



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 16 OF 1988

IN THE MATTER OF THE ESTATE OF LABAN KING'ORI MACHARIA (DECEASED)

ZAWERIA WANGARI KINGORI.....APPLICANT

JOHN MWANGI KING'ORI.....RESPONDENT

RULING

1. The deceased, KING'ORI MACHARIA, died on 16th February, 1986. A Grant of Probate of his written Will dated 5th April, 1975 was issued to JOHN MWANGI KINGORI (hereinafter the Executor) on 30th March, 1988. The said JOHN MWANGI KING'ORI, RISHIBA WANJERI KING'ORI and NELLY WANJERI KING'ORI were the Executors named in the Will. The deceased had three wives.
2. Summons for Revocation of grant was filed in Court on 30th April, 2003 by FRANCIS MWANGI KINGORI and NELLY WANJERI KING'ORI. The properties that comprised the estate of the deceased were distributed on 26th April, 2013. The Beneficiaries agreed that the distribution would be on the basis of the three (3) houses of the deceased in accordance with the last Will of the Deceased.
3. Kimaru J in his Ruling dated 29th October, 2014 directed that the properties to be inherited by the 1st house shall be distributed on the basis of **section 29(a)** of the **law of Succession Act**, equally among all the children of that house irrespective of whether they are sons or daughters, married or unmarried. This was as a result of an application made by ZAWERIA WANGARI KINGORI arguing that the Executor had excluded her from benefitting from the share due to her mother's house.
4. The estate of the deceased comprised of ten (10) properties. There was no dispute regarding how the nine (9) properties were distributed to the beneficiaries by the court. The Executor disputed the manner in which the property registered as L.R. No. 209/1413/28 Accra Road Nairobi was distributed by the court. This was a commercial property. It was common ground that after the death of the deceased, the Executor improved the value of the property by constructing several floors above the two (2) floors that already existed at the time of the deceased's death. The parties were in agreement that the portion of the property that was to be distributed to the beneficiaries was the land itself and not the developments thereon. The Executor too conceded that the land belonged to the deceased and was therefore part of the estate which was available for distribution. Thus far there was no dispute between the beneficiaries.
5. To resolve the distribution of this particular property, the court directed the contesting parties to each appoint a Valuer of their choice, to undertake the valuation of the suit parcel of land, and

- upon the filing of such valuation reports, the court would then make its determination as to the value of the land. In compliance with the order of the court, Messrs Townland Valuers, duly instructed by one of the Objectors, filed a report that valued the land at Kshs.90 million, while Mathu and Associates duly appointed by the Executor filed a report that valued the land at Kshs.60 million.
6. The court proceeded to ascribe the value of Kshs.75 million to the suit parcel of land using the two valuation reports and taking into consideration the nature of the dispute between the parties to the suit. The court then ordered the Executor to pay to the estate the said sum of Kshs.75 million, which was to be distributed equally between the three (3) houses.
 7. The court granted the Respondent's wish to retain the suit property subject to his surrendering the value of the land to the Estate. The Executor being a beneficiary, would also benefit in a similar manner as other beneficiaries, since the house to which the Executor belongs would also get a third of the said sum of Kshs.75 million. Because there were other properties which were also valued and other beneficiaries given the first option to purchase, the respective values of those properties would be set-off as between the houses so that what would ultimately be paid in form of cash would be the balance of the set-offs.
 8. Being dissatisfied with the decision of the court, the Executor filed an application seeking for stay of execution pending the hearing and determination of his intended appeal. In a Ruling delivered by Justice Luka Kimaru also dated 29th October, 2014, the court dismissed the application for lack of merit, noting that the Executor had not established to the satisfaction of the court what prejudice he would suffer, when he was being asked to distribute the assets of the deceased to the beneficiaries. Further that the distribution of the Estate of the deceased had been pending in the corridors of the court for more than 28 years, during which period the status quo had been to the benefit of the Executor to the exclusion of other beneficiaries.
 9. By an application dated 11th November, 2014 under certificate of urgency, Francis Mwangi Kingori, a beneficiary from the 2nd House sought orders of the court to compel the Executor to account and complete the distribution of the estate and to forthwith pay to the estate a sum of Kshs. 75 million, for distribution to the respective houses and/or beneficiary, among other orders. The court was told that the Applicant had since charged the suit property for a sum of Kshs.70 million which he had refused/neglected to pay into the Estate. The court on 24th November, 2014 ordered that the Executor do pay the sum of Kshs.70 million obtained by charging the asset into the Estate to be paid out to the beneficiaries.
 10. On 11th November, 2015 also by an application brought under certificate of urgency, the Applicant FRANCIS MWANGI KINGORI, urged the court to vacate orders made on 10th November, 2015 giving parties time to file their valuations. This was based on grounds *inter alia* that there was no need for any other valuation there being two previous valuations, already on record. The Executor opposed the application vides a Replying Affidavit dated 24th November, 2015. He averred *inter alia* that the said valuation is necessary, and that he had paid Highlands Valuers a sum of Kshs. 200,000 to carry out the said valuation.
 11. It is as result of this application that the court reserved the matter to peruse the record to establish the processes that have already taken place in this cause. It is also for that reason that the court has set out the foregoing summary of the proceedings so far in this cause to provide some clarity.
 12. The charge made to Housing Finance Company of Kenya over the land is said to have been done in 2015. At this point in time however the land on which the property stands had already been pronounced by the court to be part of the assets of the Estate. The said land was therefore in escrow and any attempt by the Executor to charge it outside of the orders of the court would appear to have been intended to defeat the said orders of the court. This amounts to intermeddling with the free property of a deceased person in a manner proscribed by **section 45 Law of**

Succession Act.

13. From the preceding summary it can be noted that the grant herein has already been confirmed and the distribution of the Estate agreed. The court has also given directions on how the distribution of L.R. 209/1413/28 is to be effected. What remains is for the Executor to comply with the order of Kimaru J in the ruling dated 29th October, 2014. To entertain any other application in the matter will only serve to waste time and keep the beneficiaries out of the inheritance longer for no good reason.

For the foregoing reasons I hereby grant orders as follows:

- i. Because the charge was done subsequent and contrary to court orders, this Court in exercise of its inherent jurisdiction, vacates the charge made to Housing Finance Company of Kenya on (HFCK) land parcel No. L.R. 209/1413/28. The HFCK shall be at liberty to move against any other of the Executor's personal properties.
- ii. The Executor do give vacant possession of the property that is L.R. 209/1413/28, to facilitate the sale thereof at the current market value.
- iii. Upon the sale of the property, and because the valuation done in 2014 may have been overtaken by time, a valuation shall be done to determine the value of the land as separate from the developments thereon and the valuation shall be paid for from the proceeds of the sale. The valuer shall be agreed upon by the three counsels on record.
- iv. The current market value of land only, shall be deposited in the Estate for distribution to the three houses of the Estate.
- v. The Executors shall then move with due dispatch to distribute the Estate of the deceased to the beneficiaries in accordance with the orders of Kimaru, J. dated 29th October 2014.

It is so ordered.

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

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L. A. ACHODE

JUDGE