



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1754 OF 2009

IN THE MATTER OF THE ESTATE OF MARGARET WAMAITHA HUMPHREY–
(DECEASED)

ROBERT CHEGE MBUGUA.....1ST ADMINISTRATOR/1ST APPLICANT

SERAH NJERI SIONGO.....2ND ADMINISTRATOR/2ND APPLICANT

VERSUS

NICHOLAS NZIOKA NDAMBUKI ALIAS

WILLY KAHORE WANJIKU.....OBJECTOR

AND

NAIKUNI, NGAAH &

MIENCHA COMPANY ADVOCATES.....INTERESTED PARTY

CONSOLIDATED WITH

SUCCESSION CAUSE NO. 574 OF 2013

IN THE MATTER OF THE ESTATE OF MARGARET WAMAITHA HUMPHREY –
DECEASED

RULING

1. The deceased Margaret Wamaitha Humphrey died on 14th March 2009 at Mlolongo in Machakos County. On 3rd December 2009 a grant of letters of administration intestate was issued jointly to her son Robert Chege Mbugua (1st administrator) and to her sister Serah Njeri Siongo (2nd administrator). On 22nd February 2012 an application was made for the confirmation of the grant. The estate of the deceased was indicated to comprise LR 1504/7, LR Loitoktok (Rombo) “B” Nos 348-359, motor vehicle No. KBG 631E and money at Credit Bank Ltd, Koinange Street Branch, account numbers [particulars withheld] and [particulars withheld]. The application was opposed by Nicholas Nzioka Ndambuki alias Willy Kahore Wanjiku (the objector) who claimed to be the owner of LR 1504/7. The objector had subdivided this land

and sold various portions of it to people who also opposed the application. Others opposed to the application were claimants whose case was that they had each bought a portion of the land from the deceased before she died.

2. The court had begun the hearing of the application when the present application was filed by the administrators. The application was largely prompted by a Will that the deceased allegedly wrote and left and which is the subject of the High Court at Milimani Succession Cause No. 574 of 2013. The executors of the Will were Naikuni, Ngaah & Miencha Company Advocates who sought grant of probate. It is clear that the administrators, the objector and the other parties in the matter do oppose this Will.

3. The present application was filed on 13th April 2016. The administrators sought that the original Will be released to them for it to be subjected to verification of the thumbprints by the documents examiner. It was sought that the affidavit of an attesting witness to the due execution of the Will be filed and the deponent be availed for cross-examination; that Credit Bank Limited, Koinange Street Branch does release bank statements of A/C No. [particulars withheld] and [particulars withheld] in the name of the deceased to the 1st administrator for him to see how much interest has been earned so far and for him to be able to negotiate further interest with the bank; the bank does release Kshs.10 million to the administrators to enable them to pay for the demolition of the buildings and all other structures built and being built on LR 1504/7 after the death of the deceased; the bank does respond to their queries about any transactions involving the accounts; an order does issue directing the OCPD Mavoko to provide security to the applicants as they undertake the said demolitions; and an injunction does issue prohibiting any erections/constructions or any form of structures on the parcel by any person pending the determination of the Cause and that the administrators be allowed to pull down any existing structures or those that may be put up. It was alleged that there are CMCC 626/2013, 526/2011 and 232/2010 at Machakos; Petition 47 of 2013 at Machakos Chief Magistrate's Court and HCCC 82 of 2010 which, according to the administrators, relate to the dispute herein. The administrators seek that all these cases be consolidated with the present Cause.

4. The application was opposed by the executor Lucas Leperes Naikuni. The others who opposed it were Daniel Mutuku Mbevi, George Kirathe Waweru and the deceased's son John Humphrey Lloyd Kamau.

5. Let me start with the request for consolidation. There was no material placed on record to demonstrate that the issues and the parties in CMCC 626/2013, 526/2010, 232/2010, 47/2013 and 82/2010 were the same as those in the instant Cause. The pleadings in these suits were not made available for the court to be able to determine that consolidation would be the most effective and efficient way to deal with the issues therein. At this stage, therefore, I am not able to allow the plea for consolidation.

6. Secondly, the present Cause was filed on the basis that the deceased died intestate. It is now alleged that, in fact, the deceased died testate. There is a petition in Milimani HC Succession Cause No. 574 of 2013 for grant of probate. Directions have been given in the Cause that the validity of the Will be established, and that oral evidence shall be given by the parties on the issue. The instant application substantially alleges that the deceased did not leave a Will. The application challenges the validity of the Will. My considered view is that the prayers in the application are tied to the issue whether or not the deceased left a valid Will.

7. That being the case, in order to expedite the hearing of this long-standing dispute regarding the estate of the deceased Margaret Wamaita Humphrey, I make the following orders:-

(a) Milimani H.C. Succession Cause No. 574 of 2013 is hereby consolidated with the instant petition;

(b) parties shall prepare for the oral hearing to determine the validity of the Will herein;

(c) all parties have 30 days to file witness affidavit evidence and all necessary documents on the issues of the validity of the Will;

(d) this matter shall be mentioned on 25th January 2017 to confirm compliance and to take a hearing date; and

(e) I make no order regarding the costs of this application.

DATED and DELIVERED at NAIROBI this 13th day of DECEMBER 2016

A.O. MUCHELULE

JUDGE