



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KITALE.**

**SUCCESSION CAUSE NO. 148 OF 2005.**

**IN THE MATTER OF THE ESTATE OF:**

**MUSA KANDA KIPTUM ::::::::::::::::::::::::::::::::::::::: DECEASED.**

**AND**

**SIMEON M. KITUM )B**

**SELINA C. KIPTUM ) ::::::::::::::::::::::::::::::::::::::: APPLICANTS.**

**R U L I N G.**

This application dated 10th June, 2013, is made by the first administrator, **Seline Chepsir Kiptum**, under sections 94 & 95 of the Law of Succession Act and Rule 73 of the Probate & Administration Rules. It seeks an amendment of the letters of administration and the certificate of confirmation issued in favour of the applicant and two others i.e. Jane Kanda Limo and Josephine Cheruto Limo (herein the respondents) to the effect that the name of Josephine Cheruto Limo be removed and substituted for that of Emmanuel Toroitich Kiptum after which a fresh certificate of confirmation in the names of the applicant the first respondent and Emmanuel Toroitich Kiptum be issued.

The application also seeks to have the first respondent give an account of money collected as rent from February, 2012 to date respecting plot No. Kajiado/Kaputieni North/288 and 378 and to have her (first respondent) move out of the said rental premises in order to eliminate acrimony. Mismanagement and misappropriation of funds collected from the rental premises and have her stay at her matrimonial home in Seum comprising six (6) acres of land.

The application further seeks to have the joint administrators ordered to open a joint account for depositing income from the rental premises and making withdrawals for repairs of the premises and upkeep of two minors and the first respondent.

The application is based on the facts contained in the applicant's supporting affidavit dated 10th June, 2013, and is opposed by the respondents on the basis of the facts contained in their replying affidavit dated 17th March, 2014.

On 24th March, 2014, the court directed that the application be argued by way of written submissions and in that regard the applicant filed her submissions on 3rd June, 2014 while the respondents did likewise on 20th May, 2014.

From the rival submissions and the averments contained in both the supporting and replying affidavits, the issues arising for determination are **firstly**, whether the material grant and the accompanying certificate of confirmation should be amended in order to remove the second respondent (Josephine

Cheruto Limo) from being one of the joint administrators and appoint Emmanuel Toroitich Kiptum in her place. **Secondly**, whether the first respondent (Jane Kanda Limo), should be ordered to move out of the material rental premises and stay at her matrimonial home in Seum and **thirdly**, whether the first respondent should be ordered to give an account of money collected as rent from the material premises from February, 2012 to date and whether the joint administrators should be ordered to open a joint account for depositing money collected as rent and withdrawing the same for the repairs of the premises and the upkeep of two minors and the first respondent.

Section 94 of the Law Succession Act provides for neglect or misapplication of assets by personal representatives such that when a personal representative neglects to get in any asset forming part of the estate or misapplies any such asset thereby occasioning loss or damage, shall be liable to make good any loss or damage so occasioned.

Section 95 of the same Act provides for offences by personal representatives and prescribes punishment for the guilty party.

Such offences include wilful and reckless neglect to get in any asset forming part of the estate or misapplies any such asset or subjects any such asset to loss or damage and wilful failure to produce to the court any such inventory or account as is required by the provisions of paragraphs (e) and (g) of section 83 of the Law of Succession Act.

Under Rule 73 of the Probate & Administration Rules, the court is granted inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process.

With regard to the first issue for determination, the material grant was issued on the 12th March, 2009 to Simeon Murkomen Kiptum, Selina Chesir Kiptum (applicant), Jane Kanda Limo (first respondent) and Josephine Cheruto Limo (second respondent). It was confirmed on 14th July, 2011 and a certificate of confirmation was accordingly issued. However, the certificate was issued in favour of the applicant and the two respondents after the then first administrator Simeon Murkomen Kiptum was removed as an administrator vide an order of the court made on 27th July, 2010. The certificate was amended on the 27th February, 2012, and an amended certificate issued accordingly. It shows that the property subject of this application i.e. **Land Title No. Kajiado/Kaputieni – North/288 and 378**, was to be registered in the names of the three administrators (i.e. applicant and respondents) to hold in trust for the minors S K K and C C.

As it is now, the property is being held by the administrators for the benefit of the minors as opposed to benefit of the three administrators who it would appear are bent at utilizing the property for their own personal benefit hence the frequent disputes among themselves relating to the management of the property and the income it generates. The present application is one such dispute pitting the first administrator (applicant) against the second and third administrators (first and second respondents)

The first administrator is desirous that the third administrator (second respondent) be removed as an administrator and be substituted with one Emmanuel Toroitich Kiptum and in that regard, the material grant and the certificate of confirmation of grant be amended accordingly.

In her supporting affidavit, the applicant avers that the second respondent has totally failed to co-operate with her in administering the estate but is instead fueling conflict between the applicant and the first respondent. That, the second respondent is not adding any positive value in the estate and therefore the family of the deceased agreed to have her removed and replaced with Emmanuel Toroitich Kiptum.

In response to the foregoing, the respondents have cited the said Emmanuel Toroitich Kiptum who is a son of the applicant as a person intermeddling with the estate and in particular the property in dispute i.e. Kajiado/Kaputieni North/288 and 378.

All considered, it is the opinion of this court that other than the allegation by the applicant against the second respondent there is no evidence or demonstration of her alleged ineffectiveness in the

administration of the estate or her alleged incitement aimed at causing disharmony between the applicant and the first respondent. Indeed, the first respondent is unaware of such incitement and has pointed an accusing finger at Emmanuel Toroitich who according to her is acting in cahoot with the applicant.

This court therefore declines to remove the second respondent as an administrator and have her replaced by Emmanuel Toroitich.

If indeed, the said Emmanuel Toroitich is unnecessarily interfering with the administration of the estate as alleged by the respondents, he is hereby instructed to keep off the estate lest he finds himself rubbing shoulders with the law.

Quite intriguing is the fact that the family of the deceased agreed to have the second respondent removed as an administrator yet she was not aware of any resolution to that effect. The first respondent was also not aware of such an agreement yet she is the widow of the deceased and a very vital members of the family of the deceased. Besides, in the order of priority, the first respondent is entitled more than anybody else to administer the estate of her late husband and if her sister, the second respondent was included as an administrator to cushion her vulnerability as a widow, then it was for the benefit of the estate and in particular the protection of the rights of the minor children of the deceased who may view the administration of the estate as a money minting venture.

With regard to the second issue for determination, it would be foolhardy for this court to order the widow of the deceased (i.e. the first respondent) to move out of the disputed rental premises and stay at her matrimonial home at Seum. She has rightly inherited her late husband's property which is to be applied for her own benefit and that of her children with the deceased and any other person who was a dependant of the deceased, as such it would be against constitutional principles to bar her from any right to occupy property belonging to her late husband. She cannot be compelled to move to her matrimonial home if her stay at the disputed property is to facilitate a smooth and proper administration or management of the property. In any event, the matrimonial home at Seum is not indispute in as much as it is in the exclusive possession of the first respondent.

For reasons foregoing, this court must also decline to order that the first respondent moves out of the disputed property. She has much right to stay in the property in as much as she has the right to stay in the matrimonial home.

With regard to the third issue for determination, the provisions of section 83 (e) and (g) of the Law of Succession Act, apply to all the three administrators of the estate. The duty to produce a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all the dealings therewith upto the date of the account and the duty to complete the administration of the estate within a prescribed period are imposed upon the first respondent in as much as they are imposed upon the applicant and the second respondent. Therefore, it is upon them to jointly undertake the obligations imposed on them by the law. It would not be right to call upon only one of them to undertake the statutory duties.

In that regard, this application in as much as it calls for the rendering of accounts by only one of the administrators is obviously misconceived.

All in all, the entire application is without merit and is hereby dismissed with each party bearing own costs. It must however be mentioned herein that the apparent acrimony between the applicant and the respondents respecting the management of the estate and in particular the property subject of this application does not auger well for the wholesome administration of the estate and must be put to a stop. If the applicant cannot relate well with the respondents for the purposes of administering the estate, she may as well withdraw from the task voluntarily without necessarily seeking to impose her own appointee in the administration. She may also be removed as an administrator if it is proved that she is the stumbling block in the management of the estate.

As for the siblings of the deceased (i.e. the sons of the applicant), they must refrain from intermeddling

with the administration of the estate as none of them has any right to even purport to manage the estate. Such right is bestowed upon the administrators and nobody else.

The administrators are on their part expected to undertake their duties in accordance with the law and for the benefit of all the beneficiaries of the estate. None of them should purport to exercise their duties through agents and/or proxies.

With that, this court says no more.

**[Read and signed this 17th day of June, 2014.]**

**J.R. KARANJA.**

**JUDGE.**