



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 991 OF 2003
IN THE MATTER OF THE ESTATE OF AARON KIMOSOP KANDIE (DECEASED)
KIPRUTO KANDIE.....1ST APPLICANT
KIPTUI KANDIE.....2ND APPLICANT
VERSUS
CHEPCHUMBA LOKI KANDIE.....1ST RESPONDENT
KIGEN KANDIE.....2ND RESPONDENT

RULING

1. The deceased Aaron Kimosop Kandie died intestate on 7th July 2002. He was survived by one widow, Rhoda Chelangat Kandie, and the following four children:-

- a. Chepchumba Loki Kandie (1st respondent);
- b. Kiptui Kandie (2nd applicant);
- c. Kipruto Kandie (1st applicant); and
- d. Kigen Kandie (2nd respondent).

The widow, 1st applicant, 2nd applicant and the 2nd respondent petitioned this court for the grant of letters of administration intestate. The grant was issued to them on 9th November 2004 and confirmed on 30th January 2008. The properties forming the estate were distributed to the beneficiaries.

2. On 22nd October 2009 the applicants filed an application that sought, among other things, the revocation and annulment of the confirmed grant. That application is partly heard.

3. In the present application dated 9th December 2015 the same applicants sought the following orders:-

a. the respondents whose signatures of A/C No. **[particulars withheld]** held at Victoria Commercial Bank in the name of Nora Properties Limited be compelled to sign for the withdrawal and release of the moneys held in the account to be distributed equally to the applicants and respondents;

b. there be leave and order for the partial distribution of some of the properties of the estate of the deceased as follows:-

i. L.R. No. 93/174 Golden Gate Estate and $\frac{1}{4}$ share of the dividends from Braeburn Group of Schools to the 1st respondent;

ii. L.R. No. 209/8336/36 Loresho and $\frac{1}{4}$ share of the dividends from Braeburn Group of Schools to the 2nd respondent;

iii. L.R. No. 14277 Mombasa Road and $\frac{1}{4}$ share of the dividends from Braeburn Group of Schools to the 1st applicant;

iv. L.R. No. 209/14389 and $\frac{1}{4}$ share of the dividends from Braeburn Group of Schools to the 2nd applicant; and

v. leave be granted to the administrators to dispose off property known as L.R. No. 209/13735 measuring 2.5 acres situate at Embakasi Nairobi County and the proceeds thereof be utilised to repay the debts of the estate and the balance thereof be distributed equitably to the beneficiaries of the estate.

4. The grounds upon which the applicants based the application were that:-

a. they (the applicants) are dependent on the income from the estate for their upkeep and that the refusal of the respondents to withdraw and give them money from the account was detrimental to their well-being and was also inhuman;

b. it was just and equitable for the court to order the partial distribution of the estate in light of the fact that the respondents had appropriated to themselves properties of the estate from which they were receiving income to the exclusion of the applicants; and

c. one of the applicants was likely to suffer loss and damage as a result of a sale transaction which was likely to be cancelled if the orders are not granted.

The 1st applicant swore a supporting affidavit.

5. The application was opposed by the respondents through their notice of preliminary objection dated 11th May 2016 whose grounds were as follows:-

a. the application was defective and incompetent;

b. the orders sought were not available in view of the fact that there was unresolved application for revocation of the grant;

c. the orders sought involve properties vested in companies in respect of which the court lacks jurisdiction to arbitrate;

d. the application is misconceived, premature and based on mere speculation; and

e. the orders sought were irregular, unprocedural and a gross abuse of the process of the court in light of the pending ELC Case NO. 344 of 2015 in the High Court.

6. Parties' counsel filed written submissions which I have considered.

7. It is clear from the history of this case that all the beneficiaries consented to the confirmation of the grant on 30th January 2008. There was a schedule of the properties of the estate and the mode of distribution of the same. The beneficiaries agreed on the mode of distribution in the schedule. This is the grant that the pending application for revocation and annulment sought to attack. While that application is pending, the applicants now seek, among other things, the redistribution of the estate. The supporting affidavit alluded to family meetings that have agreed to the redistribution. However, nothing was annexed to show either the minutes of the meetings or the agreement. If the present applicant is, for instance, granted and subsequently the confirmed grant is revoked a problem of monumental proportions will be occasioned to the estate.

8. It is clear from the confirmed grant that each beneficiary came out with substantial property from the estate. There is no complaint that transmissions did not follow. One cannot therefore argue that, if the instant application is not granted the applicants will not be able to meet their basic needs.

9. In my considered view, the parties have to be patient and await the resolution of the application for the revocation and annulment of the grant. That is, if they are unable to convene as a family and consider all the outstanding issues in the matter to be able to find a solution that they can live with. The result is that I dismiss the application, but ask that, because it is a family dispute, each party bears own costs.

DATED and SIGNED at NAIROBI this 20th day of JUNE 2016.

A.O. MUCHELULE

JUDGE

DELIVERED AND SIGNED this 22ND day of JUNE 2016.

W. MUSYOKA

JUDGE