



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**SUCCESSION CAUSE NO 950 OF 2010**

**IN THE MATTER OF THE ESTATE OF GLADYS WAMBUI KIGWE (DECEASED)**

**PAULINE MUTHONI KIGWE**

**CHARLES KIGWE WACHUKA.....APPLICANTS**

**VERSUS**

**JOSEPH WATHUA KIGWE**

**GABRIEL MURITU KIGWE.....RESPONDENTS**

**RULING**

The action presented before this Court is an application filed on 10<sup>th</sup> May 2013 brought under **Rules 49, 59 & 73** of the **Probate and Administration Rules** and all the enabling provisions of the law.

The Applicants' prayers are that the Court;

- a. Compels the Administrators/Respondents of the estate to distribute the estate within 30 days and;
- b. The Registry Registrar to sign the transfer documents on behalf of the Administrators.

The application was premised on the following grounds;

The grant was confirmed on 13<sup>th</sup> February 2012 and the Administrators have taken no lead to distribute the estate. Secondly, the vast estate is going to waste and all beneficiaries are anxiously waiting for their respective shares in relation to Wakigwe Holdings where the administrators who are also directors of the company are engaged in disposing part of the said estate without the consent and approval of all beneficiaries.

In response, the Respondents, administrators of the estate of the deceased, opposed the Applicant's application. They admitted that although the grant was confirmed on 13<sup>th</sup> February 2012, it was amended and a new grant was issued in August 2012.

The Respondent alleged that they distributed the estate according to the grant save for the shares held in East African Breweries Ltd. This was attributed to the fact that the Applicant and other beneficiaries could not agree on the way forward whether to have the same shares sold as a whole and the proceeds

divided amongst the beneficiaries or to transfer their shareholding in their respective names.

With regard to LR No 13511/20 also referred to as “Ngumba Houses” which comprise of a block of massionettes, they were transferred to the beneficiaries, namely Pauline Muthoni Kigwe, Joyce Wacuka Kigwe and Salome Njeri, jointly and they collect rent to date. The title documents are not transferred to their names as they have not agreed on how they wish to handle the said property, jointly or each with their respective share.

The property comprising of Ksh.5 million in the standard Chartered Bank was distributed among the beneficiaries as shown in the confirmed grant of 13<sup>th</sup> February, 2013.

The shares in Wakigwe Holdings Ltd have been liquidated and distributed to all beneficiaries and each one of them received various parcels of land for their own personal and private use as enumerated in paragraph six (6) of the 1<sup>st</sup> Respondent’s Replying Affidavit of 21<sup>st</sup> June, 2013.

The Respondents further alluded to the following issues on the propriety of the Applicants’ application. They deponed that they distributed the estate of the deceased with diligence and to the benefit of the beneficiaries. Some of the beneficiaries have not been party to these proceedings, namely, Salome Joyce and Mary Anne Kigwe as they have no dispute with the distribution of the estate process. Secondly, the Respondents raised and brought to the attention of the Court that one of the Applicants, Charles Wachuka, is not a beneficiary to the estate since his mother is alive and well and can or may prove her rights to the estate.

In a rejoinder, the beneficiary Joyce Wachuka Kigwe by an affidavit filed on 4<sup>th</sup> July 2013 annexed the power of attorney appointing Charles Wachuka to act on her behalf. She also reiterated that she is in agreement with the applicant that the estate has not been distributed and should be distributed. By a further affidavit filed on 18<sup>th</sup> July 2013, the Applicant, Pauline Muthoni Kigwe, opposed the contents of the Respondent’s Replying Affidavit premised on the following grounds:

- a. The 412 shares in East African Breweries Ltd have not been transferred or distributed to the beneficiaries. The beneficiaries have not received dividends. There is lack of information with regard to the said shares.
- b. The Ngumba Houses (LR No. 13511/20), the title documents have not been transferred and the administrators should transfer the titles in the beneficiaries’ names.
- c. Their late mother held 800 shares in Wakigwe Holdings and the company its assets and properties have not been valued and ascertained.

However, it is common ground that the beneficiaries collect rent from LR No 13511/20. The amount of Ksh. 5 million was shared to all beneficiaries and there has been distribution of property in form of land held under Wakigwe Holdings. The bone of contention is that the distribution is not enough or equitable to the beneficiaries. Furthermore, the matters of Wakigwe Holdings are conducted to the exclusion of other shareholders and beneficiaries of the deceased’s estate. For example, there has been disposal by sale of part of the Wakigwe Holdings property as illustrated by “**PMK 1**” annexed to the Applicant’s affidavit of 18<sup>th</sup> July, 2013. This is an advertisement of sale by Lloyd Masika Ltd.

The siblings and beneficiaries of the deceased’s estate have held meetings and not agreed. Through their respective counsel they wrote several letters to the administrators annexed to the Applicants’ affidavit of 18<sup>th</sup> July, 2013; exhibit “**PMK 2**” shows letters dated 27<sup>th</sup> August 2008, 22<sup>nd</sup> February 2013 and 8<sup>th</sup> February 2013 respectively outlining the areas of disagreement and the need to resolve the same. But all was silent from the Respondents as there was no response from the administrators and so the application was filed in Court.

## **SUBMISSIONS**

On 3<sup>rd</sup> June 2015, the Applicants through their Advocate Mr. Okumu holding brief for Mr Nganga

outlined in detail the background to the application and the basis for the orders sought from the Court. He stated his clients have not been able to benefit from the estate of the deceased. Although part of the distribution of the estate has been done, the most crucial part has not been done and therefore they require Deputy Registrar Family Division to be ordered to sign the documents to effect the transfer.

By his own admission, Counsel for the Respondents relied on the pleadings filed, specifically the affidavit of the Respondent/administrators of 2<sup>nd</sup> June 2013. Counsel stated that the estate of the deceased was substantially distributed and he explained as follows:

- a. LR 13511/20 (Original No 48632) was transferred to the Applicant and her sisters and are receiving rent payments. The title documents have not been transferred because the sisters cannot agree on whether the sale proceeds of the houses be distributed to them equally or the ownership of the houses be distributed to them directly.
- b. The East African Breweries Limited (EABL) 412 shares, the transfer is pending the decision by the beneficiaries on whether to divide the shares and they lose value or sell them together and share out the proceeds.
- c. Ksh 5 million was distributed as per confirmed grant.
- d. The shares of Wakigwe Holdings Ltd were not distributed; instead, the beneficiaries' shares were liquidated and they were allocated parcels of land as stipulated in paragraph 6 of the Respondents/administrators' affidavit.

Counsel for the Respondents/administrators informed the Court that the proceeds of distribution of the estate halted upon the filing of the instant application on 10<sup>th</sup> May 2013.

## **LAW**

**Section 83 of the Law of Succession Act Cap 160** provides:

***Personal representative shall have the following duties –***

- a. ***to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;***
- b. ***to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;***
- c. ***to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);***
- d. ***to ascertain and pay, out of the estate of the deceased, all his debts;***
- e. ***within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;***
- f. ***subject to section 55 to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;***
- g. ***within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;***
- h. ***to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;;***
- i. ***to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.***

Ideally, the distribution of the estate should take place immediately after the confirmation of grant within six (6) months and/or for the period the Court may extend. From this Court's record the administrators carried out their statutory mandate under **Section 83 of the Law of Succession Act Cap 160** properly and for the benefit of all beneficiaries. It is commendable that they all agreed to substitute the deceased's will with the Memorandum of Understanding filed on 4<sup>th</sup> March 2010 which became the basis of the distribution of the estate. Up to the time of summons for confirmation of grant, there was no objection and all beneficiaries consented to the confirmation of grant of 13<sup>th</sup> February 2012. It is curious to note that from 2012 there has been a series of correspondence of accusations and counter-accusations among the beneficiaries and the administrators as exhibited by the attached correspondence to the Applicant's affidavit.

It is with the scenario in mind that the Court summoned the administrators and beneficiaries to attend court on 3<sup>rd</sup> June 2015 so as to inquire as to the challenges pertaining to the recent conduct of the parties and administrators in distributing the estate. They were not able to attend court and the matter proceeded inter partes. The Court informed the parties to have out of Court settlement with a view to reaching an amicable solution with regard to distribution of the deceased's estate.

Since the confirmed grant is not challenged and has not been set aside or appealed against and no specific challenges have been presented to this Court on the distribution process, ideally the distribution of the estate ought to take place after six (6) months from confirmation of grant or a period longer as the Court may allow. In the instant case, the matter has taken long.

To facilitate distribution of the estate and the way forward, the Court shall order the following;

- a. The property LR 13511/20 (Original No. 48632) ownership be transferred to the three (3) beneficiaries jointly if in agreement. If not the property be valued and sold and the proceeds shared among the 3 beneficiaries: Salome Njeri Kigwe; Pauline Muthoni Kigwe; and Joyce Wachuka Kigwe. If transfer takes place, the beneficiaries to incur the transfer expenses.
- b. The 412 shares of East African Breweries Ltd be transferred to the beneficiaries jointly if they are in agreement. If not, they are to be valued, sold and the proceeds shared amongst them as per their respective shareholding. Salome Njeri, Pauline Muthoni Kigwe, Joyce Wachuka Kigwe and Maryanne Njahira Karanja, the beneficiaries, to bear the transfer expenses. In the meantime, any dividends be shared among the beneficiaries appropriately.
- c. With regard to Wakigwe Holdings Ltd, the beneficiaries, shareholders and directors to hold a meeting and the shareholders meeting to determine the status of the company. If in existence the administrator to transfer the beneficiaries' shareholding as per the confirmed grant. If the company is liquidated then the beneficiaries will obtain the portions of land as stipulated in paragraph 6 of the Respondent's affidavit as follows;
  - (i) Salome Njeri Kigwe – 35 hectares (84 acres)
  - (ii) Pauline Muthoni Kigwe – 33.9 hectares (84 acres)
  - (iii) Joyce Wachuka Kigwe – 41.8 hectares (105 acres)
- d. The shareholders to have the assets of the Wakigwe Holdings; if liquidated to be valued sold and the proceeds shared among all shareholders/beneficiaries of the estate according to their respective shareholding.
- e. In the meantime, there shall be no sale, disposal or alienation of any land belonging to Wakigwe Holdings Ltd without the knowledge and consent of beneficiaries in this matter and/or shareholders of the company.
- f. These orders take effect immediately to be implemented in the next 3 months.
- g. The Court will mention the matter in 3 months for status, progress and implementation.
- h. No orders as to costs.
- i. Any aggrieved party is at liberty to apply.

**READ AND SIGNED IN OPE COURT AT NAIROBI THIS 26TH DAY OF JUNE 2015**

**M. MUIGAI**

**JUDGE**