



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
(MILIMANI LAW COURTS)

SUCCESSION CAUSE NO.651 OF 2012

MARTIN MUIRURI WAINAINA.....APPLICANT

VERSUS

TERESIA WANJIKU WAINAINA.....1ST ADMINISTRATOR

EVA WANJIKU WAINAINA2ND ADMINISTRATOR

RULING

The parties in this matter have filed numerous applications; Application dated 24th August 2012 for consolidating this cause and Succession cause no. 871 of 2012, appointment of interim administrators, an injunction against Teresiah Wanjiru Wainaina and her children from interfering with L.R. No. 209/1534/9036 and 9037/9038. Application dated the 27th August 2013 seeking appointment of interim administrators to manage the deceased's state. Application dated 27th May 2014 seeking reasonable provisions for the dependants pending the grant of letters of representation of the deceased's estate. Application dated 18th September 2014 seeking to revoke the grant of letters of administration granted to Teresia Wanjiku Wainaina and Dorcas Nyokabi Wainaina on 28th July 2014. Application dated 23rd January 2015 seeking to be allowed to withdraw funds for the children's school fees. Application dated 11th November 2014 seeking a mandatory injunction requiring Teresia Wanjiku and Dorcas Nyokabi Wainaina to co-operate with Dorcas Nyokabi Wainaina in running a business account which received rental income from the deceased's account and ordering Teresia to avail bank statements and income and expenditure relating to the deceased income generating assets. Application for summons for confirmation of grant dated 9th March 2015 listing the beneficiaries from both houses and the assets to go to them.

This then brings me to the application currently for consideration is the Notice of Motion dated 16/7/2015. The application is brought under Section 47, 83, 85 and 86 of the Law of Succession Act, rule 73 of the Probate and Administration Rules. The applicant seeks the following orders;

- i. Spent.
- ii. That the applicant be paid from the estate of the deceased a sum of Kshs. 1,900,000/- being the amount expended in payment of the hospital bill of the deceased.
- iii. That the costs of this application be provided for.

The application is based on the following grounds; That the applicant expended colossal amounts of

money in clearing the hospital bill of the deceased using his funds something that has caused the applicant to almost ground his business due to the strain caused and it is only just and fair that the estate repays the applicant the monies expended on the bills. That the applicant solely catered for the deceased's before his demise and even entered into a creditor/ debtor relationship with Nairobi hospital where the deceased died to procure the body of the deceased for burial and had even pledged his car as security. That there is still outstanding bill payable to Nairobi West Hospital Ltd. arising from the deceased's medical costs. That since the estate is seized with sufficient funds to clear the bills and refund the applicant's monies expended in so clearing the other part of the accrued medical bills.

The 1st administrator did not oppose the application.

The application was opposed by the 2nd respondent who refutes that the applicant paid the bill amounting to Kshs. 1,400,000/- claiming that there was a voucher that showed Kshs. 300,000/- was paid by cheque by the deceased and the difference via cash as he had access to his account. That the said monies were never disclosed as a liability in the deceased's estate. That the burial committee had also raised monies towards the hospital bill and to meet the burial expenses and as such the said application was brought in bad faith to meet the applicant's selfish interest further that the deceased by the time of his demise had huge sums of money in his account and was capable of paying his hospital bills as he had daily and monthly income from his businesses. That the applicant had failed to adduce any evidence showing that he paid the deceased's hospital bill of Kshs. 1,400,000/-. That the applicant and his mother have been in control of the deceased estate and receiving rental proceeds and yet they had not resolved to pay him for the said hospital bill. The respondent alleges that the vehicle used as security by the applicant was registered under the names of Nur Osman and Community Bank Ltd. That the Notice of dishonour is challenged as the same was doctored as the vehicle does not belong to the applicant and even questioned why Nairobi West Hospital did not verify ownership of the said vehicle before entering into the said agreement and further added that the applicant was guilty of perjury.

I have considered what has been deponed, submitted and attached as annexures. The applicant claims to have paid the deceased's hospital bill amounting to Kshs. 1.4 million. The respondent refutes this stating that the payment of the said hospital bill was done in various instalments at different times and at one time via cheque by the deceased before his demise. No receipts have been adduced to support the said payments as alleged by the applicant. On the issue of signature, it is clear that in the original agreement the same was signed by a Mr Amit while in the addendum the same was signed on behalf of Mr. Amit meaning the two signatures could differ. The applicant claims that he had used his motor vehicle registration number KBM 629L as security of for the deceased's outstanding hospital bill, so that the estate could be allowed to collect the deceased's body for burial. I find that this contradicts with the copy of search from the registrar of motor vehicle dated 11th May 2015 which shows that the said vehicle was registered in the names of Nur Osman and First Community Bank and not the applicant. I believe the hospital in obtaining such security would have exercised due diligence in ascertaining the true owner of the vehicle before accepting it as security. I therefore find that the applicant's application lacks merit and dismiss the same. This Court has taken note that the parties in this matter have filled numerous applications as earlier mentioned which has delayed the conclusion of this succession cause as such this Court bars the parties from filling any further applications in this succession cause and further direct that the parties do agree on the mode of distribution of the deceased's estate to facilitate the conclusion of the administration of the same. It is so ordered. Cost in the cause.

Dated, signed and delivered this 17th day of September 2015.

R. E. OUGO

JUDGE

In the presence of;

.....**For the Applicant**

.....For the 1st Respondent

.....For the 2nd Respondent

Ms. Charity

Court Clerk