



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**

**SUCCESSION CAUSE NO.835 OF 2012**

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

**DAVID MUCHIRI KAGIA ..... DECEASED**

**AND**

**HANNAH MUGURE MUCHIRI .....PETITIONER**

**VERSUS**

**WILLIAM KAGIA MUCHIRI**

**GRACE MUTHONI MUCHIRI .....OBJECTORS**

**RULING**

The Applicant/Petitioner filed a petition for Grant of Letters of Administration in respect of the estate of DAVID MUCHIRI KAGIA (deceased) and cited the respondents WILLIAM KAGIA MUCHIRI and GRACE MUTHONI MUCHIRI.

On 18th January 2013, the respondents filed an objection to the making of Grant of Letters of Administration together with petition by way of cross petition for grant.

By summons general under **Rule 73 of Probate and Administration Rules**, the petitioner under certificate of urgency moved the court for the following orders that:-

- a. *The application be certified urgent.*
- b. *The respondents be and are hereby restrained from wasting, selling or otherwise alienating the estate pending the hearing and final determination of the cause.*
- c. *The respondents as well as their cousin Grace Muthoni Kariuki and 1st respondent's wife (Wanjiku) be and are hereby ordered to move out of the applicant's residence on LR NO. NYERI/MUNICIPALITY/BLOCK 1/1141 pending the final hearing and determination of this cause.*
- d. *Account number 005050022703-01 K-Rep Bank and any other account of the deceased be frozen forthwith to avoid further waste or in the alternative the applicant be a co-signatory of the said account and co-manager of Central Hotel to safeguard her interest therein.*

The application was supported by the affidavit of the applicant sworn on 22nd January 2013 which she deponed that she is the widow of the deceased while the respondents are her step-children. That before the death of her husband she moved with him and her grand daughter in matrimonial home on LR NO. NYERI MUNICIPALITY/BLOCK 1/1141 and it was agreed when she took the deceased to India for

treatment that the respondents would move into and take care of the house in her absence.

It was further deponed that when she came back from India, she found that the respondents had brought in the first respondent's wife and their cousin into the said home and that they started showing disrespectful behaviours with no intention of leaving the house. It was further deponed that the respondents were using abusive language and had sold two cows belonging to the estate and taken away DVD player from the home.

It was deponed further that respondents were operating the deceased's business single handedly without rendering accounts and were intending to sell one of the vehicles belonging to the estate. It was further stated that the respondents were operating the accounts of the deceased illegally making themselves signatories to her exclusion.

The application was certified urgent and temporary order granted restraining the respondents from wasting, selling or otherwise alienating the estate pending inter partes hearing of the application.

### Response

In response to the application, the respondents filed replying affidavits in which it was deponed by the 1st respondent WILLIAM KAGIA MUCHIRI that they had lived with their father in Nyeri Municipality Block 1/1141 as their home having been exchanged with their property in Nakuru which was burnt in 2007 post election violence and therefore it would be unjust to order them out before the distribution of the estate.

It was further deponed that the hotel and the security business are both limited liability company with their directors and therefore can not form part of these proceedings. It was deponed further that the two cows were sold after family meeting on 1st June 2012 and 14th July 2012 to offset a debt of Kshs.805,679/=. It was deponed that the applicant had never lived with the deceased in the suit property since it was them with Wanjiku who lived thereat.

The second respondent Grace Muthoni Muchiri swore an affidavit in which she deponed that she shares one room with her cousin Grace Muthoni Kariuki who moved in to take care of her after she donated her Kidney to the deceased. She further deponed that the applicant did not complain when they lived together with the deceased in his life time and denied being disrespectful to the applicant.

It was further deponed that the guest house in Nyeri Municipality Block 1/1141 is vacant and further denied being a signatory to any of the deceased bank accounts.

On 11th March 2013, the applicant filed a supplementary affidavit in which she deponed that the respondents are married adults and therefore it is absurd for them to come back to her dwelling house. It was deponed that the 1st respondent and his family was living in Kamakwa and therefore their behaviour is contrary to Kikuyu law customs. She further deponed that the 2nd respondent had not annexed any evidence to support her medical condition. She further stated that she had interest in the two companies.

### Submissions

Directions were given that the application be heard by way of written submissions which have now been filed.

### Applicant's submissions

It was submitted that the only issue for determination is when did the applicant start living in the matrimonial home. It was submitted that they were given licence to live in the house while the applicant and her husband were away while the respondent on other part stated that they had lived thereat with the applicant and the deceased. It was submitted that the 2nd respondent had not tendered in evidence to support her medical condition.

It was further submitted that the respondents are running two companies belonging to the deceased without involving the applicant and that those companies form part of the estate. It was submitted that the accounts of the said companies therefore ought to be frozen.

#### Respondents' submissions

It was submitted that the application was brought in bad faith and that the applicant did not complain about the presence of the respondents in the said house until after the death of the deceased. It was submitted that the petitioner had refused to fast track the distribution of the estate.

As regards the two companies it was submitted that the same are limited liability companies and therefore could not form part of the succession proceedings and in support thereof the following cases were submitted:-

**Re Estate of Burton Kamau Thuri High Court Succession Cause No.488 of 2007 Nairobi reported in [2013] e KLR** where it was held that *“Limited Liability Companies are governed by the companies Act and not Law of Succession ... Probate court is not the place for resolving disputes as between the company, its shareholders, directors and third parties ....”*

**In the Matter of the Estate of Wagiko Ndibaru (deceased) Nairobi Succession Cause No.1871 of 2002 reported in [2014] e KLR** where the Judge had this to say: *“Regarding the second application I find that Nyakio Investments Ltd. is a separate legal entity for its shareholders, therefore it had a separate legal existence from the deceased and consequently this court is not the appropriate place to deal with issues affecting it. The only matter of interest to the probate court is the distribution of the shares held by the deceased in that company. All other matters concerning the company ought to be placed before the Commercial Court.”*

I will therefore first deal with prayers 4 and 5 in respect of the two companies, though no evidence has been produced to support the contention that they are both limited liability company, the applicant has not rebutted the respondents' contention. Based on the two authorities submitted by the respondent, I agree with the legal position that this court is not best suited to deal with the management of the said companies and would therefore decline to grant the two prayers. If the applicant has a case in respect of her interest in the said companies she ought to file an appropriate case.

On the issue of the house and occupation thereof, the applicant has not rebutted the fact that it is the 2nd respondent who donated her kidney to the deceased. There is also contradiction between the parties herein as to whether the respondents were both living with the applicant and the deceased in his life time or whether the same were invited by the applicant to stay in the house during her absence. Further if the 2nd respondent was with the deceased and the applicant in India while he was undergoing medication I do not see how the same would have been invited to stay in the house together with the 1st respondent in the absence of the applicant.

It is therefore clear to my mind that the applicant has not made out a *prima facie* case for the grant of prayer Number 3 - that is to order the respondents as well as the cousin Grace Muthoni Kariuki and the respondent's wife (Wanjiku) do move out of the LR NO. NYERI/MUNICIPALITY/BLOCK 1/1141 at the stage. It is clear to my mind that if the 1st applicant is married then if he was allowed by the applicant to move in he had to move in with his wife.

As regards prayer Number 1, it was upon the applicant to place before the court evidence of wastage or sale of the estate, the respondent have accounted for the sale of the two cows which according to them was done after a family meeting, there is no evidence tendered by the applicant to support her claim that the respondent intend to sell motor vehicle belonging to the estate and as the law stands no assets of the estate can be sold by anybody before grants of letters of administration.

I therefore find that the applicant's application herein lacks merit and the same is hereby dismissed. This being a family dispute each party shall meet their own costs.

Signed and dated            day of    2014

**J. WAKIAGA**

**JUDGE**

Delivered by Justice J. Ngaah on behalf of Justice Wakiaga this    25th    day of November    2014

**J. NGAAH**

**JUDGE.**

In the presence of:-

----- for Petitioner

----- for Objectors