



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

PROBATE AND ADMINISTRATION CAUSE NO. 14 OF 1991

IN THE MATTER OF THE ESTATE OF KARARAHO KARIUKI – DECEASED

AND

IN THE MATTER OF LEGAL REPRESENTATIVES – ROBERT KARARAHO, ANN WAMBOI, RYCE NJERI KARARAHO AND SUSAN WANGARE KARARAHO

AND

IN THE MATTER OF VERONICA WANGOI KARARAHOAPPLICANT

AND

BETTY WANINI KARARAHO.....1ST RESPONDENT

ROBERT KARIUKI KARARAHO2ND RESPONDENT

R U L I N G

The deceased, **Kararaho Kariuki**; died on the 6th July 1990 and the grant of letters of administration respecting his estate was issued on the 20th March 1991 in favour of Nyambura Kararaho and Njeri Kararaho Ryce both widows of the deceased.

The said grant was confirmed after the expiry of six (6) months on the 30th February 1992 as per the Court record. However, by consent of all the parties, the grant was amended by deleting the name of Nyambura Kararaho, Dorcas and substituting it with the names of Robert Kariuki Kararaho, Ann Wambui Kararaho, Susan Wangari Kararaho and Ryce Njeri Kararaho, all beneficiaries/administrators of the estate.

It would appear that the amendment was necessitated by the demise of Nyambura Kararaho Dorcas in April 1996.

The consent was made on the 30th July 1996 and a fresh grant inclusive of the names of the aforesaid beneficiaries was issued on 12th September, 1996.

Unfortunately, Robert Kariuki Kararaho, died on 6th October 2003 and Susan Wangare Kararaho died on 26th May 2004.

There was a further amendment of the grant on the 30th July 2007 the effect of which was to replace name of Robert Kariuki Kararaho with that of Veronica Wangoi Kararaho.

However, the amended grant issued on 26th February 2008 reflects as administrators the names of Betty Wanini Kararaho, Ann Wambui Kararaho, Ryce Njeri Kararaho and Robert Kariuki Kararaho.

It may be noted, unless the court records is incorrect or incomplete, that the amended grant issued on 26th February 2008 is yet to be confirmed.

It would appear from the record that the distribution of the estate property and all that appertains thereto has been problematic and is the source of the various applications and changes in the legal representation of the administrators and/or beneficiaries of the estate.

The present application dated 28th February 2011 by **Veronica Wangoi Kararaho** (herein, the applicant) is yet another such application directed at one of the administrators Betty Wanini Kararaho (herein 1st respondent).

Veronica is one of the beneficiaries and a sister to Betty. The application was served upon the first respondent and the second respondent Robert Kariuki Kararaho. An affidavit in reply was filed by the first respondent on the 9th March 2011 but at the hearing of the application, the first respondent failed to turn up.

The second respondent was represented by the learned counsel **Mr. Chemitei**, who was not opposed to the application saying that it did not touch on his client.

Learned counsel, **Mr. Omusundi**, appearing for one of the beneficiaries indicated that they were not served with the application and were in any event not opposed to it. In essence, the application seeks orders that the first respondent be compelled to equitably share the proceeds of the estate with the applicant and that the first respondent do hand over a sum of Kshs.173,150/- to the applicant being her share entitlement accumulated from October 2008 to December 2009.

The main ground in support of the application is that the first respondent being one of the administrators and a trustee of the estate's first house has refused/neglected to equitably share with other beneficiaries the proceeds received on her own behalf and on behalf of the other beneficiaries.

The applicant contends that she is entitled to a sum of Kshs.173,150/- received on her behalf by the first respondent being her share of the proceeds realized from property known as Eldoret Municipality Block 6/44 i.e. **Stage View Guest House** and property known as **Aya Inn**.

The applicant also contends that the first respondent has not been faithful in the administration of the estate by failing to render accounts.

The applicant further contends that she has a son in school who needs his school fees to be paid and also being a business woman she requires the money to facilitate the running of the business which is on the verge of stalling.

In her replying affidavit, the first respondent denies the allegations made against her by the applicant and contends that she has faithfully administered the estate as required by law and has not been solely receiving monies from the estate and holding in trust of the beneficiaries of the first house. The first

respondent also contends that the applicant was removed from being an administrator due to her mismanagement of the estate and while the first respondent admits that the applicant is entitled to a share of proceeds from the stage view Guest house, the same is to be shared equally between them and has never been withheld from the applicant.

The first respondent contends that due to the mismanagement of the estate by the applicant, there was no accountability of the estate thereby leading to an accumulation of municipal rates to the tune of Kshs.1.5 million which was paid from proceeds collected by the first respondent after the council gave a waiver and allowed the payment of rates in the sum of Kshs.158,000/-.

The first respondent contends that the applicant is aware that the proceeds of the properties she is claiming was used to pay Municipal rates and that all monies collected by the first respondent are used to secure the estate. It is also contended by the first respondent that the applicant collects rent from stage view Guest house as well as the Pioneer house on Plot No. Eldoret Municipal /Block 13/389 and uses a motor vehicle Reg. No. KZP 864 to raise income but does not provide accounts in respect thereof.

The first respondent further contended that the applicant runs six shops at Sambusa Hotel and does not share any proceeds with any of the beneficiaries.

All in all, the contention by the first respondent is that the applicant is not entitled to the orders sought herein.

Having considered the application in the light of the supporting grounds and those in opposition thereto, the view of the court is that the application would not be necessary if only the administrators of the estate inclusive of the first respondent would account for all profitable and unprofitable proceeds emanating from the estate property and more so, those directly affecting the applicant and the first respondent and generally all the beneficiaries of the deceased's first house. If proper account are rendered then the beneficiaries would have no reason to complain as they would know what happened to their share of the estate and why they cannot have it when required. The beneficiaries ought to know the purpose for which any proceeds are put and whether the same are for the benefit of the estate. The annexure marked AI to AVI contained in the first respondent's replying affidavit indicate that a sum of approximately Kshs.131,360/- belonging to the estate was used for the payment of Municipal rates and a further Kshs.10,000/- was utilized for extension of lease (see Annexure marked "B(II)" contained in the replying affidavit).

Undoubtedly, the payments were for the benefit of the estate. It is a well known fact that non-payment of municipal rates could lead to a sale of property by public auction for purposes of recovery of outstanding rates.

From the annexure marked "C(II)" in the replying affidavit it would appear that the applicant was not made aware of the utilization of part of her share of the estate property towards the payment of the municipal rates or any other obligation. Such omission by the first respondent as the administrator representing the first house was a breach of the trust bestowed upon her by the beneficiaries and a reflection of the failure to properly and constantly account for the estates proceeds and more so, those affecting the applicant either positively or negatively.

It is notable that at one time the applicant was one of the administrators and on the 9th November 2009 the court made an order restraining her from interfering with the first respondent's drawing of her income from the estate property known as Njahi Guest House.

It is the first respondent's contention that the removal of the applicant as an administrator was due to her mismanagement of the estate property. Herein, the applicant alleges and implies that the first respondent as the current administrator is also mismanaging the estate.

The failure to account for proceeds is a reflection of mismanagement. It is this type of management perpetrated by both the first respondent and the applicant when she was the administrator that has led to the present deep rooted acrimony against each other. The acrimony is taking a heavy toll in the delay of this matter by the failure of all the parties to agree on distribution of the estate property. This has contributed greatly to the delay in having the final grant confirmed by the court.

It is sad to say that if the parties will not sit down as a family and amicably agree on the distribution of the estate property they will eventually find themselves in a situation in which they will no longer draw any benefits from the estate due to its wastage and destruction. Not to mention that the situation will create an everlasting bitter and bloody relationship between the family members.

If they are to make any headway in co-existing peacefully, the parties must be prepared to make sacrifices and avoid being greedy and selfish.

The many applications presented in court pertaining to the administration of the estate were more or less prompted by greed and selfishness. They have served to protract this matter much to the detriment of both the administrators and the beneficiaries. This present application is not any better.

The positive way forward for this matter is for the parties to agree on distribution and have the grant duly confirmed once and for all. It would be much better and more satisfying for them to agree on distribution rather than the court to make a decision on the same. May the parties know that an administrator of the estate of a deceased pursuant to a grant of letters of administrator issued by the High Court is a trustee and stands in a Fiduciary relationship to all those who are beneficially interested in the estate. His duties as such trustee continue until he distributes the estate when his undertakings to the court are discharged. (See, **Stephen & Others Vs. Stephen & Another (1987) KLR 125**).

The duty to account would be such undertaking.

For all the foregoing factors, it would not be appropriate at this juncture for the court to grant or refuse to grant the present application in terms stated in prayers (2) and (3) unless, first and foremost, an account of all the proceeds for the period October, 2008 to December 2009 respecting the deceased's first house and property known as stage view guest house as well as Aya Inn is rendered to the court through the Deputy Registrar by the first respondent within the next forty five (45) days from this date hereof. In default, the applicant be at liberty to apply for the discharge and/or substitution of the first respondent as an administrator representing the first house.

Ordered accordingly.

J. R. KARANJA

JUDGE

(Read and signed this 13th day of April, 2011 in the presence of the applicant).