

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.394 OF 2008

IN THE MATTER OF THE ESTATE OF EDWARD KARIUKI KIMANI - (DECEASED)

RULING

1. The application dated 15th August 2013 is headed “Summons for Protection” and it is brought under Sections 45 (1) (2) (6) and 47 of the Law of Succession Act and Rules 49 and 73 of the Probate and Administration Rules.
2. It is brought at the instance of Peter Mwaura Kariuki, who is the applicant in the Summons for Revocation or Annulment of Grant dated 26th October 2011. He would like certain assets protected pending the hearing and determination of his revocation application dated 26th October 2011. The main order is sought in prayer 3 to restrain the administrator of the estate and her children restrained from alienating, selling, transferring, intermeddling or managing assets belonging to the deceased, which were never disclosed in the petition for grant of letters of administration intestate dated 31st January 2008, nor in the Summons for Confirmation dated 12th April 2010.
3. Filed with the application dated 15th August 2013 is a schedule of the assets that the respondents are sought to be restrained from dealing with. It lists twenty-three (23) assets which the applicant alleges were not disclosed by the administrator when she sought grant of representation. The list is reproduced in paragraph 7 of the applicant’s affidavit sworn on 15th August 2013.
4. Attached to the application are a number of documents. There is a certificate of death in respect of the deceased, Edward Kariuki Kimani. There is also a copy of the grant of letters of administration intestate made on 11th June 2008 made to Mary Kanyi Kimani. Finally, there is a certificate of confirmation of grant dated 8th November 2010.
5. There is nothing on record to indicate that the application dated 15th August 2013 was ever served on the respondents, and I have not come across a reply to the application by the respondents.
6. It was directed on 26th March 2014 that the said application be determined by way of written submissions. Both sides filed written submissions. The submissions by the applicant were filed on 10th June 2014, while the respondents’ submissions were filed on 24th June 2014.
7. The applicant’s submissions largely summarise the applications dated 26th October 2011 and 15th August 2013. He argues that he has an arguable Summons for Revocation of Grant and prays that the undisclosed assets be preserved pending the hearing and determination of the said Summons for Revocation of Grant.
8. On their part the respondents submit that the application dated 15th August 2013 does not merit grant of the orders sought. They argue that the bulk of the assets the subject of the application do not belong to the deceased for they are said to belong to Mbagi Limited, Mumwe Investments Ltd, Grace N. Kimani, Elizabeth Wanjiru Kariuki, Paul Kimani, Four Shoes Ltd and Rauka Ltd. It is also submitted that there is no documentary evidence to support the allegation that these assets form part of the estate of the deceased. It is submitted that the applicant is better off pursuing the speedy determination of his Summons for Revocation instead of taking time with the interlocutory summons for protection of the estate.

9. I have mentioned above that the summons dated 15th August 2013 is interlocutory. It derives its life from the Summons for Revocation of Grant dated 26th October 2011. The said Summons for Revocation is not signed and I therefore seriously doubt its validity. I would be cautious about granting interlocutory orders pending the outcome of such an application.
10. The applicant has cited a large number of assets that he alleges form part of the estate of the deceased, yet the same were not disclosed in the application for letters of administration. He has attached some documents to his affidavit in support of the application, yet none of the documents attached relate to the assets in question. There is therefore no evidence that the assets in question belonged to the deceased or had anything to do with him to warrant their being disclosed in the schedule of the assets that formed his estate.
11. I need not say more. I am not convinced that I ought to grant the orders sought in the application dated 15th August 2013. In my view, the said application is not well conceived, and the orders sought in it are not for granting. I hereby dismiss the same. The respondents shall have costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 30th DAY OF January 2015.

W. MUSYOKA

JUDGE

In the presence of Miss Kibura advocate for the Applicant.

In the presence of Miss. Njuguna for Mr. Kibanga advocate for the Respondents.