



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1445 OF 2002

IN THE MATTER OF THE ESTATE OF FRANCIS MAINA KAMAU (DECEASED)

M K M.....1ST APPLICANT

J N M.....2ND APPLICANT

E W3RD APPLICANT

I N M.....4TH APPLICANT

VERSUS

B N M.....RESPONDENT

RULING

1. The deceased F M K died intestate on 12th April 2002. He was survived by a widow B N M (the respondent) and four children (the applicants). The respondent petitioned for the grant of letters of administration intestate with the consent of the applicants. The grant was issued to her on 30th July 2002, and confirmed on 4th June 2003. The estate was to be registered in the name of the respondent to hold in trust for the applicants in equal shares.
2. On 22nd September 2009 the applicants filed summons seeking the revocation of the grant on the basis that following the confirmation the respondent registered the estate in her name absolutely and continued to use the property for herself. Further, that she had failed to account to them. They asked that after the revocation all the beneficiaries be appointed as joint administrators of the estate. The application was opposed. It is pending.
3. The applicants filed the instant application dated 30th September 2015 seeking that the respondent accounts for the estate of deceased; they be included as joint holders of Account No. [particulars withheld] at Bank of Africa and Account No.[particulars withheld] at Equity Bank, which are both currently in the name of the respondent and into which the proceeds of the rents of the estate are deposited; or, in the alternative, a joint account in the name of all the beneficiaries be opened and all proceeds be banked therein; the estate of the deceased be distributed to all the beneficiaries forthwith and the respondent be restrained from disposing or in any way interfering with the

- estate, pending distribution. The applicants were complaining that the respondent had refused, failed or neglected to render a true and just estate account, as well as failing to distribute the estate. They stated that the respondent was intermeddling in the estate and disposing of parts of the same without reference, or benefit to them. All efforts to reconcile the parties, they claimed, had been resisted by the respondent. The respondent opposed the application saying that she had a life interest in the property and that the applicants' interests had not crystallised as her life interest had not yet terminated. She denied having disposed of any property of the estate, and stated that she had used the property to take care of the applicants. She went on to state that the applicants were now adults and capable of taking care of themselves. The application, she concluded, was intended to render her destitute as she solely depended on the rental income for her sustenance.
4. Mr Kalwa for the applicants and Mr Wachira for the respondent agreed to have the application decided on the basis of the affidavit evidence and written submissions.
 5. The certificate of confirmation indicated that the estate of the deceased was to be registered in the name of the respondent for her to hold in trust for the applicants in equal shares. The property were Nyandarua[particulars withheld] , Njoro/[particulars withheld] – Kiamunyi, Nakuru Municipality[particulars withheld] , L.R. [particulars withheld] City Park, [particulars withheld] Toyota Corolla and [particulars withheld] Nissan. There is no dispute that although the property was to be registered in the name of the respondent in trust for the applicants, the same was registered to her absolutely. That registration certainly went against what was agreed during confirmation. Secondly, the 1st applicant's supplementary affidavit shows that the vehicles have since been transferred to Kariru Stephen and Imbwaga Beatrice, respectively. The respondent has not materially disputed this. Further, the affidavit shows, and there is green card to prove this, that 2 acres of Njoro/[particulars withheld] have been transferred to [particulars withheld] School Ltd.
 6. In short, there is sufficient evidence to show that the respondent is disposing of the estate of the deceased. That estate was, according to the certificate of confirmation, meant to be held in trust for the applicants. The respondent, as trustee, was to hold the estate for the applicants as beneficiaries. She was supposed to deal with the property in the estate for the benefit of the applicants. This was not her property which she could deal with as she wished.
 7. These are the reasons why I allow the application, but on the following terms:-
 - a. within 30 days from today the respondent shall render a true and accurate account of all her dealings with all the properties of the estate, including any rents and proceeds of any disposals and how the money has been spent;
 - b. the respondent is restrained from disposing or in any way further dealing with the estate until the summons for revocation is heard and determined;
 - c. any further operation of the account No.[particulars withheld] at Bank of Africa and Account No. [particulars withheld] at Equity Bank is stopped until the above summons is heard and determined;
 - d. the issue of the distribution of the estate to be dealt with in the application for revocation; and
 - e. costs of the application to be paid by the respondent.

DATED and DELIVERED at NAIROBI this 23rd day of February 2016

A.O. MUCHELULE

JUDGE