



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 2324 OF 2015**

**IN THE MATTER OF THE ESTATE OF TERESIA WAIYEGO IHUGO (DECEASED)**

**AJELICA WAIRIMU IHUGO.....1<sup>ST</sup> APPLICANT**

**CONSOLATA NJERI IHUGO.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**IBRAHIM MAINA IHUGO.....1<sup>ST</sup> RESPONDENT**

**PETER DOMINIC MBUI IHUGO.....2<sup>ND</sup> RESPONDENT**

**DAVID NDERU IHUGO.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. Teresia Waiyego Ihugo the deceased hereinafter referred to as the deceased died on the 19<sup>th</sup> May 2004. On the 29/7/5 Ajellica Wairimu Ihugo and Consolata Njeri Ihugo filed a petition for letter of administration intestate. They are the daughters of the deceased. In their affidavit in support of the petition they state those left surviving the deceased as;

- i. Anne Wanjiru Ihugo
- ii. Ajellica Wairimu Ihugo
- iii. Ibrahim Maina Ihugo
- iv Consolata Njeri Ihugo
- v. Peter Dominic Mbui
- vi. David Nderu Ihugo

2. Before the petition was filed Ibrahim Maina Ihugo, Peter Dominic Mbui Ihugo had been served with a citation notice. It is after the citation that the 2 petitioners filed their petition dated the 27/7/2015 and filed on the 29/7/2015. On the 28/7/2015 the petitioner/applicants filed a notice of motion dated the 28/7/2015. It is brought under section 45, 47 and 76 of the Laws of Succession Act Cap 60 Laws of Kenya Rules 44 and 73 of the Probate and Administration Rules. The applicants seek the following orders;

***a) That status quo as it was since the demise of Teresia Waiyego Ihugo in respect of all the***

***properties forming the assets of the deceased's estate herein and more particularly 29% shares in land No. 209/2565- Nairobi Country via Grant No. IR 80881 (commonly known as Business Centre) be maintained pending the issuance of the grant froileters of Administration Intestate which petition has since been filed.***

***b) That the said respondents be ordered to immediately give a detailed account of and deposit into this court the proceeds of the rental income from 29% shares in Land No. 209/2565- Nariobi County Via Grant No. IR 80881(Commonly known as business Centre)***

***c) That the transfer and registration of any shares in respect of any assets belonging to the deceased herein particularly in the said land No. 209/2565- Nairobi County Via Grant No IR 80881 (Commonly known as Business Centre )Effected after the demise of the deceased be revoked and/or nullified.***

3. The application is supported by the affidavit of Ajellica Wairimu Ihugo together 3 grounds stated on the face of the application as follows;

a) The respondents have fraudulently transferred the deceased's 29% shares in land no. 209/2565- Nairobi County via grant No. IR 80881 (Commonly known as Business Centre) which was supposed to be held in trust to a commonly known as Business centre), which was supposed to be held in trust, to a company where they are shareholders and they have adamantly refused and/or neglected to disclose how much they have sold the same and/or give property account of the proceeds of the sale thereof to the applicants.

b) The respondents have not given to the applicants a proper and full account of the rental income that is generated from the said premises.

c) The respondents acts complained of herein amount to unwarranted intermeddling with the estate herein to the detriment of the interests of the other beneficiaries

4. The application solicited the response of the respondents. Each respondent filed a replying affidavit to oppose the application. The affidavits are each dated 2/12/2015. In response the applicant filed a supplementary affidavit dated the 26/1/2016 and thereafter David Nderu Ihugo the 3<sup>rd</sup> Respondent filed a supplementary affidavit. The application was canvassed by way of written submissions. The applicant filed their submissions on the 5/4/16. The respondent did not file any written submissions.

5. The applicant depones as follows; They the applicants and the respondents are beneficiaries on the estate of Teresia Waiyego Ihugo who died on the 19/3/04. Teresia died intestate. That they have applied for the letters of Administration intestate. That recently they learnt that the respondent their brothers have without their knowledge consent or knowledge fraudulently sold and transferred the deceased's shares in land no. 209/2565 to a 3<sup>rd</sup> party and they have refused to or neglected to disclose the amount they sold them for. That there has been no grant of letters of administration in respect of their mother's estate. They therefore seek an order that the respondents deposit the proceeds of sale so that it can be shared by the rightful beneficiaries. That if the order is not given the respondents are likely to dispose, alienate and or waste the entire estate to the detriment of other beneficiaries.

6. Each respondent filed a replying affidavit. The contents of the said 3 affidavits are similar. They accuse the applicants of failing to make full and correct depositions while prosecuting this succession cause. That the applicants are married and are not amongst the beneficiaries in the deceased's share in land No. 209/2565 Nairobi County via grant No. IR 80881. That is was an agreement they had before their mother died. To support this they refer to a consent letter dated the 11/3/2015 signed by their sisters. They also depose that they learnt that their sisters filed this succession cause without their knowledge of the other beneficiaries and that at meeting of all their siblings it was agreed that they have two administrators David Nderu Ihugo and Ajellica Wairimu Ihugo. That it was also agreed at 2 meetings on how the properties were to be shared and that C. M. Ngugi Advocates witnessed the same. They narrate how the properties were to be shared. They further deponed the 2 sureties who are alleged to have signed

the affidavit of justification of proposed sureties, Joseph Maina Kanyago and Nderu Mwangi have denied even signing the affidavit. They urge the court to discharge the exparte orders as concerns Muthithu Business Centre and to dismiss the application. They argue that whilst in the process of exercising their proprietary rights for the sale of the shares the applicants came to court and stopped them from selling the shares in the Muthithu Business Centre, that the said shares contain the financial and material contributions from the mother as the applicants had refused to contribute to the building.

7. In a supplementary affidavit the applicants' response is that they reiterate the contents of their earlier affidavit, that there was no discussion of sharing parcel no. 209/ 2565, that they did sign the consent letter dated the 11/3/15 however they were misled, misrepresented and fraudulently made to believe that the monetary value of the shares belonging to their deceased mother in LR 209/2565 and in another known as Mwikuru Africa Hotel and Building in the name of the late father were the same. They explain how they were cajoled to denounce their claim over the shares and how they have found out the worth of their mother's share they further state that the petitioner was filed with full knowledge of the respondents. That they did agree on the proposed mode of distribution but not in the presence of Mr. Ngugi Advocate. That they are entitled to benefit from the parents estate and they urge the court not to vary or vacate their expectations.

8. David Nderu Ihugo filed a supplementary affidavit on the 5/6/2016. He too reiterated the contents. In it he explains the mode of distribution and the agreement they had as a family. He avers that the applicants are casual with the truth and they urge the court to discharge the exparte orders.

9. The applicants filed written submissions on the 5/6/16. The respondent did not. I have read the submissions filed. From what it is deponed there is no dispute that the applicants and the respondents are beneficiaries of the estate of Teressia Waiyego Ihugo and therefore the legal beneficiaries. The petition that was filed by the applicant has not moved. The applicant have filed an application on to stop the respondents from continuing to dispose or interfere with the deceased property. It is apparent that there is no other succession case filed in another court. The parties appeared before the chief and agreed on the administrators. The applicants moved to court when they saw that nothing is being done.

10. The process of obtaining a grant for a deceased's estate has stages as provided in law. The applicants have started the process. It is for the family to adhere to the process and what forms the deceased estate has to be discussed by the beneficiaries including the mode of distribution. The issue of who should inherit what can be dealt with later. Thus I will not make a finding on the issues raised on whether the applicants have a right to inherit at this stage. However this court recognizes that the applicants and beneficiaries are legal beneficiaries to the deceased estate.

11. Allegations have also been made by the applicants that they were misled by the respondents, these are issues that can only be determined by way of viva voce evidence. Further the issue of whether the deceased distributed the estate before her death can only be determined by way of *viva voce* evidence. On the issue of intermeddling there are accusations from both sides as who should get what or who is entitled to what. The deceased's estate needs to be determined. It is hard to determine at this stage as to whether there is intermeddling or not. Concerns have been raised and therefore in order to preserve the deceased estate as the process of getting a grant continues this court make the following orders;

***i. The status quo as it was since the demise of Teresia Waiyego Ihugo in respect of all properties forming the assets of the deceased's estate shall be maintained pending the issuance of the grant for letters of administration intestate.***

***ii. The applicants and the respondent shall have a meeting within 30 days from the date of this ruling to determine the assets and worth of the deceased's estate and agree on the mode of distribution pending the application for grant for letters of administration.***

***iii. The applicants and the respondent also agree at the said meeting who shall be the administrators of the estate to continue with the process in court.***

**iv. The issue of revoking any title cannot be done at this stage.**

**v. The respondent did not file a formal application to set aside the exparte order. I have however varied the orders sought. Matter to be mentioned in the month of July 2016 to find out the process of the discussion. If there will be no agreement this court shall propose to the parties to be avail themselves for mediation. *No orders as to costs. It is so ordered.***

Dated signed and delivered this 25<sup>th</sup> day of May 2016

**R. E. OUGO**

**JUDGE**

**In the presence of:**

.....**For the 1<sup>st</sup> and 2<sup>nd</sup> Applicants**

.....**For the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents**

**Ms Charity Court Clerk**