



REPUBLIC OF KENYA
HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 2764 OF 2011
IN THE MATTER OF THE ESTATE OF JOSEPH NJENGA GATHII (DECEASED)

BETWEEN

CAROLINE MUMBI NJENGA.....1ST APPLICANT

SAMUEL GATHII NJENGA.....2ND APPLICANT

FRANCIS MUIRU NJENGA.....3RD APPLICANT

AND

PATRICK MBUGUA NJENGA.....1ST RESPONDENT

MARY WANJIRU NJENGA.....2ND RESPONDENT

PETER KANYARI NJENGA.....3RD RESPONDENT

RULING

INTRODUCTION

The deceased, Joseph Njenga Gathii died on 15th September 2000. On 27th July 2012, Hon Justice M.G.Mugo revoked the grant issued in **Kiambu Chief Magistrate Court Succession Cause 128 of 2010** and the administrators Elizabeth Wairimu Njenga, Mary Nyandundu Mungai and Samuel Gathii Njenga were restrained from any further dealings with the estate property.

On 12th June 2015, after lengthy submissions by the family members before Court, this Court by the Ruling delivered on 12th June 2015 as administrators of the estate; Patrick Mbugua Njenga for the 1st house, Mary Wanjiru Njenga for the 2nd house and Peter Kanyari Njenga for the 3rd house. Among other statutory duties, the administrators were to open a joint account to receive and bank the balance of the purchase price proceeds from the sale of 2 plots to Kirunje Investments. The administrators were also to receive proceeds from Limuru Crest Company Limited to distribute amongst all beneficiaries through their representative administrator.

On 20th May 2016 the beneficiaries filed summons for revocation of grant issued on 12th June 2015 under **Section 76 (d)** of the **Law of Succession Act Cap 160**. The administrators failed to comply with the others of this Court and more particularly failed to comply with their statutory mandate under **Section 83** of the **Law of Succession Act Cap 160**.

In that regard, Caroline Mumbi Njenga, Samuel Gathii Njenga and Francis Muiro Njenga (hereafter 'the Applicants') filed the present Application seeking to have the said Grant revoked. In the Summons for Revocation of Grant dated 31st March 2016 the Applicants sought the following orders:

a) ...

b) The Grant of Letters of Administration issued to Patrick Mbugua Njenga, Mary Wanjiru Njenga, and Peter Kanyari Njenga, made on the 12th day of June, 2015 be revoked.

c) That Caroline Mumbi Njenga, Mary Wanjiru Njenga and Elizabeth Wairimu Njenga be appointed as the new administrators of the Estate of the deceased.

d) The Respondents give a full account to the Court on the proceeds received and submit all unmerited money to the new administrators.

THE APPLICANTS' CASE

In their joint Affidavit sworn on 30th March 2016, in support of the Application, the Applicants contended that the Administrators/Respondents having withdrawn the sum of Kshs. 6,800,000/= from Limuru Crest Company Limited in early August 2015, have failed to distribute to all the beneficiaries their respective shares of the same and they are apprehensive that the said money may be squandered to their detriment.

It was their case that the administrators to the deceased Estate have failed to proceed diligently with the administration of the Estate as they have no team work thus resulting in a standstill as far as the administration of the Estate is concerned. Furthermore, that the said Grant of Letters of Administration issued has been breached as the administrators have failed to investigate, gather and collect unlisted assets of the deceased.

According to the Applicants, save for Mary Wanjiru Njenga distributed equally to 6 beneficiaries, the other two administrators have not distributed to the respective beneficiaries their share of Kshs. 6,800,000/= received from Limuru Crest Company Limited. The amount was divided into Kshs. 2,000,000/= for each of the three households of the deceased. Peter Kanyari Njenga of the 3rd house only distributed Kshs. 1,350,000/= to the 8 beneficiaries refused to distribute the balance of Kshs. 650,000/= which he retained for himself. Patrick Mbugua Njenga on the other hand totally refused to distribute any part of the Kshs. 2,000,000/= to the 7 beneficiaries of the 1st House and banked the money in a personal account in his sole name.

The Applicants contended further that the balance that remained from the division of the Kshs. 6,000,000/= which was divided into Kshs. 2,000,000/= for each of the three households of the deceased is Kshs. 800,000/= that has been kept in a joint account of the three administrators and it has come to their attention that Patrick Mbugua Njenga has said that the money shall be withdrawn when he deems it necessary.

Accordingly, that the Respondents received the sum of Kshs. 3,284,993.75 from Mr. Ernest Njenga Kiruku T/A Kirunje Investment after the sale of two plots belonging to the Estate of the deceased but they have failed to account or distribute the same to the beneficiaries and that the Administrators have failed to prepare and file Summons for Confirmation of Grant within 90 days from the date of the issuance of the Grant of Letters of Administration.

Finally, the Applicants deposed that in order to expedite the present matter, the beneficiaries met on 18th December 2015 and elected Caroline Mumbi Njenga, from the 1st house, Mary Wanjiru Njenga from the 2nd house and Elizabeth Wairimu Njenga from 3rd house respectively to act as the new administrators of the Estate of the deceased.

DETERMINATION

This is a protracted dispute on administration of the large estate. The issues are whether the present administrators have conducted themselves with regard to administering the deceased's estate in terms of subsisting Court orders and the statutory mandate espoused in **Sections 82 and 83** of the **Law of Succession Act Cap 160**.

The Court orders issued on 12th June 2015 were as follows;

- 1) The administrators to carry out duties as provided by section 83 of Law of Succession Act**
- 2) To investigate gather and collect the undisclosed assets**
- 3) To file summons for confirmation of grant with consents from beneficiaries and any protestor to file protest and alternative mode of distribution**
- 4) To open a joint account to receive proceeds of sale from Kirunji Investments and Limuru Crest Company Limited.**

On 23rd may 2015 the family members in Court spoke candidly and passionately on the conduct of the administrators; they did not call meetings with all beneficiaries, consult or inform beneficiaries on goings on with regard to the estate, there has been no openness and transparency, they are not in agreement among themselves, Patrick questions the sale of 2 plots to Kirunje Investments a matter already canvassed in the Ruling of 12th June 2015.

The only meeting held was to agree to withdrawal of monies. Once the money was withdrawn and each administrator took each house's share to distribute equally amongst the beneficiaries, the children of that house, they went separate ways. As illustrated above, the money was not distributed at all beneficiaries equally in each house except in the 2nd house, if distributed it was not equally amongst the beneficiaries of each house except the 2nd house.

Clearly from the circumstances stated above, there has been a stalemate no effort or progress has been made to facilitate equal, equitable and expedient distribution of the estate. In terms of the statutory mandate, no accounts or inventory has been rendered to Court by the administrators and or to the beneficiaries.

The administrators claimed that the previous administrators did not hand over any documents to them. With respect that is a matter that they should have filed in Court for orders of handing over to be granted and enforced. Unfortunately, the complaints raised against the administrators have nothing to do with lack of handing over of documents by the previous administrators, but lack of communication, transparency and fairness to all beneficiaries in handling the deceased's estate.

It was alleged a joint account by the administrators was opened but the details of the said account were scanty and did not amount to proof of the said account. The administrators have not complied with Court Orders of 12th June 2015 and they have been detrimental to and hindrance to distribution of the deceased's estate instead of facilitating the distribution of the estate. They have abdicated their statutory mandate to hold in trust property of the deceased's estate for the benefit of all beneficiaries. The administrators save for Mary Wanjiru Njenga of the 2nd house who acted diligently has contravened **Section 76(d)** of the **Law of Succession Act cap 160**.

In *IN RE ESTATE OF DAVID KYULI KAINDI (DECEASED), SUCCESSION CAUSE NO. 3403 OF 2005*, it was pointed out that:

“[18] the most potent remedy in the hands of a beneficiary is that of calling personal representatives to account. Beneficiaries who are not personal representatives have no control over the estate. The property of the deceased does not vest in them. They have no power over it; neither do they have any obligations with respect to it. When aggrieved by the manner the estate is being run their remedy lies in seeking accounts from the personal representatives, and, in extreme cases of maladministration and misconduct by the personal representatives, in applying for revocation of the grant.”

[19] The obligation to account is tied up with the fact that personal representatives are also trustees. They are defined as such in the Trustee Act, Cap 167, Laws of Kenya, at Section 2. This is so as property belonging to another vests in them in their capacity as personal representatives, and they hold the same for the benefit of others – beneficiaries, heirs, dependants, survivors, creditors, among others. They stand in a fiduciary position in relation to the property and the beneficiaries. As they hold the property for the benefit of others or on behalf of others – they stand to account to the persons for whose benefit or on whose behalf they hold the property. It is an equitable duty and a statutory obligation.”

The above case stipulates the role of personal representatives, be they administrators where there is no Will or executors where there is a Will; in default of compliance with their statutory duties as is the case in the instant case then the remedy is in revocation of the grant.

DISPOSITION

- 1) From the analysis of the evidence on record and the legal provisions I find the administrators Patrick Mbugua Njenga for the 1st house and Peter Kanyari Njenga of the 3rd house have acted in contravention of Court Orders of 12th June 2015 which have not been reviewed, amended, set aside or appealed against and contrary to the legal provisions outlined above to the detriment of beneficiaries of the estate.
- 2) Patrick Mbugua Njenga holds Ksh. 2m for equal distribution to all siblings of the 1st house. Until he distributes the said funds to all beneficiaries in the said house, he is not eligible to any other share of the deceased's estate.
- 3) Peter Kanyari Njenga holds Ksh. 400,000/- of the funds available to distribute to the siblings in the 3rd house. Until he distributes the money to the beneficiaries of the 3rd house, he is not eligible to any other share of the deceased's estate.
- 4) The grant issued on 12th June 2015 appointing Patrick Mbugua Njenga and Patrick Mbugua Njenga is revoked and annulled forthwith.
- 5) A new and fresh grant shall issue in the names of CAROLINE MUMBI NJENGA of the 1st house, MARY WANJIRU NJENGA retained from the 2nd house and ELIZABETH WAIRIMU NJENGA of the 3rd house as administrators of the deceased's estate forthwith.
- 6) The new administrators shall comply with all valid Court orders and carry out duties prescribed under Section 83 of Law of Succession Act Cap 160.
- 7) The administrators shall cause and ensure equal distribution of the monies received from Kirunje Investments and Limuru Crest Company Limited to all beneficiaries.
- 8) In default any further distribution of property that comprises of the deceased's estate in the proposed mode of distribution shall take into account monies owed to beneficiaries by

former administrators and their beneficial interest reduced to the monies withheld.

9) The administrators shall file summons for confirmation of grant within 90 days from today with consents of all beneficiaries.

10) In default any protestor shall file protest with alternative mode of distribution for the Court to determine.

Each party shall bear its own costs.

DELIVERED SIGNED & DATED IN OPEN COURT ON 16TH SEPTEMBER, 2016

M.W.MUIGAI

JUDGE

INTHE PRESENCE OF;

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