having gone through the affidavits filed before this court, the executor did file records of account from Gimco Limited. He also filled statements from 1989-1990 highlighting income receive from the property in question. I do note that from the court file that no formal transfer documents in connection to the deceased one half share in the property in question have been exhibited and no record of each beneficiary's share has been filed. The alleged transfer of the deceased interest in the property in question has not been documented and as such completion of the said estate cannot be said to have been done. I have also gone through the partnership deed dated 16th June 1976 and in particular paragraph 3 which reads;

"Kariithi Kinuthia hereby agrees and declares that the one half share registered in his name of Kariithi Kinuthia is not his alone but he holds the said half share as the representative of the partners to this deed"

From the above it is clear that the deceased acted on his own motion and on behalf of the eight partners and could only bequeath his share to his beneficiaries. Consequently, the registration of the title documents in the name of Jerald and the deceased can be said to have been as a consideration from all the partners in terms of their contribution and resolve. It thus leads to the conclusion that the deceased share that is capable of being bequeathed is only in terms of his share in the partnership and not as his capacity

as a representative to the partnership.

I therefore order the following:

- i. The executor shall within 30 days from the date of this ruling file comprehensive and complete accounts illustrating money paid out to the beneficiaries, and money paid out of the estate in reference to L.R No. 209/2716 and 209/785/17
- ii. The executor shall convey a meeting with the partners so as to effect the transfer of the deceased share in the L.R Nos. 209/2716 and 209/785/17 to its rightful beneficiary.
- iii. Parties to take a mention date within 45 days to confirm compliance with these orders.
- iv. Costs in the cause.

Signed, dated and delivered this **29th** Day of September 2017.

R. E OUGO

JUDGE

In the presence of:

Mr. Mugo h/b Mrs Kimani For the Applicant

Respondent Absent

Ms Charity Court Clerk