



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
SUCCESSION CAUSE NO. 839 OF 2010

IN THE MATTER OF THE ESTATE OF CATHERINE MUTHONI GATHETHU – DECEASED

TERESA MUMBI MUTHONI.....1ST APPLICANT/OBJECTOR
EMMA NYAGUTHII MUTHONI.....2ND APPLICANT/OBJECTOR

VERSUS

SAMSON MAINA MUTHONI.....PETITIONER/RESPONDENT

RULING

Pursuant to the provisions of *Section 76* of the Law of Succession Act and rule 73 of the Probate and Administration Rules, Teresa Mumbi Muthoni and Emma Nyaguthii Muthoni, hereinafter referred to as “the objectors”, took out the summons for revocation of grant dated 29th September 2010 in which they applied for the grant of Letters of Administration made to Samson Maina Muthoni, hereinafter referred to as “the Petitioner,” on 23rd November 2009 by the Principal Magistrate’s Court, Nanyuki revoked. The Objectors also applied for an order of injunction to restrain the Petitioner from receiving rental proceeds due to the Estate. They applied for an order to authorize Mwalimu estate Agents to collect and retain the rental incomes. The duo further applied for an order to divest the Petitioner from the management of Kenya Bar, motor Vehicles registration No. KBE 810E, KBE 369D, KAX 381J, KBA 146Y and KBF 476W. The Summons is supported by two affidavits of Emma Nyaguthii Muthoni. The Petitioner filed a replying affidavit he swore to oppose the application. Learned advocates from both sides recorded a consent order directing the Summons to be determined by affidavit evidence and by written submissions.

I have considered the grounds set out on the face of the Summons and the facts deponed in the affidavits filed in support and against the summons. I have further considered the written submissions filed by both sides.

The Objectors urged this Court to allow the Summons on the basis of the following reasons:

First, it is argued that the Petitioner did not disclose a full inventory of assets of the Estate despite having been compelled by an order issued by the Principal Magistrate’s Court, Nanyuki. Secondly, Objectors have further alleged that the petitioner has embarked on wasting the asset of the Estate thus enriching himself by misusing the grant.

The Petitioner has opposed the Objectors’ application on the basis that he was authorized by the Objectors and other beneficiaries to administer the Estate. He denied ever misappropriating the assets of

the Estate. He asserted that the motor vehicles listed on the face of the summons are not registered in the name of the deceased hence they did not form part of the assets of the Estate. The Petitioner was of the view that the Summons was filed in bad faith.

Having carefully considered the material placed before me and the rival submissions, it is apparent that the Objectors are seeking for the grant of Letters of Administration given to the Petitioner revoked on the following grounds:

- (i) that the Petitioner has not diligently administered the Estate.
- (ii) That the Petitioner has not made a full disclosure to the court of the assets of the Estate.
- (iii) That the grant has become useless and inoperative.

- (iv) It is said the Petitioner has mismanaged the Estate by collecting rental incomes due to the estate and applying the same to his personal use.

The objectors listed motor vehicles which they claimed are in the custody and use of the Petitioner yet they are assets of the Estate. The Petitioner has denied the above allegations. I have carefully perused the list of assets the Petitioner disclosed in the petition. The Petitioner merely mentioned two assets namely:

- (i) Money held in account No. 1153163, Barclays Bank, Nyeri.
- (ii) Money held in Account No. 01-0103-006-006-0289 Taifa Sacco Society Ltd., Nyeri.

The Petitioner gave the estimated value of the Estate as Ksh.100,000/=. The record shows that the Objectors filed an application seeking for a court order to compel the Petitioner to give an account of the entire estate vide the Summons dated 14th January 2010. In paragraph 4 of the affidavit of Emma Nyaguthii Muthoni which affidavit was filed in support of the aforesaid summons, the deponent averred as follows:

“4. That we have discovered that the following properties belonging to the deceased’s estate were left out.

- (i) South Wisdom Flat (Kamakwa) Nyeri.***
- (ii) Kenya Bar & Restaurant (Nyeri).***
- (iii) Motor vehicles registration No: KBE 810E***

***KBA 146Y
KBF 476W
KAX 381J***

The Petitioner responded to the aforesaid averments in his replying affidavit sworn on 18th January 2010 in paragraph 10 as follows:

“10. That paragraph of the replying affidavit is untrue and is made out of wishful thinking and cannot assist the court in making decisions.”

The Objectors have repeated the same allegations in the Summons now before Court. It is also alleged that the Petitioner deliberately failed to disclose the existence of **L.R. NO. TETU/UJIRU/639/93** as an asset of the Estate. I have already stated that the Petitioner claimed that the motor vehicles listed by the Objectors do not belong to the Estate. It is important to note that none of the parties has filed any document to establish the owner of the motor vehicles. In his replying affidavit, the Petitioner stated that the motor vehicles have outstanding loans and that some like KBF 476W was repossessed by the financiers. The Petitioner admitted that the deceased owned a flat at Kamakwa. The question is, why didn't the Petitioner list this as the asset of Estate? In paragraph 11 of the replying affidavit the Petitioner stated as follows:

“11. That I do not receive any rent from the Estate and upon terminating the services of Mwalimu Estate Agents who were rude and uncooperative, I appointed the services of Propa Investments who provides statements and pays loans for the vehicles. Mwalimu used to charge

12% while Propa charges 8% hence a saving to the Estate.”

The aforesaid averment tells a lot about the Petitioner. If the motor vehicles in question are not the property of the Estate, then why use the rental incomes from the Kamakwa Plot to pay outstanding loans on motor vehicles. The other question is, why hasn't the Petitioner made an account as ordered by the Senior Principal Magistrate's Court? Having considered the entirety of the case, I am convinced the Objectors have established their allegations. I am satisfied that the Petitioner has intentionally concealed from this Court many of the assets of the Estate. The Petitioner has not been transparent in the administration of the Estate. The grounds set out on the face of the Summons for revocation of grant are sufficient to enable this court issue the orders. I allow the summons as prayed. The Objectors have not made a cross-petition for the grant. However, it is not proper to leave the Estate in a limbo. In exercise of my inherent power under *Section 47* of the Law of Succession Act and under *rule 73* of the Probate and Administration Rules, I hereby order that a fresh grant be issued in the joint names of the Objectors. The Objectors are at liberty to apply for the confirmation of the grant notwithstanding that six months have not lapsed. Before making the application for confirmation of grant, they should first trace and identify the assets of the Estate. Since the dispute involves members of the same family, I order that each party meets his or her own costs.

Dated and delivered at Nyeri this 25th day of February 2011.

**J. K. SERGON
JUDGE**

In open court in the presence of Mr. Mugo for Applicant and Mwangi holding brief Muthigani for the Respondent.