



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
SUCCESSION CAUSE NO. 338 OF 2007
(IN THE MATTER OF THE ESTATE OF MILKA WANGITHI MWARARI - DECEASED)

PETERSON MURIITHI
MITHAMO.....APPLICANT
VERSUS
ELIUD NDUGUTU.....
.....PETITIONER

RULING

Peterson Muriithi Mithamo has moved this court through Magee was Magee Advocate under order XLIV Rule 1 of the Civil Procedure Rules; and Rules 63 and 73 of the Probate and Administration Rules for the following orders:-

1. ***That the Honourable court be pleased to review and/or set aside the orders issued on 12.11.07.***
2. ***that the Honourable court be pleased to order the respondent to give a statement of Account of the operations of A/C number 1301-25-1292 with Kirinyaga District Farmers Sacco as from 12.10.01 to date.***
3. ***That the Honourable court be further pleased to issue a limited Grant of letters of administration in respect of the No. 1301-25-1292 with Kirinyaga District Farmers Sacco.***

He has listed 3 grounds on the face of the application. He has also supported the same with his Affidavit dated 28.04.08. The gravaman of his Application is that the Respondent who was issued with a limited grant by this court has been squandering the money collected from the tea bushes left by the deceased which money goes into the account in question. He therefore wants the Respondent to be asked to account for the withdrawals. He also wants to be appointed as the administrator of the deceased’s estate in place of the Respondent.

According to the Respondent who appears to have the support of the other siblings, he is the eldest son of the deceased and therefore entitled to take care of the estate. He has also deponed that after the death of the deceased he used to take care of the tea bushes using money from his pockets for 4 years until 2007 when he was given the limited Grant. He availed to the court the statements of accounts for the tea account in question. He explained that he employed a worker to tend the tea and paid for other expenses to ensure that the tea was growing and was picked and taken to the factory.

I have looked at the statement of the account. I agree that by the time the deceased died i.e. March 2003 there was a paltry sum of KShs.508.43 in the account. The same statement shows that the tea was being taken to the factory and the account was making money without any withdrawals. From 1.4.03 to November 2007 when the limited Grant was issued to the Applicant, the account had grown to

KShs.423,305. The Respondent on getting the limited grant immediately withdrew over 200,000. He has not explained what he did with the money or whether the same was a reimbursement of what he had used earlier on. The statement thereafter shows consistent withdrawals, some for several times in a month with some single withdrawals of over 40,000 Sh. As at December 2008 only a paltry Sh.4,939.90 remained in the account.

It is appreciated that the respondent did spend his own resources to ensure that the tea bushes were taken care of for 4 years. In my view however, he has not given an account of what he was doing with these withdrawals some of which cannot be said to be small. The other beneficiaries are entitled to know what the Respondent as the administrator of the said estate is doing with that money. In my view, there are no sufficient grounds to remove him as the administrator of the estate and replace him with the applicant. The Applicant also withdrew the money when he had the passbook and left close to nothing in the account.

Prayer 1 of his application is therefore denied. I nonetheless find that the Respondent should file an account of how the money withdrawn from the deceased's account has been used – particularly the withdrawal made on 8.11.07 for KShs.225,000 and any other withdrawals that are in excess of 10,000 Sh. at a go. It is only after such an explanation is given that the court can determine whether indeed the Respondent has been diligent and prudent in the administration of the said Estate.

He will render the said accounts within 60 days from the date hereof.

W. KARANJA
JUDGE

Delivered, signed and dated at Embu this 9th day of December 2010

In presence of:- Both Counsel and parties.