

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

P&A NO.1874 OF 2006

IN THE MATTER OF THE ESTATE OF ARTHUR WANYOIKE THUNGU (DECEASED)

MICHAEL L THUNGU WANYOIKE

SAMUEL THUNGU WANYOIKE

EUNICE WAMBUI WANYOIKE

ANTONY THUNGU WANYOIKE.....APPLICANTS

VERSUS

ONESMUS NJOROGE WANYOIKE.....OBJECTOR

RULING

The properties that comprise the estate of the deceased, save for a few, have been distributed to the beneficiaries. However, a dispute has arisen between beneficiaries belonging to the 7th house. Onesmus Njoroge Wanyoike (Onesmus), a son to Pauline Mumbi Wanyoike (Pauline) (the 7th widow of the deceased) filed an affidavit protesting the distribution of the properties that were allotted to the beneficiaries of the said 7th house. Onesmus contends that the properties that were distributed to the 7th house were not in the form that was presented in the court. He deponed that his mother had sold substantial part of the said estate. He prays that before the court finally distributes the remainder of the properties that comprise the estate of the deceased, it should take into account that he had not benefitted at all from a substantial part of the estate allotted to the 7th house.

The protest was opposed. Pauline Mumbi Wanyoike argued that all the properties that she sold was with the consent of the members of her family. She further stated that Onesmus benefitted from the proceeds of the said sale. In particular, she stated that part of the proceeds of the sale was applied to construct a house within one of the properties that Onesmus is currently residing in. She was of the view that if the court is to distribute the estate allotted to the 7th house, then, it should do so in an equitable manner whereby all the beneficiaries should get an equal share.

During the hearing of the protest, this court heard oral rival submission made by Mr. Masake for Onesmus and by Mr. Ouma for the 7th house. This court has carefully considered the said submission. What emerged from the submission is that there is no dispute as to who are the dependants of the 7th house. It was common ground that Pauline has sold a substantial part of the estate that was allotted to the 7th house by the court. Pauline sold the said part of the estate during the pendency of the succession dispute and before the court had confirmed the grant. It was obvious to this court that Pauline sold the said portion of the estate of the deceased without the authority of this court. In her defence, Pauline argued that there was consensus between the members of her family for the particular properties to be sold. Onesmus disputes this assertion. He vehemently argues that he did not benefit at all from the proceeds of the sale of the said properties. Having carefully evaluated the facts of this case, it was clear to this court that the bone of contention between Onesmus and his mother is in regard to how the proceeds of the sale were applied.

This court cannot one way or the other reach a determination, firstly whether there was consensus

between the members of the 7th house to sell the properties in question and secondly, whether the proceeds of the sale benefitted all the beneficiaries. This court will require Pauline to provide accounts on the properties that she sold and how she applied the proceeds from the said sale. This court therefore orders Pauline to provide to the court a detailed statement of accounts on the properties that she sold, the purchase consideration and how she applied the proceeds of the said sale. The said statement of accounts shall be served upon Onesmus who shall be at liberty to comment on them. These accounts will enable the court determine whether Onesmus benefitted from the proceeds of the said sale. Depending on the outcome, this court shall apply part of the estate that is yet to be distributed to satisfy any party who may have been shortchanged in the distribution to the specific members of the 7th house. Pauline is given fourteen (14) days to file and serve the said statement of accounts to Onesmus. This case shall be mentioned on **2nd July 2015** for further directions. It is so ordered.

DATED AT NAIROBI THIS 16TH DAY OF JUNE 2015

L. KIMARU

JUDGE