



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 2986 OF 2007

IN THE MATTER OF THE MICHAEL KARUMI MUTAMBA – (DECEASED)

RULING

1. The application that I am tasked to rule on is dated 10th June 2013. It is brought by one of the executors of the will of the deceased and other beneficiaries of the estate. He seeks orders touching on estate accounts. There are three principal orders – that rent proceeds from the premises known as LR NO. 209/2788/20 be deposited in a joint account in the names of the law firm of Gichuki King’ara and Company Advocates, that three accounts operated by the co-executor (being CFC Stanbic Account No. 0010013148, CFC Stanbic Account No. 0100000128362 and National Bank Account No. 0124067-818400) be frozen and that the co-executor be restrained from dealing with LR No. 209/2788/20 pending the hearing and determination of this cause.
2. The case by the applicant is that his co-executor has not administered the estate in accordance with the law. Her alleged misconduct with respect to the estate has led to several suits against her. She has been charged in a criminal case of making a false document without authority and of altering a document with intent to deceive. There are also two civil cases against her. One is by tenants who seek injunctive orders against her, while the other is by the Nairobi Hospital with regard to unsettled hospital bills incurred by the deceased. The applicant has complained that although the family had agreed to utilize the rent collected for the premises standing on LR NO. 209/2788/20 to defray the hospital expenses, the co-executor/respondent has been utilizing the rental income for over own personal benefit.
3. The application was served on the respondent on the 19th June 2013. There is an affidavit of service to evidence the same, sworn on 26th June 2013 by the person who served the process. The affidavit was filed in court on 25th June 2013.
4. Despite service the respondent did not respond to the application. The allegations made on the face of the application dated 10th June 2013 and the detailed particulars set out in the affidavit of Peter Mutamba Karumba sworn on 10th June 2013 have not been controverted.
5. It would appear from the material on record that the executors of the will of the deceased have not been acting in concert concerning the administration of the estate. The rents collected from the estate asset known as LR NO. 209/2788/20 do not go to a central account operated by both executors and it would appear to be going into the personal accounts of the respondent. The suits against the respondent suggest that she has been acting singly as if she was the sole executor of the will, yet by his will made on 23rd November 2006 the deceased committed administration of his estate to both the first applicant and the respondent. The court also by the grant of probate of written will made on 5th March 2008 committed administration of the estate to the two parties.

6. Personal representatives hold their offices in trust for the beneficiaries. This is so because the estate property vests in them, not as absolute owners, but rather as trustees for others. They stand in a fiduciary position with respect to the property and are accountable to heirs, beneficiaries and creditors. They are bound at all times to act to the best interests of the beneficiaries. They will be regarded as failing in their duties as such if their acts with respect to the estate property are detrimental to the interest of the beneficiaries, heirs and creditors.

7. The material placed before establishes that the acts of the respondent are not to the best interests of the beneficiaries and the creditors. They would appear to be detrimental to the estate. This court is therefore bound to take action to protect the interests of the beneficiaries and creditors.

8. In the end, I find merit in the application dated 10th June 2013 and will allow it in the following terms:-

(1) That as the executors do not appear to agree on administration of the estate, the rent collected from the premises on LR No. 209/2788/20 Mung'aria House, Ambala Road, Nairobi shall be deposited with law firm of Messrs. Gichuki King'ara & Company Advocates until further orders;

(2) that the respondent, Mary Waithera Mutamba, is hereby restrained from dealing with the property known as LR NO. 209/2788/20 in any manner until further orders of this court;

(3) that the respondent shall within thirty (30) prepare and place before the court an account of all the rents collected by her from tenants in the property known as LR No. 209/2788/20 from the date of the deceased's death to date;

(4) that pending the rendering of the account the subject of (3) above and until further orders of this court, the following bank accounts shall stand frozen, that is to say:-

(a) CFC Stanbic Account No. 0010013148 in the name of Mary Waithera Mutamba,

(b) CFC Stanbic Account No. 0100000128362 in the name of Mary Waithera Mutamba;
and

(c) National Bank of Kenya Account No. 012407818400 in the name of Mary Waithera Mutamba;

(5) That this matter shall be mentioned after 30 days for compliance with respect to (3) above.

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

W. MUSYOKA

JUDGE

No appearance for the applicants.