



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 357 OF 2011**

**IN THE MATTER OF THE ESTATE OF FREDRICK KAGIO KINYUA (DECEASED)**

**RULING**

1. The Summons dated 17<sup>th</sup> February 2014 seeks two principal orders: an account and appointment of a managing agent.
2. It is at the instance of a survivor of the deceased, who complains that although the respondent administrator has been collecting rent she has not been accounting to anyone, and there is apprehension that there could be mismanagement or misappropriation of the income. It is on that basis that the accounts and the appointment of a managing agent are called for.
3. I have perused through the record before me and I do not find evidence of a reply by the respondent administrator, even though counsel for the respondent had been attending court when the application came up for mention, directions and hearing. There is reference in the submissions by H. W. Gichohi, guarantor, that he swore an affidavit in reply on 5<sup>th</sup> June 2014, but there is no such affidavit on record.
4. Be that as it may, the office of administrator is that of trust. Section 79 of the Law of Succession Act, Cap 160, Laws of Kenya, vests the assets of the estate in the personal representative, in this case the administrator. Although the vesting constitutes the personal representative with powers and rights akin to those of a legal owner of the assets, the property does not belong to him but to the estate and he holds the same not for his own behalf but on behalf of the estate and for the benefit of those ultimately entitled to it, be they heirs, beneficiaries, survivors, dependants or creditors.
5. The fact that the personal representative holds property on behalf of others and for their benefit makes his position a fiduciary one. He is accountable to the estate; the courts and the ultimate beneficiaries for his administration of the assets. The accounts can be rendered at any time, following a court order at the instance or prompting of any interested part or on the court's own motion. Whether accounts should be rendered should not be a matter for debate, but rather a matter of course. A personal representative should not even wait for a court order once a beneficiary mentions that they would like to be furnished with an account. The duty to account is statutory and is clearly set out in Section 83 of the Law of Succession Act. It is a point that I need not belabour.
6. I am invited to appoint a managing agent as the administrator appears to have failed in her duties as such. I should consider making that order only after the accounts sought have been rendered or where the administrator has defaulted in rendering accounts when ordered to do so by the court.
7. Providing accounts is a serious affair, and failure to furnish them when ordered by the court is ground under Section 76(d) (iii) of the Law of Succession Act for revocation of grant. Failure to account is a dereliction of a statutory duty. An administrator holds the office of a trustee and is bound to account as earlier indicated. An administrator who is unable or unwilling to account is not entitled to remain in office. Rather than appointing managing agents to assist him in his statutory duties, he or she should be removed from office.
8. The sole purpose of administration of estates is distribution of the assets amongst those entitled. That is the ultimate goal. Estates are not administered for the sake of it, but so as to facilitate distribution. It is important that parties do not engage in endless litigation and lose sight of the ultimate goal, distribution of the estate.

9. The orders that I am moved to make are as follows:-

- a. **That the application dated 17<sup>th</sup> February 2014 is hereby allowed in terms of prayer 1;**
- b. **That the said accounts shall be furnished within thirty (30) days of the date of this order;**
- c. **That in default of (a) and (b) above, the grant of letters of administration intestate made herein to the administrator, Esther Njeri Kagio, shall automatically stand revoked; and**
- d. **That costs shall be in the cause.**

**DATED, SIGNED and DELIVERED at NAIROBI this 18<sup>TH</sup> DAY OF DECEMBER, 2015.**

**W. MUSYOKA**

**JUDGE**