



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 1567 OF 1998**

**IN THE MATTER OF THE ESTATE OF KAMAU MUTHAMI (DECEASED)**

**RULING**

1. The deceased died on 5<sup>th</sup> September 1997. Representation to the estate was sought in the matter by a petition lodged herein by Idah Njeri Kamau, in her capacity as the widow of the deceased. She stated that the deceased was survived by her and their six (6) children, being Samuel Kamau Muthami, Margaret Wanjiku, Nancy Wangari Kamau, Susan Njambi, Monica Wambui and Eunice Wanjiru. He was expressed to have died possessed of two assets, being Mutuini/Dagoretti/214 and money in an account with Barclays Bank. There is a consent on record dated 13<sup>th</sup> August 1998, purported to be signed by all six children, indicating their support to the petition by their mother Idah Njeri Kamau.

2. An objection to the petition by the widow was lodged in court on 23<sup>rd</sup> February 1999 by a son of the deceased and the petitioner herein, called Samuel Kamau Muthami. He filed an answer to the petition, a cross-petition and an affidavit in support of the cross-petition on 15<sup>th</sup> March 1999. He stated that his mother was not fit to administer the estate for an undisclosed reason, and that she had not sought his consent. He listed the same persons as those listed in the petition as survivors, save for Nancy Wangari Kamau, who was omitted.

3. It is not clear to me from the record before me whether the objection proceedings were conducted or a consent was entered into to dispose of the objection, but a grant of letters of administration intestate were made to the petitioner and the objector on 29<sup>th</sup> November 2000. The typed record of the proceedings indicates that a consent was recorded on 29<sup>th</sup> November 2000 for appointment of both the petitioner and the cross-petitioner as administrators, with liberty to either of them to apply for confirmation within six months.

4. The first administrator, Idah Njeri Kamau, moved the court for distribution of the estate through a summons for confirmation of grant dated 6<sup>th</sup> February 2000, where she proposed to have the money in the account devolve upon her absolutely, together with the life interest in the landed asset. There is on record a consent signed by three (3) of the daughters - Margaret Wanjiku, Nancy Wangari Kamau and Susan Njambi - in support of the proposed distribution, dated 14<sup>th</sup> February 2001

5. The second administrator, Samuel Kamau Muthami, was not party to the confirmation application, although he was a co-administrator, and I have not come across any affidavit by him supporting the said application, or an affidavit of protest if he was not in agreement with it. There is, however, a consent on record dated 14<sup>th</sup> August 2002, and filed herein on 15<sup>th</sup> August 2002, signed by the advocates for both administrators, wherein the estate was proposed to be distributed between the widow, the son and the unmarried daughters of the deceased. That meant that the two married daughters, Monica Wambui and Eunice Wanjiru, were not provided for. The said consent was adopted as an order of the court on 7<sup>th</sup> October 2002. A certificate of confirmation of grant was duly issued in those terms dated 7<sup>th</sup> October 2002.

6. The application that I am called upon to determine is dated 19<sup>th</sup> January 2017. It is brought at the instance of Monica Wambui Kamau. She sought various prohibitory and restraining orders against Margaret Wanjiku with relation to Mutuini/Dagoretti/214. There is also a prayer for accounts in relation

to rents collected from premises standing on the property. The grounds on the face of the application are so poorly drafted that they do not make sense at all, for in them the applicant appears to be accusing herself intermeddling with the said property and of selling off or leasing part of the property. In her affidavit in support, the applicant complains that she was not involved in the proceedings and she had not been informed of the distribution. She deposes that the respondent and their brother were administrators for the purposes of preserving the estate and therefore the respondents' conduct contravened their duties as such.

7. The respondent has responded to the application through an affidavit sworn on 3<sup>rd</sup> March 2017. She denies being an administrator, and asserts that she is a mere beneficiary. She states that the estate was distributed in 2002 and the assets shared out amongst the beneficiaries, save for the applicants, and all the beneficiaries have taken their respective portions. She avers that prior to his death the deceased had called a family meeting to distribute his property where the applicants openly stated that they did not wish to get any land as they were married and satisfied. She further avers that the two had also renounced their entitlement to a share in the estate in a document dated 24<sup>th</sup> September 2000, attached to her affidavit.

8. Together with the replying affidavit, the respondent has also filed a notice of preliminary objection dated 21<sup>st</sup> June 2017, where she states that the estate was distributed and therefore the application was untenable.

9. Directions were given on 21<sup>st</sup> June 2017 for the simultaneous disposal of the application and the preliminary objection. Disposal was to be by way of written submissions. Both sides have complied with those directions by filing their respective written submissions, which I have read through and noted the arguments made therein.

10. I have narrated in the foregoing paragraphs of this ruling the events in this matter since inception. It is quite clear from the record that the grant herein was confirmed, and distribution of the estate approved by the court in orders that were made sometime in 2002. Those orders are still subsisting. The distribution ordered by the court then has not been vacated or set aside or varied. In it the applicants were not allocated any shares. The basis of their exclusion appears to be that they were married and had renounced their rights over the estate. The propriety of their exclusion is not an issue for determination in the application before me. The widow of the deceased has since died. I made a ruling on 23<sup>rd</sup> October 2015 directing that her entitlement under the 2002 distribution be subjected to succession proceedings initiated in a matter relating to her estate.

11. I agree with the respondent. As the estate has been distributed, the applicants have no locus to seek the orders that they seek in their application. They are not entitled to anything from the distribution of 2002, so there can be no foundation for any orders against the persons named in that process as beneficiaries so long as the 2002 orders are still intact. If their claim is to entitlement to the share that was allotted to their mother, then they ought to move the court appropriately in a cause relating to the estate of their deceased mother.

12. I need not say more. The application before me is without proper foundation and I shall, which I hereby do, accordingly dismiss the same with costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 8<sup>TH</sup> DAY OF DECEMBER, 2017.**

**W. MUSYOKA**

**JUDGE**