



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

SUCCESSION CAUSE NO. 463 OF 2014

IN THE MATTER OF THE ESTATE OF: ESTHER NYAKERARIO alias ESTHER NYAKERARI.....DECEASED

BETWEEN

MASERO RIOBA TURUKA.....OBJECTOR / APPLICANT

VERSUS

MARWA RIOBA TURUKA.....PETITIONERS / RESPONDENTS

RULING NO. 1

1. This ruling relates to the Summons dated 30/09/2015 and filed on 02/10/2015 which were taken out by one **Wairungu Rioba Turuka** who is a Co-Administrator in respect to the estate of the deceased herein, Nyakerario Rioba Turuka alias Esther Nyakerario.

2. The application sought the following two prayers:-

“1. That Masero Rioba Turuka the Co-Administrator do render an account of all the rents/monies collected by himself from plot No. 51 Isebania since the year 2006 to date.

2. That pending the confirmation and distribution of the estate the rents accruing from plot no. 51 Isebania (Commercial Plot) deposited at Migori High Court.”

3. The Applicant swore an Affidavit on 29/09/2015 in support of the application.

4. **Masero Rioba Turuka**, a Co-Administrator and to whom the application was directed to, opposed the application. He filed a Replying Affidavit evenly sworn on 09/11/2015.

5. For this court to be able to deal with the application at hand with ease and clarity, it is worth having a brief look at its background. Masero Rioba Turuka, the Co-Administrator/Respondent petitioned for Letters of Administration in respect to the deceased herein before the High Court at Kisii in Succession Case No. 505 of 2010.

6. On 01/02/2011 the grant was issued as petitioned. Come 30/09/2011, one **Marwa Rioba Turuka** filed an objection to the making of the grant through Messrs Kerario Marwa and Co. Advocates. Although the grant had already been issued, the application for objection proceeded on for directions where it was agreed that the same be heard by way of oral evidence. Thereafter and before the hearing took place, the Court file was transferred to this Court for further dealing on the opening of a High Court station.

7. On 06/05/2015 the said Co-Administrator Masero Rioba Turuka filed a Summons for Confirmation which is pending determination.
8. On 15/07/2015 the then Administrator of the estate, Masero Rioba Turuka and the “Objector” Marwa Rioba Turuka through their respective Advocates entered into a consent that the grant which had been issued by the High Court at Kisii be revoked and a joint one be issued to the names of Masero Rioba Turuka and Wairungu Rioba Turuka, who are siblings, with liberty to any and/or all of them to apply for confirmation within 30 days thereof. The joint grant was issued on 24/07/2015.
9. It was after the foregone that the application under consideration was filed.
10. Back to the Summons at hand, the Applicant contends that his brother the Co-Administrator has been collecting monthly rent to the tune of Kshs. 200,000/= since April 2006 from the property standing on Plot No. 51 Isebania (hereinafter referred to as 'the property') which forms part of the deceased's estate and as such he ought to account for the same. The Applicant further contends that the accounts once rendered will pave a way to the confirmation of the grant. It was submitted that since the Respondent had been the sole Administrator of the estate before the coming in of the Applicant he remains under a legal duty to render the accounts.
11. The Respondent is of the contrary view. He takes the position that the property was originally one of the various properties which were owned by their late father who went ahead and distributed his said properties among all his children during his lifetime. The property in issue was then earmarked for six children being the Respondent and his five other siblings. It then happened that the six siblings were still minors and in order to secure their shares in the property, the property was registered in the name of their mother who is the deceased herein and in their trust.
12. The Respondent further deponed that the Applicant and his other sibling Marwa Rioba were given the parcel of land known as BUKIRA/BWISABOKA/2546 which land they later on sold to a third party and migrated to Tanzania.
13. It is the Respondent's contention that the property has so far been shared equally among the six siblings and of them each has fully developed his share independently. The Respondent retained his share of the property being a portion measuring about 50ft by 100ft on which he put a small structure which he has rented out at Kshs. 5,000/= monthly. He sees the application as ill-intentioned and brought up only to complicate issues instead of having the grant confirmed. He prays that the application be dismissed with costs.
14. I have intently considered the application alongside the response, the parties' submission as well as the background. Whereas the Applicant's position is correct in law that an Administrator is answerable to both the beneficiaries and the Court and can be called at any time to render the accounts for any proceeds from the estate, the application at hand has introduced a new dimension to the matter. That is the contention that the property was registered in the deceased's name but in the trust of the Respondent and his five other siblings and to the total exclusion of all the others as their share of their father's property and that all the other children benefitted from several other properties of their father.
15. This Court is alive to the fact that the matter before it concerns the estate of the deceased herein and not the estate of the Applicant's father. However this Court is under a duty to ensure that the dispute in issue is determined substantively and with possible finality. It is indeed not in doubt that in the event the Respondent succeeds in his position, that will have an effect on the deceased's estate herein and the confirmation thereof.
16. In circumstances therefore, this Court will not make a determination to the Summons dated 30/09/2015 and will instead give the Respondent time to reconsider his position in these proceedings. That he will do in the next 21 days.
17. This matter will then be fixed for a Mention on 23/03/2016 for the Respondent to update the Court on

any progress and/or for the Court to make further and/or final orders in respect of the Summons dated 30/09/2015.

18. Orders accordingly.

DATED and SIGNED AT MIGORI this 31ST day of MARCH 2016.

C. MRIMA

JUDGE