

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

P&A NO.157 OF 1992

IN THE MATTER OF THE ESTATE OF MWANGI KIRAGU JOSEPH (DECEASED)

PETER KIRAGU)

JAMES MAINA KIRAGU).....ADMINISTRATORS/APPLICANTS

VERSUS

KIRUNDI & CO. ADVOCATES.....RESPONDENT

RULING

Before me is an application filed by the Applicants seeking orders of this court to compel the firm of Messrs Kirundi & Co. Advocates to account for and remit all the monies that the said firm collected from tenants in respect of Plot No.371 Mathare North (the suit property) since June 1996 to date. The Applicants asked the court to order the Respondent to pay the said sum plus interest. The Applicants further asked the court to set aside the order that it issued on 31st May 1996. The grounds in support of the application are stated on the face of the application. The application is supported by the annexed affidavit of Peter Kiragu Mwangi. In the said affidavit, he depones that by an order of the court issued on 31st May 1996, the Respondents were allowed to receive rents from all the tenants in the suit property. It was the Applicants' case that since the said order was issued, the Respondent had not accounted for the rent received. He averred that the beneficiaries of the estate of the deceased had continued to suffer loss and damage due to the fact that the Respondent had declined to provide accounts during the period that they have been managing the suit property on behalf of the estate of the deceased.

In response, an advocate in the Respondent firm swore a replying affidavit in opposition to the application. That advocate is Sharon Ndunge Thyaka. She acknowledged the fact that the court in indeed issued an order directing the tenants in the suit property to pay rent to their law firm. She however explained that there were challenges in collecting the said rent. The Respondent was unable to obtain particulars of the tenants from the Applicants. This made it difficult for the Respondent to pursue the tenants to pay the said rent. It was in frustration of this situation that the Respondent wrote to their clients requesting them to appoint another advocate to act on their behalf in the matter. This communication was made to said clients on 14th January 2000. In the period that the Respondent managed the said suit property, they received a total of Kshs.16,800/- as rent. The sum of Kshs.8,248/- was paid to the City Council on instructions of the clients. The balance of Kshs.8,552/- was available for collection by the Administrators of the estate of the deceased. In the premises therefore, the Respondent urged the court to dismiss the application since it had not been in management of the suit property since February 1998.

At the hearing of the application, this court heard oral rival submission made by Mr. Wilson for the Applicants and by Mr. Mahia for the Respondent. This court has carefully considered the said submission and the pleadings filed by the parties herein in support of their respective opposing positions. The issue for determination by this court is whether the Applicants establish a case for this court to grant them the reliefs sought in the application. It was conceded that the court indeed issue an order directing the Respondent to collect rent from the suit premises. Unfortunately it appears that due to breakdown in communication between the Respondent and their clients, the particulars of the tenants were not given to the Respondent. The correspondence exchanged between the Respondent and their clients is evidence of

this failure of communication. Notwithstanding this fact, the Respondent collected some rent before it stopped collecting rent completely about two (2) years after the initial order was issued. This court is satisfied that the Respondent has properly accounted for the sums that it received during the period that it managed the suit property. The Respondent established to the satisfaction of this court that it was frustrated due to factors beyond its control from giving effect to the order of the court.

In the premises therefore, the order issued on 31st May 1996 granting the Respondent authority to collect rent is hereby set aside. The parties to this petition shall make presentations on who shall be authorized to receive the said rent. Since this case has remained pending for far too long before determination, the court directs the parties to appear before it on 1st of April 2014 for appropriate directions on the way forward. The Respondent is ordered to pay the amount in its custody to the firm of C.N. Kihara & Co. Advocates within fourteen (14) days of today's date. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 21ST DAY OF MARCH 2014

L. KIMARU

JUDGE