



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO.2694 OF 2006**

**IN THE MATTER OF THE ESTATE OF MWATI KARIUKI – (DECEASED)**

**BENSON GICHOHI MWATI.....APPLICANT**

**VERSUS**

**ALEX KING'ARA MWATI.....RESPONDENT**

**RULING**

Kariuki Mwati, the deceased to whose estate these proceedings relate died on 12<sup>th</sup> August 2003. The deceased was married to two wives. One wife, Jenniffer Wanjiru Mwati survived the deceased while the other wife, Nancy Wangechi Mwati is deceased. There is a dispute between the two families of the deceased (respectively headed by the applicant and the respondent) regarding the composition of the estate of the deceased, and further regarding how the estate of the deceased should be distributed. There have been protracted proceedings in court until it reached a point when the court directed the protagonists to file their proposals regarding how they would wish the estate of the deceased to be distributed. The applicant filed an application for confirmation of grant on 15<sup>th</sup> June 2009 wherein he made certain proposals regarding how the estate of the deceased was to be distributed among the dependants of the deceased. The respondent filed an affidavit of protest giving a counter proposal in regard to how the estate of the deceased, in his view, ought to be shared out among the beneficiaries. The said application for confirmation of grant is yet to be heard and disposed off by the court.

Meanwhile, on 9<sup>th</sup> June 2010, the applicant filed an application pursuant to the provisions of **Section 28(a),(b) & (e), 42, 45 & 47** of the **Law of Succession Act** seeking several orders from the court. In essence, the applicant sought orders from the court to compel the respondent to render accounts in respect of rents that he had received on behalf of the estate of deceased from the properties of the estate of the deceased that are under his management. The properties are listed on the face of application. The applicant further craved for orders from the court for a new estate agent to be appointed to manage the rentable properties that comprise the estate of the deceased pending the hearing and determination of the dispute regarding distribution of the said estate to the dependants. The applicant further sought for the estate agent who is currently managing the estate of the deceased to be directed to render accounts for the amounts that he has received on behalf of the estate of the deceased. The application is opposed. The respondent swore a lengthy replying affidavit in opposition to the application.

On 19<sup>th</sup> July 2010, this court made an interlocutory order requiring the estate agent i.e. Newton Gakuru t/a Gamar Investment to deposit in court the entire sum that he received on behalf of estate of deceased pending further orders of the court. During the hearing of the application, this court heard oral rival submissions made by Mr.Kamau for the applicant, Mr. Gachoka for the respondent and by Mr. Gaita for the estate agent. This court has carefully considered the said submissions. As stated earlier, the issue in dispute between the applicant and the respondent is in relation to how the estate of the deceased should be distributed among the beneficiaries. The present application seek the preservation of the income that is generated by the rentable properties owned by the estate of the deceased pending distribution of the said estate to its beneficiaries. From affidavit evidence, it was clear that both the applicant and the respondent

are collecting rent from various properties that comprise the estate of the deceased. The bulk of the rent is collected by the respondent. Some of the properties that the respondent collects rent from are owned jointly between the estate of the deceased and third parties. The deceased, it appears, was in partnership with others when the said properties were purchased. This court is of the view that the issues in dispute between the applicant and the respondent can only be resolved once and for all if the parties were to proceed to list the application for confirmation of grant for hearing. The orders sought by the applicant in the present application will not resolve the dispute but would result in the prolongation of the dispute.

Having carefully evaluated the rival arguments put forward by the applicant and the respondent, it is this court's view that the only way that the dispute between the applicant and the respondent can be resolved with finality is for the court to distribute the estate of the deceased to the dependants of the deceased. Meanwhile, in order to preserve the estate of the deceased, it is hereby ordered that all the rental income from the estate of the deceased, less any expenses that may be utilized for the maintenance of the said properties, shall be deposited in an escrow account to be maintained by the applicant and the respondent. The issue regarding accounts shall be resolved by the court when it shall consider the distribution of the estate of the deceased. The parties shall be at liberty to list the cause for further directions before this court in regard to how the hearing of the dispute regarding the distribution of the estate of the deceased shall be disposed off. The estate agent currently managing the properties that comprise the estate of the deceased shall continue with the said management pending further orders of this court subject only to the direction that he shall be required to deposit the rents received in the escrow account established pursuant to the orders of this court.

Since this is a family dispute, each party shall bear its own costs.

**DATED AT NAIROBI THIS 11<sup>TH</sup> DAY OF FEBRUARY, 2011**

**L. KIMARU  
JUDGE**