



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 1745 OF 2000

AND

IN THE MATTER OF THE ESTATE OF JANE WANJIRU MUTHEE (DECEASED)

RULING

1. The Summons dated 7th June, 2013 is taken out under Section 47 of the Law of Succession Act Cap, 160 Laws of Kenya and Rule 73 of the Probate and Administration Rules. The Applicant seeks orders for the substitution of the Applicant ANTHONY KINYENJE MUTHEE one of the sons of JANE WANJIRU MUTHEE with GLADWELL WANJIRU NYOIKE and JAMES NJOROGE MUTHEE as personal representative of the estate of JANE WANJIRU MUTHEE.
2. The background to the application is set out in the affidavit of ANTHONY KINYENJE MUTHEE the Applicant herein, sworn on 7th June, 2013. JANE WANJIRU MUTHEE died on 18th May, 1998, and by the time the Letters of Administration were taken out, the Applicant, ANTHONY KINYENJE MUTHEE was a minor of 11 years. The Applicant is now adult. JAMES NJOROGE MUTHEE is mentally incapacitated. GLADWELL WANJIRU NYOIKE is the grandmother to ANTHONY KINYENJE MUTHEE.
3. The application is opposed by one of the administrators, GLADWELL WANJIRU NYOIKE. She swore a replying affidavit on 26th June, 2013. She deposes that she applied for Letters of Administration in the estate of JANE WANJIRU MUTHEE as she wanted to protect the same from being wasted away until the true beneficiaries get their share to the same. She concedes that JAMES NJOROGE MUTHEE has been of unsound mind for some time now but recently he was discharged from Mathare Hospital with the doctors indicating that he has substantially recovered. It is further her averment that there has been a lot of intermeddling with the properties of the deceased person after her death with the sole intention of depriving the true beneficiaries of their rightful shares. She argues that the Applicant does not know most of the material facts relating to the estate including the intermeddling with the properties of the deceased person as much of these activities took place when he was a child and hence he will not be in a position to properly and competently defend the interests of the estate. She also argues that the present application is not made in good faith as the Applicant has constantly caused disputes between family members demanding for the estate property to be released to him. She states that the Applicant's sister, named Caroline Wanjiku Muthee, passed on and left behind a child and who ought to benefit from the estate. She holds the view that the Applicant may not be in a position to ensure equitable distribution of the estate of the deceased as to consider some of the vulnerable people such as the child of Caroline Wanjiku Muthee, and states that if any substitution has to be made, then let the Applicant be made one of the Administrators of the estate alongside herself.

4. Parties herein filed in their written submissions.
5. I have carefully considered the application, the affidavits as well as the rival written submissions by the parties. There is no dispute that the Applicant herein is a child of the deceased. Further, it also not in dispute that the deceased died intestate. What then is the legal position in a situation such as the instant one?
6. Section 38 of the Law of Succession Act Cap, 160 states that –

”Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

7. In this case, I agree with Counsel for the Applicant’s submission that the Applicant being the surviving child of the deceased, is entitled to and capable of administering the estate on his own behalf and on behalf of the other beneficiaries.
8. I further note that the Applicant contends that one of the Administrators, JAMES NJOROGE MUTHEE, is mentally incapacitated and is therefore not capable properly administering the estate. Section 56 of the Law of Succession Act determines certain persons who should not be issued with a grant of representation. Section 56 (1) (a) of the Act provides as follows-

‘No grant of representation shall be made—

9. In the instant case, I note that the Respondent, GLADWELL WANJIRU NYOIKE, has in her Replying affidavit stated at paragraph 5 “that it is true that JAMES NJOROGE MUTHEE has been of unsound mind for some time now but recently he was discharged from Mathare Hospital as the doctors have indicated that he has substantially recovered.’ I believe that when the grant of representation was issued to the said JAMES NJOROGE MUTHEE he was of a sound mind but now that he has unfortunately become mentally incapacitated, a fact that has been admitted by the Respondent, he cannot continue being one of the Administrators of the said estate.
10. I have also noted that when the grant of representation was made to the said Administrators, the Applicant herein was a minor and therefore lacked the capacity to administer the said estate. He has now become of age and is capable of administering the said estate.
11. The Respondent main opposition to the instant application as I understand it is that the said estate has been greatly intermeddled with and many parcels of land have been disposed of in irregular manner and that much of these intermeddling took place when the Applicant herein was a minor hence not being in a position to know most of the facts and information surrounding such intermeddling. I find this argument inconceivable as the Respondent stated in her a replying affidavit that her interest in the estate is to see that all the true beneficiaries of the estate of the deceased benefit from the same. If indeed, that was her interest then nothing stops her from sharing the said facts and information she might have regarding the irregularities and intermeddling which have taken place with the Applicant. To that end I find that the Respondent GLADWELL WANJIRU NYOIKE is not being candid with the Court.
12. In view of the foregoing, I have no doubt whatsoever that the Applicant’s application is merited. I find that the applicant is entitled to and capable of administering the estate of the deceased. Accordingly, I hereby appoint ANTHONY KINYENJE MUTHEE and GLADWELL WANJIRU NYOIKE as personal representatives of JANE WANJIRU MUTHEE. A grant of letters of administration intestate shall be issued to them.

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

W. MUSYOKA

JUDGE

In the presence of Mr. Kimathi for Mr. Ojienda advocate for the applicant.