



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 611 OF 1995
IN THE MATTER OF THE ESTATE OF KIBUE KANGARI – (DECEASED)

RULING

1. The application dated 22nd January 2014 seeks several orders-
 - (a) furnishing of accounts,
 - (b) appointment of an administrator in place of the current administrator,
 - (c) review of orders made on 17th June 1997 and 25th October 2006 and 8th December 2011, and
 - (d) an order for immediate distribution of the estate.
2. In an affidavit in support of the application, it is averted that the administrator has been acting in a secretive and biased manner by erecting rental houses on one of the assets, does not share rental income with the other beneficiaries, that he failed to disclose to the court that he has distributed the estate and acquired title deeds in the names of some of the beneficiaries, and that he had denied the applicant permission to erect a house in place of one that had burnt.
3. The administrator has replied to the application. His reply comprises of denials. The fresh allegations made in the reply are responded to by the applicant in a further affidavit sworn on 12th May 2014.
4. The application was argued orally on 7th June 2014. The applicant's case was argued by Mr. Mungla, while the administrator, being unrepresented, presented his case in person.
5. I must state from the start that the application as framed is generally inadequate. In the first place, an administrator can only be removed upon the filing of an application for revocation of the grant made to him. It is permissible under Section 76 of the Law of Succession Act for a grant to be revoked on grounds of maladministration – where there is failure to apply for confirmation of grant within the period allowed in law, failure to proceed diligently with administration and failure to furnish accounts when ordered to by the court.
6. The allegations made against the administrator herein gravitate towards maladministration. The proper cause of action by the applicant ought to have been the filing of a summons for revocation of the grant made to the administrator, premised on *Section 76(d)* of the Law of Succession Act. An administrator cannot be removed under *Section 83* of the Law of Succession Act.

7. The applicant prays for review of the orders made on 17th June 1997, 25th October 2006 and 8th December 2011. The body of the affidavit in support of the application makes no reference whatsoever to these orders. No reason has been given to justify the review of the said orders and no basis whatsoever has been laid for such review.

8. I do concede however that there is basis for granting the prayer for the rendering of an account. The office of administrator is one of trust. The administrator is bound to account to the beneficiaries for his administration of the estate. Such account can be called for at any time, and beneficiaries need not justify the prayer for accounts.

9. This is an old cause. The deceased died in 1995 and the cause was commenced then. There is no good reason why the administration has not been completed to-date. There is therefore basis for the concern raised by the applicant with respect to distribution.

10. The orders that I shall make in the circumstances are:-

- a. That the administrator of the estate of deceased shall within 30 days prepare and place before court a comprehensive account of his administration of the estate;
- b. That the administrator is granted 45 days to complete the administration of the estate and to distribute the estate of the deceased, in default of which the grant made to him shall stand revoked, and
- c. That the matter shall be mentioned on 28th January 2015 for compliance.

DATED, SIGNED and DELIVERED at NAIROBI this 28th DAY OF November 2014.

W. MUSYOKA

JUDGE

In the presence of Ms. Alice Kabura, in person.