



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 780 OF 1988

IN THE MATTER OF THE ESTATE OF
AMOS WAGACHA WAGITHUKU (DECEASED)

EDWARD MUROKI MBIYU.....1ST APPLICANT

STEPHEN KARANJA MBIYU.....2ND APPLICANT

VERSUS

JOHN NJENGA WAGACHA alias JOHN WAGACHA GITHUKU.....RESPONDENT

RULING

1. The deceased Amos Wagacha Wagithuku died on 18th March 1984. A grant was issued to John Wagacha Githuku alias John Njenga Wagacha (the respondent) on 28th October 1998. The same was confirmed on 7th April 2003. The estate was to be distributed equally between the two widows (houses) of the deceased. The two widows were Ruth Muthoni Mbiyu and Hannah Wambui Githuku. Each house was to hold her share in trust for herself and her children in equal shares. The properties forming the estate were:-

- a. Dagoretti/Kangemi/270;
- b. Dagoretti/Riruta/T.54;
- c. Kericho/Londiani/233; and
- d. Dagoretti/Riruta/6.

2. The applicants state that it was subsequently agreed that Dagoretti/Riruta/T.54 be sold and the proceeds be used to subdivide Kericho/Londiani/233 and Dagoretti/Riruta/6 to enable the sharing, and that the balance of the proceeds be shared equally between the two houses. They state that the respondent sold the plot for Kshs.2,035,000/= ('EMM2") and was paid on 3rd September 2003 but has neither subdivided the parcels nor accounted for the money. The result is that the estate's administration has not been completed.

3. This application was filed on 11th August 2014 by the applicants, who are beneficiaries of the estate, to

find that the respondent is guilty of contempt for wilfully failing to produce to court an account or inventory of the assets of the deceased within 6 months from the date of the confirmation of the grant, and to have him committed to prison for a term not exceeding one year for the contempt. The application was served on the respondent but he did not respond to it, or attend the hearing. Mr Ondabu prosecuted the application on behalf of the applicants.

4. I expected that now that it is alleged that the respondent has failed to finalise the administration of the estate and has failed to account for certain monies, an application be filed seeking that he provides a full and accurate account and inventory of all the dealings in regard to the estate of the deceased. Such application would be grounded on **section 83(g) and (h) of the Law of Succession Act (Cap. 160)** that provides that a person with a confirmed grant should produce to court a full and accurate account of the completed administration. Such production is done either on the person's own motion or on the application of any interested party. It is only when, upon order by the court, the person has not produced the account and inventory that an application can be made to cite him for contempt of court order.

5. In this case, there was no order made against the respondent to produce account and inventory of the administration of the estate. It follows that the present application to cite him for contempt was premature and is therefore dismissed.

6. However, in the wider interests of justice, and considering that there is uncontested allegation that since 2003 the administration of the estate has not been completed, I direct that within 30 days from today the respondent does file and serve a full and accurate account of all his dealings he has undertaken towards the estate. He has to show what he has done to share the estate to the beneficiaries in accordance with the certificate of confirmation. He has also to fully account for the Kshs.2,035,000/=. This order shall be served on him and this Cause shall be mentioned on 26th October 2015 to consider the account and inventory. There was no response to the application and therefore there shall be no order as to costs.

DATED and DELIVERED this 21st day of September 2015.

A.O. MUCHELULE

JUDGE