



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2763 OF 2008

IN THE MATTER OF THE ESTATE OF DAMARIS NJERI KIMANI – (DECEASED)

RULING

1. The administrator of the estate of the deceased has moved the court by an application dated 13th October 2014. The application is premised on Section 45 of the Law of Succession Act and Rule 73 and 79 of the Probate and Administration Rules.
2. The orders sought are for the eviction of members of the family of the deceased who live on estate property specifically Plot No. 113/38/Embakasi and Plot No. 949 Githurai Mwiki, police supervision of the eviction exercise, authority to manage Plot No. 113/381 Embakasi and Plot No.949 Githurai Kimbo, maintenance out of the estate, accounts from Nancy Watiri, Elizabeth Wangui, Eunice Wairimu and Jamleck Mwangi, production of all title documents by Nancy Watiri and preservation of the estate pending distribution.
3. The grounds upon which the application is premised are set out on the face of the application and in the affidavit of the applicant Hellen Wakarindi, sworn on 13th October 2014. She avers that she was appointed administrator of the estate of the deceased on 18th September 2014. Members of her family are accused of intermeddling with the estate by inciting tenants with the result that the estate is being wasted. She pleads that she has been ailing and she would like the court to order her maintenance from the estate.
4. The application was served on the respondents as per the affidavit of service sworn on 17th October 2014. The respondents did not file replies to the application, hence the application is unopposed.
5. The applicant herein was appointed administrator of the estate of the deceased on 18th September 2014. A grant of letters of administration intestate was duly issued to her.
6. By dint of her appointment as such she became the personal representative of the deceased. This means she stands in for the deceased so far as estate property is concerned. She has the power to do such things as the deceased would have done with respect to her property. She has the power to sell it, to invest it, to enter into contracts over it, to sue and be sued in connection with it, among others. These powers are detailed in Section 82 of the Law of Succession Act and in the Trustee Act, Cap 167, Laws of Kenya.
7. To facilitate the exercise of the powers referred to above the property is vested in the personal representative of the deceased. The relevant provision in that regard is Section 79 of the Law of Succession Act, which provides-

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and,

subject to any limitation imposed by the grant all the property of the deceased shall vest in him as personal representative.”

8. The effect of Section 79 of the Act is that the administrator upon her appointment as such substituted the deceased as the legal owner of the property that makes up the estate. She has all the rights and powers of a legal owner. She can for that reason enter into legally binding contracts over the property, she can enforce any cause of action which arises over the property, she can enforce contracts touching on the property, she can defend suits which arise over estate property, she can dispose of such property by way of sale, she can invest estate property, she can insure the property, she can lease or hire it out, among others.

9. It is to be noted, however, that although Section 79 of the Act constitutes the administrator legal owner, she does not become an absolute owner of the property. The property does not become hers. The property of a dead person is subject to trust. The administrator of such property holds the property in trust for others. She is a mere trustee of the property for the benefit of others. She would hold such property for the benefit of the heirs and survivors of the deceased, as well as for the benefit of creditors and others who have an interest in the same. She holds such property in trust pending payment of debts and distribution of the estate.

10. Since the estate of the deceased vests in the administrator by virtue of Section 79 of the Act, all the assets must be under her control. She would have possession of all documents of title. She should be the one receiving all the revenue, profits, income and rents due from estate property. It is her duty to settle all the debts owing by the estate and to settle all statutory dues and obligations that the estate is subject to.

12. Once administration of the estate is vested in or committed to a particular heir or survivor of the deceased, all the others, whether they be children or spouses of the deceased, should surrender all the property of the deceased and title documents thereto to the appointed administrator. They are expected to cooperate with the administrator in all respects.

13. According to the affidavit sworn by the applicant on 13th June 2014, in support of the petition for grant of letters of administration intestate, the deceased died possessed of the assets listed in paragraph 6 of the said affidavit. By dint of Section 79 of the Act, all these assets now vest in the administrator, Hellen Wakarindi. She should have all the documents of title relating to these assets. She should be the one to collect rent from any of the assets that are income-generating. The tenants occupying any of the property should be answerable to her as landlady.

14. Conversely, as administrator, the applicant is a trustee, for she holds the said property in trust. She holds the property not for her own benefit, but for the benefit of others. She stands in a fiduciary position with respect to the property and the beneficiaries. As trustee she is bound to account for her administration of the estate. She should open and operate estate accounts, into which she should pay in all the proceeds from the income-generating assets. She should tender an account to court of her administration of the estate as and when required to do so by the court.

15. The applicant has premised her application on Section 45 of the Law of Succession Act. Section 45 provides as follows:-

“45(1). Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall—

(a) be guilty of an offence and liable to a fine... or to a term of imprisonment... or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

16. Intermeddling occurs when a person who has no authority in law to handle the property of a dead person handles such property. Authority to handle the property of a dead person is given by the law. Under the Law of Succession Act, such authority is given under Sections 45 and 46 of the Act. The persons who may handle the property of a dead person are those to whom representation has been granted, by either a grant of probate or of letters of administration, and the public officers mentioned in Section 46 of the Law of Succession Act.

17. It is an offence under Section 45(2) (a) of the Act for a person to handle the property of a dead person when such person does not have authority in law to handle such property. This is to say that intermeddling is a criminal offence. It is committed by persons who handle the property of a dead person when they have not obtained representation to the estate or they are not the public officers mentioned in Section 46 of the Act.

18. Section 45(2)(b) of the Act makes intermeddlers responsible to the administrators of the estate. This means that all those persons who have handled estate property when they did not hold a grant of representation must account to the person who is eventually appointed administrator of the estate. The administrator's duties include collection of debts and getting in of the estate. Calling intermeddlers to account would be an exercise in the discharge of the duty to collect debts owing to estate and the getting in of the estate.

19. The cause herein relates to the estate of one Damaris Njeri Kimani. She is dead, having passed on 14th November 2007 intestate. Her property should not be handled by any person unless such person holds a grant of letters of administration intestate or is one of the public officers envisaged in Section 46 of the Law of Succession Act. Any person who handled or is handling any of the property belonging to Damaris Njeri Kimani without holding a grant of letters of administration intestate or without being one of the public officers envisaged by Section 46 of the Act is an intermeddler. Such a person has committed a criminal offence under Section 45 (2) (a) of the Act, and is liable to account to the administrator of the estate by virtue of Section 45(2) (b) of the Act.

20. The deceased herein died in 2007. Representation to her estate was granted on 18th September 2014. She died possessed of various assets, some of which generate income, going by the record before me. The property in question is occupied by tenants. Rents have been collected since 2007, by persons who did not and still do not hold a grant of representation, and who have not been accounting for the rents collected. Clearly, the applicant has made out a case for the orders sought with respect to management of the assets and to accounts.

21. The applicant pleads that she is needy and she should be maintained from the income-generated from the estate property. She has however not given details on the extent of her needs. In maintenance cases it is imperative that the needs in question must be outlined and figures given of the amounts of money required to meet those needs. Without such details the orders sought are not available.

22. In view of everything that I said above and having taken into account all the prevailing circumstances, I am disposed to make the following orders:-

- a. That the orders recorded on 27th July 2009 regarding the collection of rental income are hereby vacated to allow the administrator take charge of the estate;
- b. That the administrator shall hereby forthwith take charge of all the assets of the estate, including Plot No. 949, Mwiki and Plot No. 113/381 Embakasi;
- c. That the administrator shall with effect from the date of this ruling collect rent from all the income-generating assets of the estate, including from Plot No. 949 Mwiki and Plot No. 113/381 and all the tenants shall pay rent directly to the administrator;
- d. That the administrator shall within seven (7) days of the date of this ruling open and operate a

- bank account where all the income generated from estate assets shall be paid into;
- e. That to facilitate compliance with orders (b) and (c) above, I hereby command the officers commanding the Githurai Police Station and the Embakasi Police Station to assist the administrator in the enforcement of the orders;
 - f. That the administrator shall prepare and place before the court a true and accurate account of her administration of the estate of the deceased on a quarterly basis;
 - g. That Nancy Watiri, Elizabeth Wangui, Eunice Wairimu and Jamleck Mwangi shall prepare and place before the court in the next 30 days a true and accurate statement of account of all the rents and other income that they have collected from the estate property under their control for the period running from 14th November 2007 to the date of this ruling;
 - h. That Nancy Watiri shall produce and deposit in court, within 30 days, documents of title relating to estate property as given to her by Joseph Kimani;
 - i. That the applicant shall file in the next fourteen (14) days an affidavit outlining her needs and stating the figures of the amount of money which is sufficient to meet those needs;
 - j. That a formal order and copies of this ruling shall be served on the officers commanding the Githurai and the Embakasi police stations;
 - k. That the matter shall be mentioned on 25th February 2015 for compliance; and
 - l. That there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 19th DAY OF December, 2014.

W. MUSYOKA

JUDGE

In the presence of M/s. Wakarindi for the applicant