



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 2916 'A' OF 2005

IN THE MATTER OF THE ESTATE OF CHRISTOM KINYUA – (DECEASED)

RULING

1. On 23rd May 2014 administration of the estate of the deceased was committed to Lucy Wanjiku Kinyua, James Wainaina Kinyua and Wainaina Kinyua Wainaina, when it was directed that a grant of letters of administration with the will annexed be issued to them accordingly.
2. A certificate of grant of probate with written will was issued on 23rd May 2014. This did not confirm with the order of 23rd May 2014 which had specifically directed the issuance of a grant of letters of administration with the will annexed as the will of the deceased did not appoint any executors.
3. The amended summons dated 19th August 2014 is brought at the instance of one administrator as against his co-administrators. It is said that the respondents are collecting rent from a property and the proceeds thereof are not being deposited in the estate account nor accounted for.
4. There is on record evidence that the said application was served on the respondents. Of the two respondents only one of them, Lucy Wanjiku Kinyua, has responded to the application. She concedes that she intended to collect rent for August 2014, and made her own independent allegations against the applicant with respect to collection of rent. She says that she has nothing to account for since she has not collected any rent.
5. The application was argued orally before me on 25th August 2014. It was urged by Mr. Wageni for the applicant and opposed by Mr. Achoki for the 2nd respondent.
6. It would appear to me from material before me that the administrators appointed to manage the estate of the deceased are not acting in concert, but at cross-purposes. When that happens the only remedy available would be to revoke the grant made to them for they do not appear to appreciate why they were appointed in the first place.
7. Where joint administration is granted to a group of people, it is expected that they would at all time act together. They would open a joint estate account into which all the proceeds or income from any income – generated activities would be paid. To achieve this no doubt the administrators should collaborate.
8. I note that the protection orders in the instant application are being sought against persons who are themselves administrators. *Section 79* of the Law of Succession Act vests estate property in personal

representatives. The two respondents are administrators of the estate of the deceased, the estate property therefore vests in them. They cannot possibly intermeddle with an estate that vests in them as administrators. Injunctive orders therefore cannot be made against them in the manner proposed by the applicant.

9. I note that the deceased died in 2005 and todate his estate has not been distributed. The administrators are engaged in sideshows instead of getting on with the business of administration and division of the estate as expected of them as administrators.

10. As concerns the grant of probate dated 23rd May 2014, I have already indicated above that the said certificate was issued erroneously given that the order made on 23rd May 2014 was that a grant of letters of administration with will annexed be made. There is power under *Section 76* of the Law of Succession Act for this court to *suo moto* order the cancellation of the said grant of probate.

11. In view of everything that I have said above, I will make the following orders:-

(a) That the grant of probate with written will issued on 23rd May 2014 is hereby cancelled, instead a grant of letters of administration with will annexed shall issue upon Lucy Wanjiku Kinyua, James Wainaina Kinyua and Wainaina Kinyua Wainaina;

(b) That the administrators shall open a joint estate account where all three are signatories and all the income generated from the assets of the estate shall be paid into that account;

(c) That the account referred to in (b) above shall be opened within fourteen (14) days of this order;

(d) That the administrators are given forty-five (45) days to file an application for the confirmation of the grant made to them on 23rd May 2014, in default of which the said grant shall stand revoked and the administration of the estate vested in the Public Trustee;

(e) That this matter shall be mentioned on 21st February 2015 to confirm the opening of a joint-estate account and the filing of an application for the confirmation of grant by the administrators; and

(f) That costs shall in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 11th DAY OF December 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Wageni for the applicant

In the presence of Mr. Mwangi for Miss King'oo for the respondent.