



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO.261 OF 2003

IN THE MATTER OF THE ESTATE OF WILSON WAMAGATA (DECEASED)

FRANCIS KAIRU

JAMES GITHINGU

VIRGINIA WAMBUI MURIU.....APPLICANTS

VERSUS

NELSON NG'ANG'A WAMAGATA.....RESPONDENT

RULING

The applicants filed an application seeking orders of the court to compel the respondent to furnish them with accounts in respect of the proceeds of Account No.140114542 at Kenya Commercial Bank which was operated by the deceased. The applicants further prayed that the respondent be compelled to deliver the said proceeds to the applicants for the purposes of the same being distributed equally among all the dependants of the deceased. The application is supported by the annexed affidavit of the applicants. The application is opposed. The respondent swore a replying affidavit in opposition to application.

At the hearing of the application, I heard oral rival submissions made by Mr. Njiraini acting for the applicants and by the respondent himself who was acting in person. The facts of this application are more or less not in dispute. The grant of letters of administration intestate in respect of the estate of the deceased was issued to Francis Kairu, John Muriu, Nelson Ng'ang'a (the respondent) and James

Githingu. The said grant was issued on 16th April 1998. On 5th May 1999, the respondent together with his co-administrators applied for the said grant to be confirmed. It is apparent that the respondent himself made proposals in regard to how the estate of the deceased was to be distributed. The respondent distributed to himself the contents of the said account that is the subject of this application. The grant was confirmed on 25th May 1999. The respondent used the said confirmation of grant to withdraw the sum of Kshs.70,245.90 that was in the said account. It is pertinent to note that the respondent, in applying to the court for the said grant to be confirmed, did not obtain the consent to the proposed distribution of all beneficiaries of the estate of the deceased. The applicants, who are dependants of the estate of the deceased, crave for an order of this court to compel the respondent to surrender the said amount so that the same may be distributed equally to all the beneficiaries of the estate of the deceased. The respondent does not deny that he withdrew the said funds and utilized it for his own benefit. He justifies his decision by stating that the other dependants in a similar fashion benefited from the loose assets of the estate of the deceased. That may be so. However, that is not an issue that is presently before this court. It was clear to this court that the applicants have a case when they demand that the respondent surrender the said amount to the administrators of the estate of the deceased so that the same may be equally distributed among all the dependants of the deceased. As stated earlier in this ruling, the respondent did not obtain the consent of all the beneficiaries of the estate of the deceased before he sought to confirm the grant of letters of administration intestate that was issued to him and his co-administrators. The decision to benefit from the contents of the said account was solely the respondent's.

In the premises therefore, I will allow the application. The respondent is hereby ordered to surrender to the administrators of the estate of the deceased the sum of Kshs.70,245.90 for the purpose of the said amount being distributed equally among all the dependants of the estate of the deceased. For avoidance of doubt, the respondent shall be considered as one of the beneficiaries of the estate of the deceased. The respondent shall pay the costs of the application.

DATED AT NAIROBI THIS 21ST DAY OF JANUARY, 2011

L. KIMARU

JUDGE