



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1874 OF 2014

IN THE MATTER OF THE ESTATE OF BENJAMIN KIRUNDI MAHIGA (DECEASED)

RULING

1. The deceased died on 11th February 2014. Representation to his estate was obtained on 12th November 2014 to Nahashon Mahugu Kirundi, Geoffrey Chege Kirundi, Samuel Gitahi Kirundi and Elikanah Magu Kirundi.
2. On 9th March 2016, one of the administrators, Samuel Gitahi Kirundi, filed an application dated 9th March 2016, seeking several orders against his co-administrators accusing them of closing a shop, neglecting to administer the estate according to law and excluding him from administration, destroying assets and diverting income.
3. Before that said application could be heard and disposed of *inter partes*, Samuel Gitahi Kirundi brought another application, dated 19th April 2017, relating to a tea buying centre on Loc 19/Gacharageini/2689 and certain accounts. It is this application that is the subject of this application. It has been responded to by Geoffrey Chege Kirundi, through his affidavit sworn on 17th April 2017. He avers that the orders sought would interfere with the administrators' duty to manage the estate.
4. I granted the parties interim orders for preservation of the estate, and directed the parties to file skeletal submissions to be highlighted. The highlights were done on 12th July 2017.
5. I have anxiously perused through the record. I note that grant herein was made in 2014, and to date it has not been confirmed despite the expiry of the six (6) months provided for in section 71 of the Law of Succession Act, Cap 160, Law of Kenya. An application for confirmation of grant is yet to be filed.
6. I note that the two applications have been brought by one administrator against his three co-administrators. It would appear that he is not working in concert with his colleagues to administer the estate, and is instead engaged in activity that thwarts the exercise.
7. The duty of the administrators is to ascertain assets, and to collect and gather the estate in readiness for payment of debts and liabilities, and distribution of the net estate. The law gives those six months to ascertain the assets and liabilities, to collect and gather the estate, and to settle debts and liabilities. After expiration of that period, they are required to go back to court for permission to distribute the estate. The role of the court in this is to facilitate ascertainment, collection and preservation of the estate, and eventually distribution. It is not envisaged that the court would help in the micromanagement of the estate.
8. A number of the processes in the Civil Procedure Act, Cap 21, Laws of Kenya, have been adopted through Rule 63 of the Probate and Administration Rules. Not all the processes in the Civil Procedure Act

and Rules have been so adopted. One of those not adopted are the processes relating to grant of injunctions and restraining orders. This is for good reason. Section 79 of the Law of Succession Act vests the estate of the deceased in the administrators. This is necessary as it aids in administration. It is not prudent to restrain a person in whom property vests from exercising the rights of a person vested with ownership rights. Grant of restraining orders usually has the effect of encumbering the administrator in the discharge of his duties as such.

9. The remedies that the law has availed for parties unhappy with the manner an estate is being administered are to call for accounts and to seek revocation of the grant. Grant of orders to restrain administrators should be avoided at all costs. To avoid conflicts between administrators *inter se* and with beneficiaries, it is prudent that administrators should move quickly to have the estate distributed.

10. The application that I am called upon to determine, invites me to help in the micromanagement of the estate, in terms of directing how the survivors of the deceased sell their tea leaves to a tea collection centre, among others. Such applications are more of a hindrance to administration than facilitative thereof.

11. Having considered everything in this matter I am of the view that justice would be served if the following orders are made -

- a. That I direct the administrators corporately or singly to move quickly and apply for confirmation of their grant;**
- b. That the confirmation application should be filed within forty-five (45) days;**
- c. That any one of the administrators and survivors of the deceased who disagree with the proposals in the application are at liberty to file affidavits of protest;**
- d. That the matter shall be mentioned after forty-five years for compliance;**
- e. That to move this matter forward I shall dismiss the application dated 19th April 2017, discharge all the temporary orders made on the said application and direct that no other or further interlocutory applications shall be filed in this matter before the confirmation application is filed and determined or unless leave is granted by the court in that respect; and**
- f. That costs shall be in the cause.**

DATED, SIGNED and DELIVERED at NAIROBI this 8TH DAY OF DECEMBER, 2017.

W. MUSYOKA

JUDGE