



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 218 OF 2007
IN THE MATTER OF THE ESTATE OF HABIBA WANJELA KALAMDIN (DECEASED)
RULING

1. The application dated 28th May 2011, seeks several orders. The principal prayers are:-
 - a. *An injunction during the pendency of the application, to restrain wastage or plunder of the estate;*
 - b. *Removal of the administrators; and*
 - c. *Cancellation of the sale of Ruiru West/Block 1/1956.*
2. The same is brought at the instance of Mohamed Kalamdin Mohamed, one of the beneficiaries of the estate. His affidavit in support of the application was sworn on 28th May 2014. His case is that the orders made on 14th March 2014 have not been complied with. It had been ordered that a property be sold and its proceeds shared among the beneficiaries, that an account be rendered within 45 days and administration of the estate be completed within 60 days. He complains that none of that has happened to date. In addition to that he complains that the administrators purported on 31st October 2011 to sell Ruiru West/Block 1/1956 without the consent of the beneficiaries and/or without a court order. Even after the said sale, no accounts were furnished to him as beneficiary. He contends that the said property was disposed of at a throw away price.
3. The response to the application takes the form of the replying affidavit sworn on 6th June 2014 by one Zabina Kalamdin Mohamed. She accuses the applicant of being one of the obstacles to the completion of administration to the extent that he still maintains a caution to some unnamed asset. On the sale of Ruiru West/Block 1/1956, she concedes the sale, says that the court has already dealt with the matter and states that the administrators will deal with the matter when rendering accounts. She blames the beneficiaries for the failure by the administrators to give accounts. She alleges that they have withheld information, some of them collect rent from premises they occupy yet they had declined to furnish the details to the administrators so that the latter could compile accounts.
4. I directed on 31st July 2014 that the said application be disposed of by way of written submissions. I further directed the parties to file their respective submissions within a definite duration. Pursuant to those directions both sides duly filed their respective submissions.
5. The application that I am called upon to decide is inspired by the orders I made on 14th March 2014. I had on that date directed the sale and distribution of Plot No. D13 Huruma, the rendering of accounts by

the administrators and completion of administration within 60 days. The applicant's case is that the said orders have not been complied with to date, and it is on that basis that he seeks the removal of the administrators, amongst other orders.

6. The administrators reply in the affidavit sworn on 6th June 2014 to the application concedes that the orders of 14th March 2014 have not been complied with. D13 Huruma has not been sold and the proceeds of sale distributed amongst the beneficiaries, accounts have not been rendered and administration of the estate has not been completed within 60 days of the date of the orders of 14th March 2014.

7. Various reasons are advanced for the failure to comply. The applicant is accused of maintaining a caution on one of the assets that make up the estate. The said property is not identified in the affidavit in reply, but it is identified in the application dated 22nd July 2014 as Ruiru East/Block 1/205. A beneficiary known as Razia Kalamdin Mohamed is said to be an impediment to the sale of D13 Huruma as she has remained in occupation and refused to vacate.

8. The administration of the estate herein could only be completed after the disposal by sale of D13 Huruma and distribution of the proceeds of sale and distribution of Ruiru East/Block 1/205 in the manner set out in the certificate of confirmation of grant dated 1st February 2011 and the orders made on 14th March 2014. The administrators do not appear to me to blame for the failure to deal with the two assets in the manner stated above. The applicant and Razia Kalamdin are to bear full responsibility.

9. I have noted from the record that the administrators have filed an application dated 2nd July 2014 which seeks orders designed to facilitate compliance with the orders of 14th March 2014. There are prayers that the caution lodged against Ruiru East/Block 1/205 be removed and that Razia Kalamdin be compelled to vacate the premises on D13/5 Huruma.

10. The other matter informing the application dated 28th May 2014 is the sale of Ruiru West/Block 1/1956 by the administrators. The applicant complains that the said property was sold on 31st October 2011 by the administrators. The alleged sale was done after the grant had been confirmed on 1st February 2011. His concern is that the sale was done without the consent of the beneficiaries or leave of court.

11. The administrators conceded the sale saying that the matter of the sale had been dealt with by the court. They agreed that they would be in a position when rendering accounts to explain why the property was sold and how its proceeds were applied.

12. According to the certificate of confirmation of grant dated 1st February 2011, plot No. D13/5 Huruma/Mathare Valley and Ruiru West (more particularly known as Ruiru West/Block 1/1956) was to be distributed to the beneficiaries in the following ratios-

a. Razia Kalamdin Mohamed	–	14.2%
b. Mohamed Kalamdin Mohamed	–	29%
c. Zabina Kalamdin Mohamed	–	14.2%
d. Shamim Kalamdin Mohamed	–	14.2%
e. Nazin Kalamdin Mohamed	–	14.2%
f. Yasmin Kalamdin Mohamed	–	14.2%

13. I had held on 14th March 2014, that D13/5 Huruma/Mathare Valley was not agricultural land, but a developed residential plot. It could not in the circumstances be subdivided for distribution purposes, and therefore the only way of dealing with it was by way of sale and distribution of the proceeds of sale. At

the confirmation, the property was not allocated to one individual, but to all the six surviving children of the deceased. It must be sold to facilitate distribution and whoever is in occupation must deliver up vacant possession to the administrators; in default they must be forcibly removed. The orders of 1st February 2011 have not been varied, and therefore there cannot be any basis for any of the beneficiaries claiming sole entitlement to the property on grounds of occupation.

14. Regarding Ruiru West/Block 1/1956, the orders of 1st February 2011 envisaged that the said property be distributed amongst the six beneficiaries. There were no orders for the sale of the said property. The said property could only be dealt with in terms of the certificate of confirmation of grant dated 1st February 2011. It could only be dealt with otherwise after the terms of the certificate of confirmation had been altered by a court order. The said terms remain intact for no order of the court was obtained to vary them. If there was a sale of the said property, then the said sale was irregular to the extent that it was inconsistent with the terms of the certificate of confirmation of the grant dated 1st February 2011.

15. I have seen documents on record where the reasons for the sale of the said asset are advanced and explanations offered on how the proceeds of sale were utilized, yet the said documents are not on oath and I will not accord them any attention. However, as it appears that the administrators have some explanation for their conduct, it would be prudent to grant them an opportunity to properly explain themselves.

16. I agree with the applicant that the order to file accounts has not been complied with. No plausible reason has been given for the non-compliance. The excuse that the beneficiaries did not cooperate with the administrators on the matter does not hold. The persons in charge of the estate are the administrators, the beneficiaries who are not administrators have nothing to do with administration.

17. The applicant has made a good case for the removal of the administrators on account of the disposal of estate property after confirmation of grant without leave of court and failure to render accounts within the period appointed by the court.

18. Before I can make adverse orders against the administrators, I will allow them time to regularize matters. Consequently, these are the orders that I am disposed to make in the matter-

a. That the Land Registrar responsible for the Thika District Land Registry is hereby directed to forthwith remove the caution lodged by the applicant herein against Ruiru East/Block 1/205;

b. That Razia Kalamdin Mohamed shall vacate the premises on No. D13/5 Huruma/Mathare Valley within thirty (30) days in default of which she shall be forcibly removed therefrom;

c. That the Officer Commanding the Huruma Police Station or any other Police Station within the jurisdiction shall facilitate compliance with order (b) above;

d. That the administrators shall file the accounts the subject of paragraph 12(2) of the ruling of 14th March 2014 within thirty (30) days;

e. That the administrators shall file a separate account within thirty (30) days of date hereof on the sale of Ruiru West/Block 1/1956, dwelling on whose authority the same was sold, to who, for what consideration and how the proceeds of sale were applied;

h. That the accounts in (d) and(e) above shall be in affidavit form;

g. That in default of (d) and (e) above, the grant of letters of administration intestate made herein on 29th May 2008 shall stand revoked;

h. That the matter to be mentioned for compliance after thirty (30) days on a date to be fixed

at the registry; and

i. That there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 18TH DAY OF DECEMBER, 2015.

W. MUSYOKA

JUDGE