



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 552 of 1993

IN THE MATTER OF THE ESTATE OF CHRISTINE WANJIKU KAMUYU –
(DECEASED)

RULING

I have before me a summons for Review dated 14th July, 2005 premised under Rules 49, 63(1) and 73 of Succession Act (*sic*), Probate and Administration Rules of Succession Act (*sic*) (Cap 160 Laws of Kenya).

It seeks orders to review the order of the court given on 31st March, 2004 and to set it aside. The Applicant also seeks the costs of the summons. The summons is supported by grounds set forth on its face and on the supporting affidavit sworn by Mary Wanjiku Ng'ang'a sworn on 14th July, 2005.

It shall be appropriate to quote the two grounds set forth on the application, namely:

- (a) There is an error apparent on the face of the record in that no arguments were heard for against the application hence adverse orders were made without the applicant being heard.
- (b) The order given is in direct contradiction to consent order given by Hon. J. Githinji (as he then was).

In the affidavit in support, the consent order as recorded is annexed which reads

“By consent hearing on 25.10.95 at 2.30 p.m. The order that rental income from the dispute (*sic*) plot be deposited into an estate account at HFCK is stayed pending determination of the dispute about distribution on condition that applicant keep full accounts of the income from that property.”

From the record of the matter, I do find that the matter was heard as from 25th October, 1998, and in the Ruling made by Githinji J. (as he then was) on 13th February, 2000 he ruled that:

“Plot No.Dagoretti/Riruta/1935 be allocated to one Stephen Wanyee, Kamuyu and Dagoretti/(Kawangware/Riruta/961(184) be shared equally by all the eight children of the deceased”.

Thus the dispute as to distribution was already resolved, as per the record of case.

Thereafter, the summons for confirmation dated 12th March, 2003 came up for hearing before Koome J. on 15th March, 2004.

Mr. Mbigi, the learned counsel for the Applicant herein but the Respondent in the said application, raised a preliminary objection as to the competence of the applicant applying for such confirmation. The prayers made in the summons for confirmation dated 12th March, 2003 sought the following orders:

- 1. That the grant given to PETER KINUTHIA KAMUYU and PAUL NG'ANG'A KAMUYU by consent on 25/5/95 be confirmed in the name of HELLEN WAMBUI KAMUYU.**
- 2. That the said schedule of the property, heirs and shares do conform and abide by the orders of Hon. Mr. Justice Githinji dated 13.2.2000.**
- 3. That PAUL NG'ANG'A KAMUYU do give account of the rent on the property known as KAWANGWARE/RIRUTA/961(184) from the date of the death of the CRISTINE WANJIKU KAMUYU to date of this application.**
- 4. That the money corrected (*sic*) by the said administrator be deposited with the Housing Finance Company of Kenya pending further directions of this court or that such other preservation order be granted in the interest of justice.**
- 5. That further rent of the said properties be deposited in the account and be shared equally between beneficiaries in accordance with Order of this court.**
- 6. That the costs of this application be provided for.**

The Court after considering fully the background of the case as well as the applicable provisions of law struck out prayer numbers 1 and 2. However, considering that the Administrators have duty in law to give account of the estate properties allowed. The prayer Nos.3, 4 and 5.

I also noted that there is mention in the ruling of the order made by Githinji J. (as then he was) referred to by me in the earlier part of this ruling.

By granting the above order, the court directed the Administrators to apply for confirmation of the grant within 30 days and to comply with orders given within 30 days.

I further note that the affidavit in support of the application is filed by the wife of Paul Nganga an administrator and holder of the Power of Attorney, dated 2nd April, 2004.

I have carefully considered the application dated 12th March, 2003, the Affidavit in support and Replying affidavit as well the present application, affidavits in support and replying affidavits and the submissions made by the counsel from both the sides.

I do agree with the contentions raised by the learned counsel for the Respondent herein in that the Administrator Paul Ng'ang'a has failed to comply with the orders of the court which is sought to be reviewed after the lapse of more than one year and two months. Despite that the applicant herein has totally failed to explain the delay and failure to comply with court order.

Moreover, I also agree that the dispute as to distribution has been settled vide Ruling of Githinji J. made on 13th February, 2000. Thus, it is misleading to state that the consent order dated 4th July, 1995 is still in force.

That ruling has not been appealed against nor any application to review the same is made.

I also further agree that, apart from the aforesaid observation, till to-date no account is filed by the

Administrator which was the condition precedent to the consent order. There is thus no ground apparent on the face of record or otherwise to review the order made on 31st March, 2001.

Without doubt the Administrators herein are delaying unduly the process of confirmation of the grant and distribution of the estate. It is time they stopped to do so.

This court shall repeat that no court shall tolerate the Administrators defying the law and orders of the court.

In the premises aforesaid, I dismiss the summon for review with costs.

I further order, under Rule 73 of the probate and Administration Rules, that the Administrators do file the summons for confirmation within 7 days from the date hereof. In failure thereof, the summons dated 15th March, 2007 filed by Hellen Wambui Kamuyu the Respondent herein be heard on 14th October, 2008

Orders accordingly.

Dated and signed at Nairobi this 6th day of October, 2008.

K.H. RAWAL

JUDGE

6.10.08