



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 38 OF 2015

IN THE MATTER OF THE ESTATE OF CHRISTOPHER MATU WANGANGA (DECEASED)

CECILIA NGIMA MATU

ROSEMARY KITHIRA MURORIA.....PETITIONERS

RULING

1. This is an application seeking an order of this court to make provision out of the estate of the deceased allowing the second administrator to withdraw from Afya Sacco Society Ltd, Fosa account the sum of Kshs 241,527 for the payment of school fees in arrears for the year 2016 in respect of the deceased's children Ian Wang'anga Matu and Elvis Muroria Matu. The applicant also seeks an order to make provision for the payment of a sum of Kshs 600,000/- from the same account to cater for the rent for the months of October 2015 to December 2016 being house rent in respect of the second administrator/applicant, which she occupies with her two above named children.

2. The application is supported by 10 grounds set out on the face of the motion. The major grounds are as follows. Firstly, the first wife of the deceased is Cecilia Ngima Matu and Rosemary Kithira Muroria is the 2nd wife, both of whom are joint administrators of the estate of the deceased. She has also stated that the applicant had anticipated the speedy disposal of this matter but has turned out that it is taking longer than expected. She has also stated that she has been heavily indebted as a result of the delay in hearing and determining this cause. The debts incurred include, school fees for her children and unpaid rent for the house that they occupy.

3. The applicant has also stated that she is also servicing a loan she obtained to cater for the medical expenses incurred by her deceased husband when he was ill. Finally, she has stated that the first administrator is well settled on plot No. Gaturi/Githimu/7402 in a house built by the deceased while the applicant lives in a rental house. It is for these reasons that she prays that her application be granted to avoid her children from suffering irreparably and to pay those debts.

4. The applicant has deponed to a 15 paragraph affidavit. She has repeated factually the matters set out in the grounds in support of the notice of motion. She has deponed that she is heavily indebted as a result of paying school fees and house rent which she occupies with her two children. She has also deponed that she was not allocated a government house due to housing shortages in Kajiado hospital. She has further deponed that following the sickness of her husband, she incurred an enormous medical bill in regard to which she took a loan, which she is still servicing. She has stated that the first administrator and herself receive monthly pension of the deceased in the sum of Kshs 43,000/- and Kshs 49,000/- respectively which she states cannot meet the responsibilities entrusted to her including utility bills and other basic needs. She has also deponed that she is in arrears of paying rent in the sum of Kshs 400,000/- with effect from October 2015 to date.

5. Furthermore, she has deponed that her children risk being sent home for school fees, which is in arrears if it is not paid by the beginning of term 3 of 2016. Finally, she has deponed that the first administrator has three adult children who have completed their studies and are in gainful employment and business and that the first administrator is well settled on plot No. Gaturi/Githimu/7402 which was built by the deceased.

6. The first administrator Cecilia Ngima Matu has deponed to a 36 paragraph affidavit in opposition to the application. I will only highlight the major factual issues raised in that affidavit. She has deponed that the applicant filed a parallel succession cause in the High Court at Nairobi being Succession Cause No. 285/15, knowing very well that the deceased was at the time of his death domiciled at Embu and also while knowing very well the plight of her children. She has further deponed that both the applicant and herself were appointed joint administrators and ever since their appointment, they have never agreed or met, because they do not see eye to eye. And for this reason, she blames the applicant for the delay in hearing and determination of this suit. She has further deponed that she does not accept the applicant as the widow or second wife of the deceased husband.

7. Additionally, she has deponed that she is the only lawful wife and legally surviving widow of the deceased in support of which she has annexed a marriage certificate. She has also deponed that her late husband was incapable of contracting any other marriage during the subsistence of their marriage which subsisted until 11th September 2014 when he died. She has deponed that the document which is annexed as the will of the deceased does not have a date indicating when it was sworn to and she intends to challenge the validity of the will in a separate application. She has further deponed that the applicant and her children can only claim for dependency and not as heirs of the estate.

8. She has also deponed that the deceased set up savings with Afya Sacco in regard to which he named his son Andrew Wanganga Matu as his sole beneficiary. She has further deponed that the facts relating to that account are within the knowledge of the applicant and that she has before tried unsuccessfully to access those funds. She has also deponed that the applicant is being untruthful in stating that her monthly income is Kshs 49,000/-. In this regard, she has deponed that the applicant has not disclosed that she was provided for together with her children. She has also deponed that the deceased built a home for the applicant on land parcel No. Ruguru/Karuthi/1001, which she has deponed is a palatial building and in support of which she annexed photographs marked CNM4.

9. She has further deponed that the applicant grabbed two pharmacy shops operated by the deceased during his lifetime one of which is at Nyeri and another one at Kitengela in Nairobi which she depones are viable businesses. Furthermore, she has deponed that she is 60 years old, sickly with hypertension and diabetes in regards to which she needs constant medication, healthcare and attention. She has deponed that she has incurred utility bills which were left behind by her late husband whose payments were overdue. The bills were annexed to the affidavit as annex CNM 6.

10. And finally, she has deponed that there is a dormant account No 1004130200027 at the Consolidated Bank Embu Branch which has a balance close to Kshs 4,000,000/- which she proposes should be closed with the funds thereof being shared equally among the following persons:

1. Cecilia Ngima Matu
2. Andrew Wang'ang'a Matu
3. Antony Githinji
4. Caroline Nyacomba Matu
5. Rosemary Kithira Muroria
6. Ian Wang'ang'a
7. Elvis Muroria

11. I have considered the affidavit evidence of both parties and the short submissions made by both counsel in this matter. I find that this is a unique application which in practical terms has serious conflicting affidavit evidence tendered by both parties. The conflict in the affidavit evidence can only be resolved by oral evidence. I find that she the account from which the applicant seeks to withdraw funds

to pay for the accumulated bills, rent arrears included and the school fees is in the affidavit evidence of the respondent the property of Andrew Wang'ang'a Matu who is a sole beneficiary. She has further deponed that the applicant has unsuccessfully sought to access the funds in that account before. This allegation is capable of a resolution by oral evidence in the final distribution of the estate of the deceased.

12. In the circumstances, I find that the school fees of the applicant's two children should be paid out of the funds at the Consolidated Bank Embu branch for this term only and the balance should be shared equally among the persons named in paragraph 35 of the first administrator's affidavit. It therefore follows that the issue of rents and utilities for the two widows will be their personal responsibility. The applicant and the respondent are each in receipt of the pension of the deceased. There is also evidence that the applicant is running two pharmacies, one in Nyeri and another in Kitengela Nairobi.

13. The applicant's application is dismissed in all other respects except as shown in paragraph 12 of this ruling. The parties are encouraged to have this cause heard and determined finally to avoid this kind of applications coming up hereafter. This will provide a final solution to the outstanding issues between the parties.

RULING DELIVERED, DATED and SIGNED in open court at **EMBU** this **25th** day of **OCTOBER 2016**.

In the presence of Mr Kathungu holding brief for Ms Fatuma for the applicant and in the presence of Cecilia Matu and in the absence of her counsel Mr M. Njagi and in the presence of Mr Ithiga for the objector.

Court clerk Njue

J.M. BWONWONGA

JUDGE

25.10.16