



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1958 OF 2013

IN THE MATTER OF THE ESTATE OF ROBERT MUCHIRI MUNGAI (DECEASED)

RULING

1. For determination is the Notice of Motion application dated 27th May 2014 and brought under Section 45 of the Law of Succession Act, Cap 160 of the Laws of Kenya, and Rules 49 and 73 of the Probate and Administration Rules. The application seeks the removal of Patrick Munyui, trading as Patland Property Agency, as the agent of the deceased estate, orders to restrain him from interfering with, dealing, collecting rent and or in any other way inter-meddling in Kiambaa/Ruaka/804 and 4410, and for the said person to render in court a true and just account of all the monies collected as rent from the estate of the deceased since June 2013 to date.
2. The application is predicated on the grounds set out on the face of the application, as well as on the facts deposed to in the affidavit of the applicant, Salome Wanjiru Muchiri, sworn on 27th May 2014.
3. The general grounds are that the applicant had been appointed administrator of the estate of the deceased on 15th May 2014. Patrick Munyui has been collecting rent from income generating assets of the estate since the demise of the deceased on 8th June 2013. The applicant complains that the said respondent has failed, refused or neglected to account to her as administrator of the estate of all the rental income collected since June 2013 to date. She avers that the said failure, refusal or neglect to account has amounted to intermeddling with the property of a deceased person in contravention of provisions of the Law of Succession Act. She asserts that she is the person authorized in law to administer the estate of the deceased according to law, and therefore the respondent should surrender to her as administrator collection of rent from the premises in question and account for what he has collected so far.
4. The application is unopposed, as there is no reply to it on record. There is proof that the respondent was served with a copy of the said application, as indicated in the affidavit of service sworn by David Jod K, a licensed court process server, and filed herein. He avers that he effected service on 5th June 2014 upon Patrick Munyui, Stephen Mbugua Muchiri, Peter Mungai Muchiri and Lucy Wanjiku Muchiri.
5. I note that there is on record written submissions by the objectors dated 24th September 2014 and filed on 25th September 2014. It is alleged in the said written submissions that the objectors have opposed the administrator's application through an affidavit sworn by Patrick Munyui Ngethe and Peter Mungai Muchiri on 24th June 2014. I have perused the record carefully. I have noted from it that the said affidavit of the respondent was not filed in reply to the application dated 27th May 2014, but rather in support of the Summons for Revocation of the Grant dated 24th June 2014.
6. The application was disposed of by way of written submissions on directions given on 22nd July 2014. The submissions by the applicant are largely a rehash of her case as set out in her affidavit sworn in

support of the application. The objectors in their submissions urge the court not to grant the application in view of the pendency of the revocation application filed by them dated 24th June 2014.

7. Representation to the estate of the deceased was committed in this matter to the applicant in the instant application. The grant in question constituted her the administrator of the estate of the deceased. The estate of the deceased was vested in her by dint of her appointment as administrator. This is by virtue of section 79 of the Law of Succession Act, which provides as follows –

‘The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as a personal representative.’

8. The effect of section 79 is that the personal representative of the deceased steps into the shoes of the deceased, so to speak. He assumes the rights, powers and duties that the deceased had over the estate property, and he is entitled to do such things, with respect to the property, as the deceased himself would have had he been alive. These powers and duties are set out in sections 82 and 83 of the Law of Succession Act. The provisions of the Law of Succession Act should be read alongside those of the Trustee Act, Cap 167, Laws of Kenya, for personal representatives of a dead person are also trustees within the meaning assigned to trustees by the Trustee Act. Sections 4 to 35 of the Trustee Act deal with the powers of trustees.

9. Section 79 of the Law of Succession Act should also be read together with section 45 thereof, which states that the personal representative is the only person who is authorized to handle or take possession of estate property by dint of having been appointed the personal representative of the deceased. Any other person not so appointed does not have authority to handle, take possession or dispose of estate property. Any person who then acts without authority to handle estate property becomes an intermeddler, and is liable to prosecution for the offence created under section 45(2) (a) of the Law of Succession Act. He is also obliged by section 45(2) (b) of the Act to account to the lawful personal representative of the deceased in respect of the assets that he has intermeddled with.

10. For avoidance of doubt, Section 45 of the Law of Succession, provides as follows -

‘(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall –

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment; and

(b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.’

11. In this case, the person vested with authority to manage the estate of the deceased is the applicant by dint of her appointment as administrator on 15th May 2014. No other person has authority to handle estate property except her. The estate of the deceased vests in her. She has the powers set out under the Law of Succession Act and the Trustee Act to deal with estate property. This includes the power to enter into and enforce contracts in respect of such property.

12. This means that as administrator, the property in the name of the deceased, that is to say Kiambaa/Ruaka/804 and 4410, vests in her and she should be the person to manage the said asset. Management here would include collection of rent and any other income accruing from the said asset.

13. The respondents argue that there is a pending application seeking revocation of the grant of 15th May 2014, and plead that the instant application ought not be granted pending the disposal of the revocation

application. The answer to this submission is that the pendency of a revocation application does not operate as a stay of the powers of an administrator appointed to run the estate of the deceased. Such administrator retains the powers granted to her by the Law of Succession Act and the Trustee Act, even as the parties battle it out in court in the effort to have the grant revoked or nullified.

14. In view of everything that I have said above, I do find merit in the application dated 27th May 2014. I allow the same in the terms proposed. The applicant shall forthwith take charge of the estate. Accounts shall be rendered in the next thirty (30) days of the date of this ruling. Costs to follow the event.

DATED, SIGNED and DELIVERED at NAIROBI this 31ST DAY OF JULY, 2015.

W. MUSYOKA

JUDGE

In the presence of Mr. Njuwanda for Mrs. Wambugu advocate for the Applicant.

In the presence of Mrs. Mbanya for Mr. Kimani advocate for the Respondent.