



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Succession Cause 1101 of 2011

**IN THE MATTER OF THE ESTATE OF DUNCAN MURIITHI
KIMONDO.....DECEASED**

AND

SUSAN WANJIRU

MURIITHI.....CITOR

VERSUS

LEAH NGIMA MURIITHI & 5

OTHERS.....CITEE

RULING

This ruling is the outcome of the summons dated 5th December 2011 in which Faith Wanjiru Kimondo, the applicant sought for the following orders:

- 1. That this application be certified as urgent and heard ex-parte in the first instant due to its urgency.***
- 2. That the Respondent herein Susan Wanjiru, agents, servants, brothers, sisters or any one claiming through her e restrained from collecting rent or in any other way interfering or intermeddling with the deceased estate particularly THEGENGE/KARIA/1275 and MUMBI ESTATE PLOT until the share of each beneficiary is determined or until further orders of this court.***
- 3. That the Respondent herein Susan Wanjiru be ordered to account for all Rent collected from THEGENGE/KARIA/1275 and MUMBI ESTATE PLOT from May 2011 to date.***
- 4. That an order be made for opening an account where all rent collected from THEGENGE/KARIA/1275 and MUMBI ESTATE PLOT shall be deposited until the share of each beneficiary is determined.***
- 5. The cost of this Application be in the cause.***

The applicant filed an affidavit she swore to support the summons Susan Wanjiru Muriithi, the Respondent herein, filed the replying affidavit she swore to oppose the summons.

It is the submission of the Applicant that the Respondent has intermeddled with the estate and converted all the rent collected from the estate to her personal gain to the utter detriment of other beneficiaries. The applicant further alleged that the Respondent has refused to disclose or inform her of any rental income collected from the deceased's estate. From the above reasons the Applicant sought for an orders prayed in the summons to preserve the income and to prevent misuse of the assets of the estate. The Respondent urged this court to dismiss the summons. The respondent averred that the amount collected as rent from L.R. No. Thegenge/Karia/1275 does not exceed 10,000/= per month out of which the same is used to settle bills left by the deceased's late mother. The Respondent alluded that when her father died title to the aforesaid parcel of land was pledged as a security for the financial accommodation with Kenya Wide Building Society Ltd. It is said the loan was not repaid prompting the Respondent's late mother Esther Nyakinyua Wachira and her co-wife Leah Ngima Muriithi to enter into an agreement to jointly settle the debt. It is stated that Leah Ngima Muriithi did not honour her part of the bargain, forcing the Respondent and her brothers to step in and assist their late mother to save the property by repaying the loan as the Applicant became indifferent. It is the submission of the Respondent that the Applicant should keep off matters concerning L.R.Thegenge/Karia/1275 and the plot at Mumbi Estate since it is the Respondent, her late mother together with her brothers who redeemed the property as the Applicant folded her hands. It is the Respondent's submission that Leah Ngima Muriithi, the petitioner herein is using the Applicant to cause disharmony in the family. The respondent further pointed out that the Applicant is not entitled to anything from the deceased estate since she has already gone to the Karatina court and succeeded the estate of her husband who was presumed dead. I have considered the material placed before this court. The main complaint raised by the Applicant is that the Respondent has embarked on collecting rental income due from L.R. No.Thegenge/Karia.1275 and plot at Mumbi Estate and failing to account to the estate. The Respondent has no denied the Applicant's allegations that she has intermeddled with the deceased's estate by collecting rent and failing to account. She has merely gone at length to explain the reasons to justify her actions. It is not in dispute that L.R. No.Thegenge/Karia/1275 is the asset of the estate of Duncan Muriithi Kimondo, deceased. The deceased passed away on 20th February 1989. This succession cause was filed on 18th October 2011. It is alleged that the Respondent started collecting rent from May 2011. That assertion is not controverted. The Respondent's explanation is that she and others redeemed the property. With respect, that does not entitle the Respondent to continue doing what she has been accused of. The fact that she and others managed to redeem the deceased's properties by settling the outstanding debt owing from since properties that did not entitle her to take over the deceased's property. Such a claim can only be lawfully lodged and taken care of as a liability to the estate. In the circumstances I am convinced the summons dated 8th December 2011 is well founded. It is allowed as prayed. Costs of the summons shall abide the outcome of the cause.

Dated and delivered this 17th day of August, 2012.

**J.K. SERGON
JUDGE**