



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PROBATE AND ADMINISTRATION DIVISION
SUCCESSION CAUSE NO. 949 OF 2011
IN THE MATTER OF THE ESTATE OF GERALD MUTURI MAINA (DECEASED)

EUNICE MUTURI

WASHINGTON MUCHIRI MUTURI.....APPLICANTS/ADMINISTRATORS

Versus

BARCLAYS BANK OF KENYA.....RESPONDENT

R U L I N G

1. The deceased to whose Estate these proceedings relate is Gerald Muturi Maina who died on 10th January, 2011. A grant of letters of Administration of his intestate Estate was made to Eunice Muturi and Washington Muchiri Muturi (hereinafter the Applicants), the deceased's widow and son respectively.
2. By an application dated 16th September 2015 the Applicants pray for orders that Kshs.7,203,842.15 held in the joint names of Daniel Muiruri Ng'ang'a (deceased) and Gerald Muturi Maina (deceased) held at Barclays Bank Branch, in account No.[particulars withheld] be released to the Estate of Gerald Muturi Maina.
3. The application is premised on grounds that the grant of Letters of Administration issued herein was confirmed on 1st April 2014 and the Estate has so far been distributed in terms of the confirmed grant. That Kshs. 10,146,090 due to the Estate of Daniel Muiruri Ng'ang'a was released on 25th June 2015 from KCB Account No. [particulars withheld] which was held in the joint names of the two deceased persons. Further that the Estate of the deceased does not owe any monies to the Estate of Daniel Muiruri Ng'ang'a and that the sum of Kshs. Kshs.7,203,842.15 held in the joint names of Daniel Muiruri Ng'ang'a and Gerald Muturi Maina belongs to the Estate of the deceased herein.
4. The application was supported by the affidavit of Washington Muchiri Muturi the 2nd Applicant, in which he deposed that his co-Administratrix and himself have visited Barclays Bank Branch, since June 2014, for the release of Kshs.7,203,842.15 to the Estate. That the Bank has refused to release the monies claiming that the Grant issued to the Estate of Daniel Muiruri Ng'ang'a must also be confirmed before the bank can release the funds to the beneficiaries.
5. The Applicant argued that the confirmation of the Grant of Letters of Administration issued to the

- administrators of the Estate of Daniel Muiruri Ng'ang'a has nothing to do with the funds held in the Barclays bank account as the Estate has already received its share from the joint account held at Kenya Commercial Bank. The Applicant further argues that the Administrators of the Estate of Daniel Muiruri Ng'ang'a have never objected to the said funds being released to the Estate of the deceased. That therefore there is no basis for the bank to continue insisting that it is after confirmation of the grant issued to the Administrators of the estate of Daniel Muiruri Ng'ang'a that they can release the funds to the beneficiaries of the deceased.
6. In opposition Evans Kamau swore a replying affidavit on behalf of the Respondent bank and deposed that he is the Branch Operations Officer, Barclays Bank Branch, and has the authority to swear the affidavit on behalf of the Company. The Respondent argued that this summons was defective, premature and indeed an action of pre-emptive nature intended to embroil the Respondent in an illusory dispute created with the sole aim of embarrassing the Respondent's pristine reputation and should be dismissed.
 7. The Respondent avers that before being served with the summons, they were strangers to any rectification of Grant and any funds transfer from Kenya Commercial Bank to the estate of Daniel Muiruri Ng'ang'a as alleged in the Applicant's affidavit. He further averred that he does not dispute that the deceased Gerald Muturi Maina held account No. [particulars withheld] in his own name and also held account No. [particulars withheld] as a joint Trustee Account in the names of Daniel Muiruri Ng'ang'a and Gerald Muturi Maina with the Respondent bank.
 8. He also deposed that the Respondent bank released the sum of Kshs.6,077,393.30 to the Administrator of the Estate of Gerald Muturi Maina on 17th September 2014 in respect of account No. [particulars withheld] contrary to what has been alleged by the Applicants.
 9. The issue for determination is whether the Respondent Bank can release the funds held in the said bank in the joint names of Gerald Muturi Maina and Daniel Muiruri Ng'ang'a also deceased to the Estate of Gerald Muturi Maina at this point.
 10. From the facts on record account No. [particulars withheld] Barclays Bank branch is a joint Trustee account in the names of the two deceased persons, Daniel Muiruri Ng'ang'a and Gerald Muturi Maina. None of the two Estates can lay claim to the funds therein without providing confirmed grants to each of the two Estates. The court has had sight of the confirmed grant in the Estate of Gerald Muturi Maina but on the other hand, there seems to be no dispute that the grant issued in the Estate of Daniel Muiruri Ng'ang'a has not yet been confirmed.
 11. The Respondent bank is quite in order to demand that the grants in the two Estates be confirmed since they owe a fiduciary duty to both Estates. There is nothing difficult in the Administrators in the Estate of Daniel Muiruri Ng'ang'a obtaining partial confirmation of the grant, as relates only to the funds in question so that the said funds can then be released as agreed by Administrators in the two Estates.
 12. The undated letter from the Administrators of the Estate of Daniel Muiruri Ng'ang'a cannot take the place of a confirmed grant which is an order of court and a requirement of the law. **Section 55 (1) Law of Succession Act** provides that no grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed as provided by section 71 Law of Succession Act.
 13. It is therefore clear as pike staff that this application is not only premature and pre-emptive in nature it is also an exercise in futility since the requirement of section 55 of the Law of Succession Act is clear and unequivocal. In sum the application is found to be lacking in merit and is dismissed accordingly.

SIGNED DATED and DELIVERED in open court this **22nd** day of **April 2016**.

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L. A. ACHODE

JUDGE