



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 611 OF 1995
IN THE MATTER OF THE ESTATE OF KIBUE KANGARI (DECEASED)

RULING

1. On 28th November 2014 I directed the administrator herein to file a comprehensive account of his administration of the estate within thirty (30) days.
2. In purported compliance with the said orders the administrator lodged in court, on 22nd December 2014, a document of even date headed 'Probate Account.' In it he sought to show how the estate had been distributed. The three assets were purported to have been distributed as follows:-
 - a. **Dagoretti/Waithaka/T96 – ¼ acre**
 - i. Alice Njeri Ruringe (for estate of George Ruringe Kibue)
 - ii. Alice Nyakararu Kibue
 - iii. Veronica Njeri Kibue
 - b. **Dagoretti/Waithaka/T94 – ¼ acre**
 - i. Christopher Ruringe Kibue
 - ii. Paul Njunge Kibue
 - iii. Hannah Wairimu Kibue (now deceased)
 - c. **Dagoretti/Waithaka/154 - 2.4 acres**
 - i. Alice Njeri Ruringe (for estate of George Ruringe Kibue)
 - ii. Christopher Ruringe Kibue
 - iii. Paul Njunge Kibue
 - iv. Alice Nyakararu Kibue
 - v. Veronica Njeri Kibue
 - vi. Hannah Wairimu Kibue (now deceased)
3. It is also stated in the purported account that two portions out of Dagoretti/Waithaka/154 have been set aside for sale to raise money to complete the administration process. The portions had not been sold as at the date of the account. The administrator adds that he has been personally bearing the expenses of the administration and the deceased's liabilities.
4. When the matter was mentioned on 28th January 2015, the applicants, in the application which culminated in the ruling of 28th November 2014, disputed the account given by the administrator. It was subsequently directed that the applicants raise their concerns in written submissions.

5. The applicant's submissions are on record. They are dated 10th February 2015 and were filed in court on 10th February 2015. It is submitted that the account on Dagoretti/Waithaka/T96 does not tally with the title deed issued on 19th May 2000 which was in the names of five individuals, being Alice Njeri Ruringe, Christopher Ruringe Kibue, Alice Nyakarura Kibue, Paul Njunge Kibue and Hannah Wairimu Kibue. On Dagoretti/Waithaka/T94, it is submitted that the account has made no disclosures on the property; instead the account refers to Dagoretti/Waithaka/T49 which does not form part of the estate. On Dagoretti/Waithaka/154, it is submitted that that property is unoccupied and undistributed. The administrator is said not to have shown the applicants their respective portions. The expenses that the administrator alleges to have incurred are disputed as no evidence has been furnished.
6. Although leave had been given by the court on 20th April 2015 to the administrator to respond, no response has been filed by him or, at any rate, his response is not on record, despite extension of the order on 27th May 2015.
7. I have perused through the record. The grant herein was confirmed in a ruling that was delivered by Githinji J. on 28th March 1996, after the court had heard oral arguments from the parties. The court identified five survivors of the deceased, and ordered that the estate be distributed amongst the five survivors equally. For avoidance of doubt it was stated that the estate be distributed as follows:-
 - a. **Dagoretti/Waithaka/154:-**
 - i. Hannah Wambui Kibui – one fifth share;
 - ii. Christopher Muringe Kibui - one fifth share;
 - iii. Paul Njunge Kibui – one fifth share;
 - iv. Alice Nyakarura Kibui – one fifth share; and
 - v. Alice Njeri Ruing – one fifth share.
 - b. **Dagoretti/Waithaka/T96:-**
 - i. Hannah Wambui Kibui – one fifth share;
 - ii. Christopher Muringe Kibui - one fifth share;
 - iii. Paul Njunge Kibui – one fifth share;
 - iv. Alice Nyakarura Kibui – one fifth share; and
 - v. Alice Njeri Ruing – one fifth share.
 - c. **Dagoretti/Waithaka/T94:-**
 - i. Hannah Wambui Kibui – one fifth share;
 - ii. Christopher Muringe Kibui - one fifth share;
 - iii. Paul Njunge Kibui – one fifth share;
 - iv. Alice Nyakarura Kibui – one fifth share; and
 - v. Alice Njeri Ruing – one fifth share.
8. A certificate of confirmation of grant in the terms of the ruling of 28th March 1996 was duly issued, bearing the said date. It would appear that the said order was implemented for there are on record title deeds in respect of Dagoretti/Waithaka/T96 and Dagoretti/Waithaka/154, both dated 19th May 2000, in the names of the five survivors identified in the ruling of 28th March 1996.
9. An application, dated 24th February 1997, was allowed by Kuloba J. on 17th June 1997, in which a Jane Njanja Kibue was to be included as a beneficiary and two (2) plots were to be carved out of Dagoretti/Waithaka/154.

10. Another application was lodged in the cause on 12th September 2011, dated 9th September 2011, seeking that Veronica Njeri Kibue be included in the matter as a beneficiary. The application was heard by Njagi J., who allowed it on 8th December 2011, and specifically ordered that Veronica Njeri Kibue's name be included on the list of the beneficiaries of the estate of the deceased.
11. I have carefully gone through the record to determine whether the certificate of confirmation of grant dated 28th March 1996 was ever amended to accommodate the orders of 17th June 1997 and 8th December 2011, and I have not come across any application for the amendment of the said certificate, and I have not seen any orders for the amendment of the certificate. I have equally not seen on the record any original document which purports to be amending the certificate of confirmation of grant dated 28th March 1996.
12. There is attached to the affidavit of Christopher Muringe Kibui, the administrator herein, sworn on 21st March 2014 and filed herein on 24th March 2014, an annexure marked CRK16, which purports to be the certificate of confirmation of grant dated 28th March 1996, as amended on 17th June 1997, to include the name of Jane Njanja Kibue in the distribution.
13. I have not been able to get the court copy of the document referred to in paragraph 12 above, if at all there was such a document issued by the court. The application dated 24th February 1997, which was granted on 17th June 1997, sought orders for the inclusion of Jane Njanja Kibue as a beneficiary of the deceased, and two other orders relating to the execution of certain documents by a District Officer and the Deputy Registrar of the court, and for approval of excision of two plots from Dagoretti/Waithaka/154. There were no prayers that the estate be redistributed to accommodate Jane Njanja Kibue nor that the certificate of confirmation of grant on record be amended to include Jane Njanja Kibue. Kuloba J. granted the application as granted. The order extracted on 24th June 1997 only captured the orders sought in the application.
14. The account given in the document filed herein on 22nd December 2014 is not consistent with the orders made on 28th March 1996, 17th June 1997 and 8th December 2011. At confirmation of grant all the three assets were to be shared out equally between the five named survivors of the deceased, it is not explained why then Dagoretti/Waithaka/T94 and Dagoretti/Waithaka/T96 are being shared between three individuals yet there are no orders on record allowing the same. The orders made on 17th June 1997 and 8th December 2011 introduced new survivors, whose names had been left out at distribution. It is not explained by the administrator why these two individuals are not mentioned in his account, yet there are no court orders reversing the orders of 17th June 1997 and 8th December 2011. He has not explained the steps that he took to implement the said orders. There was an order to excise two plots from Dagoretti/Waithaka/154; an account has not been given on the implementation of the said order.
15. I agree with the applicants that the account filed by the administrator is insufficient. It cannot pass as a comprehensive account of his administration of the estate since he was appointed as such. This is a singular failure on his part as administrator. The office of an administrator is that of a trustee. He holds property which does not belong to him, holding it for the benefit of others. He is bound in law to account for his handling of the said assets, to both the court, which placed him in charge of the said assets, as well as to the survivors, the persons ultimately entitled to it. He stands in a fiduciary position with regard to the assets. Failure to properly account for his administration is a clear indication that the administrator has failed in his duties.
16. The order of 28th November 2014 also required the administrator to complete administration within forty-five (45) days. From what I can see from the record before me, the administrator has not complied with the said order. He cannot even possibly complete administration without first having the certificate of confirmation of grant dated 28th March 1996 amended to facilitate the implementation of the orders made on 17th June 1997 and 8th December 2011 so as to accommodate the two individuals that the court had identified in those orders as survivors of the

deceased who had been left out in the distribution.

17. There was a default clause to the order of 28th November 2014, that should the administrator fail to wind up the administration of the estate then the grant made to him would be revoked. I have noted that the administrator has not only failed to complete administration of the estate within the period given to him on 28th November 2014, he has also failed to give a comprehensive account of his administration of the estate since the date of his appointment.
18. Section 76 of the Law of Succession Act, Cap 160, Laws of Kenya, empowers the court to revoke a grant of representation *suo moto* where the administrator fails to proceed diligently with the administration of the estate or fails to produce an account of the administration as ordered by the court or produces one that is false. This is the effect of section 76(d) (ii) (iii) of the Act.
19. The account produced herein is inadequate, and is false to the extent that it reflects a distribution that is inconsistent with the court orders of 28th March 1996, 17th June 1997 and 8th December 2011.
20. The administrator has singularly failed in his duties as such. I therefore do hereby exercise the discretionary power given to me under section 76 of the Law of Succession Act and revoke the grant of letters of administration intestate made to the administrator on 23rd May 1995. The survivors shall agree on the new administrator or administrators. Appointment of a fresh administrator or administrators shall be made by the court from the names to be submitted by the parties on a date to be given at the delivery of this ruling.

DATED, SIGNED and DELIVERED at NAIROBI this 10TH DAY OF JUNE, 2016.

W. MUSYOKA

JUDGE