

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Succession Cause 63 of 2003

IN THE MATTER OF THE ESTATE OF CHARLES MAINA MWENDIA – DECEASED

RULING

The letters of administration in respect of the estate of the late Charles Maina Mwendia (*deceased*) was issued to Mary Wangeci Maina and John Gathage Mwendia on 15th May 2003. The administrators are the widow and brother of the deceased respectively.

On 5th December 2006 Mary Wangeci Maina, the widow of the deceased applied that the co-administrator John Gathage Mwendia be substituted with the deceased's daughter Rose Wanjiku Maina. The application was directed to be served upon the co-administrator and the hearing was set down for the 19th January 2007. On that date, the Co-administrator did not attend court and it was ordered that his name be substituted with that of Rose Wanjiku Maina, the daughter of the deceased.

On 2nd May 2007 John Gathage Mwendia filed a summons under **Section 47 of the Law of Succession Act** and **Rule 73 of the Probate and Administration Rules** seeking for the review of the order of 19th January 2007 so that the officer of the court or the public trustee can be included as the co-administrator of the estate of the deceased. The applicant also sought for an order that Mary Wangeci Maina, Boniface Gathage Maina and Rose Wanjiku Maina be restrained by an order of injunction from abusing, threatening or any manner whatsoever harassing the applicant. The applicant also swore an affidavit showing that he was late to attend court on the 19th January 2007 when the matter was called out and the order was made in his absence. He also showed the accounts of the deceased's estate as at the time he was administering jointly with the widow. There was one million shillings and he showed how a sum of Kshs 62,000/= was applied as expenses to the estate of the deceased.

Further affidavits were filed especially the affidavit sworn on 25th July 2007 and the statements of accounts that showed that since the widow and the daughter of the deceased took over the administration of the estate they had made rapid withdrawals and the account was almost depleted notwithstanding that there were two minor children who are school going and whose welfare was compromised.

On the part of the administrators, they made allegations that the applicant had misused funds of the estate. He had also refused to co-operate with the widow and it was their case that the application should be dismissed and the applicant be made to render accurate accounts for the period that he deposited the estate monies with the Co-op Trust Investment Services.

I have gone through the affidavits filed herein. I am satisfied that the applicant has sufficiently rendered the accounts up to the time when he ceased to be an administrator. The widow and the daughter took over the administration of the estate. They have also shown how they have administered the estate since they took over. It is clear from the statements of the current state of accounts that they have almost depleted the money account. There is very little left in the bank account to administer. Therefore there is no need to appoint a court official or the Public Trustee as the co-administrator.

The real properties of the deceased are held by the administrators in trust of the beneficiaries and obviously for the real properties held in trust, the same cannot be alienated without the administrators first seeking and obtaining the leave of the court. This is until the minor children all attain the age of majority.

This court understands and shares the anxiety of the applicant which is the welfare of the minor children. But it is clear on the other hand that the administrators who are the widow and daughter of the deceased together with the applicant have no cordial relationship and they cannot work together. Much as the applicant is concerned about the deceased's minor children's welfare, which the court is also concerned about, the court cannot force them to work together. Moreover it is now late as the funds have been withdrawn. The deceased was survived by the widow and four children and these are his direct beneficiaries. The widow and the deceased's daughter are the ones who have priority to be granted with the letters of administration to administer the deceased's estate. The applicant's interests are secondary. However the administrators should always take into account the best interest of the minor children and since the applicant has accounted for the period he was administering the estate, I do not see why the administrators should subject him to harassment and threats.

Accordingly I hereby order that the administrators be restrained from harassing or threatening the applicant in any manner regarding the role he played as an administrator. This being a family matter each party should bear their own costs of this unnecessary litigation.

It is so ordered.

Ruling read and signed on 24th day of January 2008

M. KOOME

JUDGE