



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 815 OF 2010
IN THE MATTER OF THE M K – (DECEASED)
RULING

1. P B G is the widow of L M K, a deceased son of the deceased M K.
2. The grant herein was confirmed on 6th June 2013 and rectified on 28th March 2013. There is only one asset of the estate – Thika Municipality/Block [*particulars withheld*]. It is said to raise rental income of Kshs. 139,000.00 presumably per month. According to the certificate of confirmation of grant the rental income is to be expanded on the maintenance of named minors and the property of the estate. Six individuals are also meant to receive a monthly allowance of Kshs.9,000.00, among the six is P B G.
3. B B G has brought the application dated 5th August 2013. She would like an account of a sum of Kshs.30,000.00 which is the surplus from the monthly rental income. She would also like to be paid Kshs.20,000.00 as monthly allowance. She also complains that the administrators have not been remitting to her full entitlement of Kshs.9,000.00 monthly allowance. She alleges that she was forced out of the family home together with her son.
4. The application was served on the respondent administrators on 6th August 2013, who filed grounds of opposition and a replying affidavit through the first administrator. In the reply the administrators dispute the allegations made by the applicant. They explain that the applicant was not forced out of the home, but she left on her own volition upon marrying a R N M with whom she was alleged to be still living with. It is also explained that the administrators have been remitting to the applicant Kshs.5,000.00 only instead of Kshs.9,000.00 as they have spent some money on the education of the applicant's child. The applicant is accused of neglecting the child. There is also an allegation that the applicant has filed a suit at the Children's Court seeking orders similar to those sought in this application. On the Kshs.30,000.00, the administrator explains that the same is utilized for meeting secondary school expenses for the deceased's children.
5. The applicant responded to this application through her affidavit sworn on 20th August 2013.
6. Both sides have filed detailed written submissions. The applicant's submissions are dated 12th September 2013 while the administrator's submissions are dated 23rd September 2013.
7. I have perused the entire record herein, inclusive of the affidavits and the submissions by counsel. I note that the court had ordered the administrators to pay the applicant a monthly allowance of Kshs.9,000.00 per month. There is no good explanation as to why the administrators have proceeded to deduct Kshs.4,000.00 from the applicant's entitlement. This went against the court order. Even if there was need for school fees to be paid for the applicant's school fees the same

need not have been met from the applicant's monthly allowance. The administrators had no mandate to do so.

8. The estate comprises of only one asset – Thika Municipality/Block *[particulars withheld]*. It is not in dispute that the applicant is a stake holder in the estate of the deceased. The asset Thika Municipality/Block *[particulars withheld]* has not been distributed. The asset generates income, Kshs.30,000.00 of which is not addressed in the certificate of confirmation of grant dated 6th June 2012 and rectified on 28th March 2013. This portion of the income must be accounted for, that is for the entire period from 6th June 2012 to date. The administrators are under a duty to account to the beneficiaries given that they hold estate property for the benefit of the beneficiaries.
9. On whether the estate should be distributed fully, I do note that some of the children are still in secondary school and they could in all probability be minors. It would not be prudent to complete administration of the estate at this stage.

10. Taking everything into account, I will make the following orders:-

- a. That the administrators are hereby ordered to prepare and place before the court, in the next thirty (30) days, a full and accurate account of the surplus of Kshs.30,000.00 collected in the period from June 2012 to date;
- b. That the administrators shall pay the applicant the full sum of Kshs.9,000.00 set out in the certificate of confirmation of grant dated 6th June 2013;
- c. That the administrators shall refund to the applicant in 30 days sums that they deducted from her allowance;
- d. That this matter shall be mentioned on a date to be given at the delivery of this ruling for compliance.

DATED, SIGNED and DELIVERED at NAIROBI this 25th DAY OF April, 2014.

W. MUSYOKA

JUDGE

In the presence of Miss. Ontiti advocate for the applicant.

In the presence of Mrs. Waiganjo for Mrs. Kayugira advocate for the respondent.