



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 720 OF 2013**

**IN THE MATTER OF THE ESTATE OF DR. MARY WANGUI MWANGI (DECEASED)**

**RULING**

1. The deceased died intestate on 18<sup>th</sup> August 2008 at Komarock Nairobi. On 4<sup>th</sup> April 2013 Sarah Wairimu Mwangi and Andrew Gatuma Mwangi applied for grant of letters of administration listing 8 beneficiaries. On 17<sup>th</sup> February 2015 the administrator Sarah Wairimu Mwangi sought a Grant ad Litem for purposes of management of **L.R. NAIROBI/KOMAROCK/115/17/201** in that the administrator Andrew Gatuma Mwangi had remained therein and refused the same to be let out for purposes of generating income that could be used to meet M W M's school fees until she completes her university education. The applicant promises to file record of accounts of the same every 6 months.

2. The applicant seeks letters of administration ad litem in the estate of Mary Wambui Mwangi do issue to Sarah Wairimu Mwangi limited for filing and arguing this application. That an injunction be issued directed at Andrew Gatuma Mwangi to vacate **L.R. Nairobi/ Komarock/1517/201** that commission mater ways properties limited manage the said house and all rental income less agreed fees be banked into the joint account held by Sarah Wairimu Mwangi, Caroline Wachu Mwangi who will utilize the funds to meet the educational expenses for M W M and E

3. The respondent in his replying affidavit dated 19<sup>th</sup> March 2015 he deponed that M W was the biological child of Gerald Mwangi Gatuma was born in 1988 by Gerald Mutungi after his death. He avers that Maureen, Violet Wanjiru Mwangi, Betty Ngonyo Mwangi, Robert Gachuhi Mwangi and Robert Mwai Mwangi are children his father had with his 1<sup>st</sup> wife Rahab Wangui; that of all of Rahab's kids apart from Maureen violet are in Kenya while Betty Ngoyo Mwangi and Robert Mwai Mwangi are in the United States of America; that Sarah Wairimu Mwangi, Carolyne Wachu Mwangi and Esther Njeri Mwangi are children of the deceased Dr. Mary Wambui Mwangi and the same are not the biological children of Gerald Mwangi Gatuma; that he is the only biological child to Dr. Mary Wambui Mwangi and Gerald Mwangi Maina; That his sister Sarah filled petition on 4<sup>th</sup> April 2012 secretly and failed to have the same gazetted to enable the family members participate. That Sarah Wairimu cannot be a sole administrator as there is a Minor in the estate; that his late mother was holding in trust his father's property in trust for other beneficiaries and minor children as indicated in certificate of confirmation of grant dated 1/10/1997 in succession cause no. 674/1994 the estate of Gerald Mwangi Gatuma adding that it is the joint administrators that will sit down and decide what to do with the estate before confirmation of grant including letting or renting of any property and how school fees for M W M's school fees will be paid. That he is informed that M's school fees for 1<sup>st</sup> term is paid in full and there is even excess of Kshs. 18,230/-. That he has offered to contribute towards M's school fees but they have refused and are adamant that it is a must that he vacates the house. That Sarah Wairimu has not stated the assets forming the mother's estate to enable the beneficiaries appreciate the value of the estate adding that the mother had other assets **NGINDA/ SAMAR/BLOCK1/330, NGINDA/SAMAR-BLOCK 1/331, PLOT NO. 494 AT MARAGWA MARKERT**. That the deceased had a dental clinic at Jubilee Insurance House on 4<sup>th</sup> floor and which Sarah, Caroline and Esther sold and did not disclose amount fetched or account for the proceeds. That the mother also had an insurance policy that could have catered to Miriam's school fees and also bank accounts whose account numbers are only know to the sisters.

4. The matter come up for hearing on 26<sup>th</sup> February 2015. The applicant argued that the sisters have petitioned the court for grant of letters of administration but the same is not signed by 2 step brothers and hence the court has not gazetted the same. That Sarah has signed a tenancy agreement and the

respondent was paid Kshs. 8,000/- all went well until after the said premises were renovated and the respondent entered and refused to get out. That a brother in law had paid M's fees and that there was no justification for the respondent to remain in the house. That the issue of parentage can be dealt with during distribution. The 3 sisters are willing to continue running the account and there is the issue of the commercialization of the property and there are no funds to do that. The deceased account was closed the child requires the court to intervene.

5. The respondent reiterated the grounds raised in the replying affidavit that the applicant has no locus to seeks the orders in the application as she is not the administrator of the estate. That though there was a petition for letters of grant of administration in April 2014 but no letters have been granted therefore Section 58 of the Law of succession Act Cap 160 has not been complied with. That rule 7 of the probate and administration rules adding that without letters of administration the applicant cannot lease out the house adding that there was no urgency in collecting the rent adding that the claim of paying the minors fees does not suffice. That payment of Kshs. 8000/- was stopped and did not get to him. That as a son to the deceased he is also entitled to the house just like his other siblings. That no information was communicated as to what happened when the account was closed or accounted to the sale proceeds of the clinic. That the application is premature. He proposes that 3 administrators Sarah Andrew and Maureen.

6. In reply the applicant argued that Maureen was not a daughter of Mary. That they had indicated the assets of the deceased in the petition and that in the same there was none that was generating income adding that there is no evidence that he has made attempts to contribute towards the sister's school fees.

7. The applicant has attached statements of rent collection, bank statements and statement of how money collected from the said property was utilized up to 2015. It is not in dispute that the applicant, respondent and M are children of the deceased. From the records fronted by the applicant Gatuma was being paid for rent and given some money for subsistence. M is the youngest and she is in school. The said house appears to be the only asset that is generating income in the deceased's estate. The applicant claims they are facing difficulties in paying school fees for M her younger sister. I find that Andrew occupying the said house is hindering generation of income from the said house. The parties are yet to obtained a grant of letter of administration and thus there is no administrators to safe guard the deceased's estate from waste. Gatuma claims that he is in ready and in a position to assist in paying M's school fees. In regards to this I find that Gatuma may have an income though he has not disclosed how much he earns as such he is not so greatly disadvantaged and can stand in his own two feet and support himself. I find that M is still a minor and is in school and as such she is deserving of school fees and maintenance prior to the taking out and confirmation of the said grant. I find that it is in the interest of justice that the respondent vacates the suit premises within the next 45 days and the same can be leased out as earlier done to enable the same generate income to pay for M's school fees and upkeep. I advise the parties to have the consent fully signed to enable them petition for grant of letter of administration and finally confirmation. Parties to have this matter mentioned at the end of the 45 days to confirm compliance. No orders as to costs. It is so ordered.

Dated, signed and delivered this **24<sup>th</sup>** day of **April** 2015.

**R. E. OUGO**

**JUDGE**

In the presence of:-

.....**For the Applicant**

.....**For the Respondent**

.....**Court Clerk**