



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO 55 OF 2014**

**IN THE MATTER OF THE ESTATE OF GEOFFREY RUOHO NJUGUNA (DECEASED)**

**STEVE NDERI**

**ALICE NYOKABI RUOHO.....ADMINISTRATORS/APPLICANTS**

**VERSUS**

**LILLIAN NYOKABI RUOHO.....RESPONDENT**

**RULING**

1. **Geoffrey Ruoho Njuguna** hereinafter referred to as the deceased died on the 19<sup>th</sup> of June 2006 at Nyandarua. On the 15<sup>th</sup> of January 2014 a petition for letter of administration intestate was filed by **Steve Nderi** and **Alice Nyokabi** the son and widow of the deceased. In their affidavit in support of the petition they list the persons surviving the deceased and the known assets. On the 18<sup>th</sup> of February 2015 the administrator filed an application to have the grant issued on the 12<sup>th</sup> of May 2014 confirmed, the beneficiaries were listed, the assets too and the mode of distribution of the said assets was stated. The deceased died and left three widows **Alice Nyokabi Ruoho**, **Esther Njeri Ruoho** and **Lillian Nyokabi Ruoho**, each household has children listed as beneficiaries.
2. On the 19<sup>th</sup> of June 2015 **Lillian Nyokabi Ruoho** instructed a lawyer to file a notice of appointment. On the 25<sup>th</sup> of June 2015 Lillian Nyokabi filed an affidavit of protest to the mode of distribution as proposed by Steve Nderi and Alice Nyokabi Ruoho. Alice Nyokabi Ruoho filed a replying affidavit to the protest raised by Lillian Ruoho on the 22<sup>nd</sup> of October. On the 17<sup>th</sup> of June 2015 the administrators filed an application under Sections 34,45, 47 and 83 of the Law of Succession Act Cap.160 seeking the following orders;

*i. That the Court be pleased to issue an order restraining the respondent (Lillian Nyokabi Ruoho) her agents, servants and or employees from intermeddling and or interfering with the deceased's parcel of Land L.R. No. Ruiru West/ Block 1/1207 and rental income from rental houses thereon until confirmation of the grant issued by the Court in respect of the estate of the deceased.*

*ii. That the respondent be ordered to give an account of the funds and surrender the funds she has collected from the deceased's rental houses on L.R. No. Ruiru West/ Block 1/1207 to the administrators.*

*iii. That cost be provided for*

3. The application is supported by the affidavit of Steve Ruoho one of the administrators. On the 26<sup>th</sup> of October 2015 the respondent filed an affidavit in response to the affidavit of Steve. Steve Nderi filed a further affidavit in response to the respondent's replying affidavit.
4. On the 10<sup>th</sup> of November 2015 the respondent file an application dated the 9<sup>th</sup> of November 2015 under sections 49 and 73 of the Law of Succession Cap. 160 of the Law of Kenya seeking an order that she be appointed as an administrator together with the two administrators and that costs be in the cause. Tis application is supported by the respondent. This application is opposed. Steve Nderi filed a replying affidavit to the said application.
5. The subject of this ruling are the above two applications. Parties made oral submissions in court; I have considered them, the affidavits that are filed and the law. Having read the affidavits this is what I gather. The deceased left behind three wives and children upon his demise. It is evident that after his demise the family had a meeting and they agreed on the administrators. As per the Chief's letter dated the 18<sup>th</sup> of April 2013 each house nominated a representative, those nominated were **Steve Nderi Ruoho** from the 1<sup>st</sup> house, **Alice Nyokabi Ruoho** the 2<sup>nd</sup> widow and **David Muchiri Ruoho** a son from the 3<sup>rd</sup> house, whose mother is the protestor/ respondent. David is said to be deceased, hence the application dated the 9<sup>th</sup> of November 2015.
6. I will first deal with the application filed on the **9/11/2015**. The respondents reasons for seeking to be an administrator is that her son who was nominated to represent her house is now deceased and that following the discussions they had at the chief's office there is no representative for her house. That she is dissatisfied with the conduct of the two administrators as they have been hostile to her, the first administrator Steve has assaulted her and that she has been made to sign forms without any explanation, thus the interest of her house shall not be adequately taken care of and that the administrators cannot be entrusted to protect her interest or her children. That the two administrators have disposed off a property Gitamayu/Nyandume/T 193 and has not accounted to her.
7. The administrators have objected to her being an administrator they argue that she knew what she was signing as it was explained to her before an advocate , that it is the respondent who assaulted him and the matter is before the court, that the plot she mentioned was subdivided by the deceased and allocated to the three wives, the plots where they are residing and that it is the respondent who has without the consent of the other wives attempted to allocate the land to herself and wanted to evict them from their homes. That her application has been brought in bad faith and is aimed at scattering their application seeking to have the applicant account for the rental income from the Ruiru property and that they have nothing personal against the applicant and that all that they want is to perform their mandate as administrators which is to preserve, administer and protect the estate of the deceased for the benefit of all the beneficiaries including the applicant.
8. The law of succession provides at section 56 that an estate of a deceased person can have up to 4 administrators. From the contents of the Chief's letter it is evident that the parties in this cause intended to have every house represented at the time they filed the petition. It is not in dispute that the nominee from the 3<sup>rd</sup> house is now deceased. The applicant feels that her house will not be adequately represented. It is also evident that the parties have some dispute on who is to manage which property or who was bequeathed the property in contention. It is important the 3<sup>rd</sup> house be represented so that their interests can be adequately represented, in my view no prejudice shall be caused to the other houses plus I also note that Steve has deposed that he has no issues with the respondent. This court therefore grants the application dated the 9<sup>th</sup> of November 2015, Lillian Nyokabi Ruoho shall be an administrator together with Steve Ruoho and Alice Nyokabi Ruoho. The administrators' shall proceed to call for a family meeting and discuss the mode of distribution of the deceased's estate. In the event that they cannot agree the parties shall take a mention date within 45 days from the date of this ruling for directions on the way forward.

9. On the application dated the **17<sup>th</sup> of June 2015**, the applicants seek to restrain the respondent from intermeddling with the estate and interfering with the deceased's estate L.R. No. Ruiru west/ Block 1/1207 and rental income, plus they seek to have her give an account of the funds and surrender the funds she collected from the deceased's rental houses on the said property. In the applicants affidavits they alleges the said property forms part of the deceased's estate as it is registered in his name having been fully owned by him plus the developments thereon and that the respondent has been intermeddling and interfering with the said property and has misappropriated rental income to the detriment of the other beneficiaries. It is also their argument that as administrators they are the ones legally mandated to collect, administer the estate of the deceased. They state that on the 24<sup>th</sup> of August 2004 the deceased in the presence of his three wives respondent being one of them and in the presence of ten (10) witnesses did declare that the said suit property should be shared amongst the three wives when he passed on. It is alleged that the respondent has already transferred to herself one of the plots being L.R. Ruiru/Gitamabya plot No. B7/02. That despite the agreement the family had on the mode of distribution of the estate the respondent has come to court and filed a protest. The protest is yet to be determined, it is on the mode of distribution. The first administrator alleges fraud on the part of the respondent on some documents attached to her affidavit. In response to this application the respondent denies the allegations made against her on fraud and states that the property in issue was purchased by the deceased from monies obtained from a judgment the court gave in favor of their two daughters who had been involved in a road accident and that from the said monies the deceased bought the plot and added 8 rental rooms. That she has always collected the said rent and used it to pay fees and for maintenance, a fact the administrators are aware of. That she has not misused the rent as alleged and that it is not true that the deceased declared that the suit property should be shared by all the wives, she has annexed various documents which are being challenged by the applicant.

10. As was submitted some of the allegation made by the parties can only be established by way of viva voce evidence at a full hearing. My duty as a court at this stage is to preserve the estate of the deceased until such time that the parties agree on the mode of distribution or the court makes a finding on the same. There is a dispute as to whether the deceased bequeathed the respondent the suit property or whether it forms part of his estate and that it was to be shared equally. The court has powers to preserve the deceased's estate, this court therefore makes the following orders;

**a) The respondent is restrained from intermeddling and or interfering with parcel L.R. No. Ruiru West/ Block1/1207 in such a way that would be detrimental to the said property.**

**b) The respondent shall continue to collect rent but the same shall be deposited in a joint account to be opened and administered by the 3 administrators.**

**c) The respondent shall give an account to the other two administrators of the funds she has been collecting from the said property L.R. No. Ruiru West/ Block1/1207 to date.**

**d) As earlier ordered the three administrators shall come up with a mode of distribution of the deceased's estate and take a mention date within 45 days from the date of this ruling. In the event that the parties fail to agree this court may direct them to proceed for mediation on the same,**

**e) Costs shall be in the cause. It is so ordered.**

Dated, signed and delivered this **22<sup>nd</sup>** Day of **June 2016**

**R. E. OUGO**

**JUDGE**

In the presence of;

.....**For the Applicants**

.....**For the Respondents**

**Charity**

**Court Clerk**