



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 2385 OF 1994
IN THE MATTER OF THE ESTATE OF WAINAINA WAITITU (DECEASED)

RULING

1. The application dated 12th September 2013 is up for determination.
2. It seeks that the administrators be compelled to file a full and accurate inventory of the assets and liabilities of the estate as well as a full and accurate account of their dealings with the estate upto the date of the account. There is also a prayer for a full and accurate account of the completed administration. There is a prayer too for distribution of the estate and for deposit of a sum of Kshs. 673,984.00 in court.
3. The affidavit in support of the application was sworn on 12th September 2013, jointly by the applicants who are children of the deceased. They complain mainly about the receipt of Kshs. 673,984.00 by the first respondent administrator, Peter Kimani Wainaina, as compensation from the Kenya Power & Lighting Company Ltd/Kenya Transmission Co. Ltd (KETRACO). He is accused of having misappropriated the funds and utilized them for his own purposes. They also complain that Salome Wairimu Mungai became an administrator by fraud.
4. The reply to the application is by both the administrators, through their joint affidavit sworn on 31st December 2013. They acknowledge payment of the compensation money, but state that the same was distributed to family members in terms of a written agreement on 19th December 2012 before the Chief of Kamunyu Location. Each family member was allegedly paid Kshs. 100,000.00, with the rest being expended on administration costs. A copy of the agreement of 19th December 2012 is attached.
5. The first administrator then swore a further affidavit on 17th June 2014 ostensibly giving an account of how the sum of Kshs., 673,984.00 was spent – on travels, processing the grant, costs of opposing the grant of letters of administration, deposit on surveyors fees, disbursements to beneficiaries of Kshs. 100,000.00 to each and on consent to transfer property.
6. The applicants swore a further affidavit on 3rd July 2014, which dealt with issues of a general nature in response to the replies by the administrators.
7. Both sides filed written submissions in line with the directions given on 8th July 2014. The applicant's submissions are dated 22nd July 2014 and were filed herein on 24th July 2014. The administrator's submissions are dated 21st October 2014 and were filed herein on 22nd October 2014.

8. I will first deal with the appointment of Salome Wairimu Mungai. It is neither here nor there. The application before me dwells on accounts and completion of administration. It does not have prayers on the removal of Salome Wairimu Mungai as administrator. It is a matter I should not tax my mind on. If the applicants are minded they can move for her removal as administrator. It is a non-issue so far as the prayers made in the application are concerned.
9. The deceased herein died on 9th February, 1991. Representation to his estate was initially granted on 9th June 1995. The grant has not been confirmed to date, although there is an application on record dated 8th September 2003 for its confirmation. I note too from the record that since 1995, when they were first appointed, the administrators have not rendered accounts for their administration of the estate.
10. Section 79 of the Law of Succession Act vests the property of the deceased in the administrators. That constitutes them legal owners of the property, yet they hold such property not for themselves, but as trustees for all those others interested in it, be they heirs or creditors. They therefore stand in a fiduciary position with regard to the property and in relation to the beneficiaries. As trustees they are accountable to the persons who are ultimately entitled to the assets upon distribution. The applicants, as heirs, are within their rights to call for an account from the administrators.
11. However, an account for the completed administration is not feasible at this stage in the process. Such an account can only be granted after debts and liabilities have been settled and the estate has been distributed. That is yet to happen for the grant still awaits confirmation. The prayer for accounts of the completed administration is therefore premature.
12. From the material before me, it is plain that the administrators received a sum of Kshs. 673,984.00 from the power company. They said the money was spent legitimately on causes related to the administration. The applicants disagree and say that the first administrator spent the money on his own devices. They have called for deposit of the money in court.
13. The first administrator says the money is not available for deposit in court for it was spent. The applicants are even said to have received a share of it, which they have not categorically denied. He swore an affidavit on 17th June 2014 to apparently explain the expenditure. I am not satisfied with the account. He should have explained when the money was received and given a blow by blow account of how every cent was utilized, backed, where appropriate, by receipts and other relevant documents.
14. The deceased died in 1991, some twenty plus years ago. Representation to his estate was obtained in 1995. To date the estate is yet to be distributed. No plausible explanation has been given. To my mind it is scandalous that an estate comprising of one or two assets is yet to be distributed more than twenty (20) years after representation was made to the administrators.
15. In the end, the application is allowed in the following terms;
 - a. **That the administrators shall within thirty (30) days of this order prepare and place before court a full and accurate inventory of the assets and liabilities of the estate as well as a true and accurate account of all the dealings with the estate from 9th June 1995 to the date of the account;**
 - b. **That the administrators shall within thirty (30) days of this order prepare and place before court a true and proper account of the sum of Kshs. 673,984.00 paid to them by Kenya Power & Lighting Company Ltd / Kenya Electricity Transmission Co. Ltd (KETRACO) as compensation with respect to Ngenda/Kimunyu/508;**
 - c. **That the administrators shall cause the summons for confirmation of grant to be heard and determined within sixty (60) days of the date of this ruling, in default of which the grant**

shall stand revoked;

- d. **That the matter shall be mentioned after thirty (30) days, for compliance with order (a) and (b) above, on a date to be given at the delivery of the ruling.**

DATED, SIGNED and DELIVERED at NAIROBI this 25TH DAY OF SEPTEMBER, 2015.

W. MUSYOKA

JUDGE