



SUCCESSION

- *Considering the duties of a personal representative.*

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 500 OF 2008

IN THE MATTER OF THE ESTATE OF M'MUTHURI M'RUTERE (DECEASED)

JOSHUA M. MUTHURI PETITIONER

VERSUS

SALOME MWARI MBOGORI 1ST PROTESTOR
JOHN NDEREBA MUTHAURA 2ND PROTESTOR

RULING

The deceased in this estate died on 30th December 2007. His estate is vast consisting of about 19 immovable properties, two cars, several bank accounts and shares. One of the deceased sons, Joshua Muthuri petitioned for grant of letters of administration intestate. He listed those who survived the deceased as follows:-

- *Veronica Nthiori*
- *Joshua Muthuri*
- *Josphine Kaguri Mwet*
- *Daniel Mutuma Muthuri*
- *Salome Mwari Mbogori*

Salome Mwari Mbogori is the deceased's daughter-in-law having married the deceased son by the name of Jack Muthaura Muthuri who himself is now deceased. A grant was issued on 13th February 2009 to Joshua the petitioner. Joshua applied for confirmation of that grant by the summons dated 23rd November 2009. Salome filed an affidavit of protest to that confirmation on 2nd March 2010 which protest is yet to be determined. Veronica has filed a summons dated 14th December 2010 and amended on 1st February 2011. It is the subject of this ruling. By that application, she seeks the following orders:-

- The Hon. Court do order the petitioner herein to release to the applicant Kshs. 292,000/= being her entitlement of the proceeds of rent up to and including the month of June.*
- The petitioner be ordered to be depositing all the rents accruing every month and collected by*

the petitioner from the deceased Plot No Meru Block 11/56 within Meru Municipality and Plot No. 19 Mwendantu area estate in an interest bearing account in a reputable bank in the joint names of the applicant, petitioner and one Daniel Mutuma Muthuri pending the hearing and determination of this cause or until further orders of this court.

d) The petitioner herein do give an accurate account of all the monies he has so far collected from the deceased estate as detailed in the supporting affidavit.

e) That the petitioner herein do disclose all material particulars of the deceased account held at Kenya Commercial Bank Meru Branch which account he has left out for distribution and from which the petitioner may have withdrawn all its monies, and in the alternative the Manager Kenya Commercial Bank Meru Branch be ordered to disclose.

That application has elicited much reaction by way of affidavits from all the other beneficiaries. It is alleged by Salome that the deceased estate has several developed plots which generate rental income. These plots include plot BII/56 which has 36 rental rooms and generates rent of Kshs. 150,000/= every three months. She stated that after the death of the deceased the beneficiaries sat down and agreed on how the rental income of Plot BII/56 was to be shared. That it was agreed that Salome was to get 1/3 of that rental income which was then believed was Kshs. 75,000/=. She later found out that the actual rent collected by Joshua in respect of that plot is Kshs. 150,000/= quarterly. That she further found out that the tenant of the premises had paid rent in advance for one year three months being Kshs. 750,000/=. Salome stated that Joshua owed her a share of Kshs. 250,000/= which was a short fall of what he had already paid. That affidavit by Salome in support of her application received a flurry of affidavits in response from other beneficiaries. In particular, Joshua in his affidavit stated that the beneficiaries of this estate sat together after the death of the deceased and agreed on which property each beneficiary was to collect and retain the rental income. He denied that he had received rental income of Kshs. 150,000/= as alleged by Salome and he denied further having received advance rent. What followed after he filed his affidavit is the filing of further affidavits by Salome and other beneficiaries counteracting each other. I do not wish to go into the minute details of who is getting which rent and who is not. When we as a country adopted for ourselves the Constitution of Kenya 2010, we held as one of our national values that the people of Kenya shall be governed by the rule of law. See Article 10 (2) (a). The law that governs the administration of the deceased estate is set out in the Law of Succession Act Cap 160. Section 83 sets out the duties of a personal representative. Joshua is a personal representative of this estate. He is by virtue of being a personal representative required under that section to pay out the deceased expenses for his funeral, collect in the free property of the deceased including debts owed to the deceased, pay out from the estate all of the deceased expenses which include expenses for processing this petition and ascertain and pay out from the deceased estate the deceased debts. Section 83 (e) provides that within 6 months such a personal representative should produce to court full and accurate inventory of the assets and liabilities of the deceased estate. Thereafter on obtaining a confirmed grant, the personal representative should distribute the deceased estate amongst its beneficiaries. In setting out in short those duties, it becomes very clear that Joshua has failed to carry out those duties as required by the law. The law of succession does not permit distribution of the estate without the leave of the court. This is what seems to have happened here in this estate. Beneficiaries are collecting and appropriating rental income of this estate before confirmation. Joshua has failed as a personal representative. He is not fit to be one. With that in mind, and considering that any rental income of this estate should be retained as per law until the estate is distributed in the interest of justice I make the following orders:-

- 1. The grant issued to Joshua M. Muthuri in this case on 13th February 2009 is hereby revoked.***
- 2. An order is made for a fresh grant to be issued in the joint names of Daniel Mutuma Muthuri and Salome Mwari Mbogori.***
- 3. All the rental income of the deceased properties shall be collected by Daniel Mutuma Muthuri and Salome Mwari Mbogori and shall be banked in an account to be opened by the two administrators.***
- 4. Daniel Mutuma Muthuri and Salome Mwari Mbogori either together or individually in case one***

of them is uncooperative shall open a bank account at Barclays Bank Kenya Ltd Meru Branch which account shall have the title “estate of M’Muthuri M’Rutere deceased” where the rental income of the deceased estate shall be banked.

5. Joshua M. Muthuri shall file an affidavit giving an account of all rents collected in respect of the properties of this estate from the date of the death of the deceased to date. Failure to do so, this court shall make further orders against Joshua M. Muthuri personally.

6. The court does hereby order the Kenya Commercial Bank Ltd through its branch manager of its Meru branch to disclose within two weeks of such request being made by the administrators Daniel Mutuma Muthuri and/or Salome Mwari Mbogori of any account in its bank in the name of M’Muthuri M’Rutere now deceased.

7. Daniel Mutuma Muthuri and Salome Mwari Mbogori shall together or individually apply forthwith without waiting for the 6 months period for the confirmation of the grant herein.

8. The costs of the summons dated 4th December 2010 shall be paid to Salome Mwari Mbogori by Joshua M. Muthuri personally.

9. At the reading of this ruling, a mention date will be given when the court shall receive the affidavit of Joshua M. Muthuri.

Judgment by:-

**MARY KASANGO
JUDGE**

Dated, signed and delivered at Meru this 21st day of July 2011.

**J. LESIIT
JUDGE**