



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 3490 of 2004

IN THE MATTER OF THE ESTATE OF NJOROGE KAMURU - (DECEASED)

RULING

One Regina Ann Wairimu Mata filed a summons for revocation of grant seeking to annul and/or revoke the grant of Letter of Administration made to James Peter Mathenyu and Teresia Wanjiku Ngugi in Succession Cause No.118 of 1999 at Principal Magistrate's Court at Kiambu.

James P. Mathenyu in the process took the lead in the case of the Respondents. One Cecilia Wanjiru Njoroge also joined on the side of the Respondents and have jointly sworn an affidavit on 26th October 2006.

After several affidavits filed from both sides, on 15th November, 2006 the parties agree that the estate be distributed as per paragraph 8 of the affidavit sworn by James Peter Mathenyu, Teresia Wanjiku Ngugi and Cecilia Wanjiku Ngugi and filed on the 26th October, 2006. The Objector Regina Mata was present and she consented to the above mode of distribution.

The said paragraph 8 is deponed as under:

- (a) **THAT L.R. NO. RIABAI/NDUMBERI/705 O.25** acres to be removed and to be registered in the name of **Cecilia Wanjiru Njoroge** absolute.
- (b) **THAT** the half of the remaining 4.75 acres to be divided and be registered in the names of **GRACE WAIRIMU MATA, REGINA WAIRIMU MATA** and **MARY NJOKI**, jointly equal shares but the share of **MARY NJOKI** to be registered in the name of **PETER MATHENYU** to hold in trust for her.
- (c) **THAT** the remaining half of 4.75 acre to be registered in the names of:

TERESIA WANJIKU NGUGI - 2½ plots

JOHNSON NJOROGE - 2 plots

JOSEPH MBUGUA - 2 plots

MARY WAMBUI - 1 plot

GRACE WAIRIMU - 1 plot

CECILIA NGONYO - 1 plot

MARGARET NJOKI - 1 plot

(d) **THAT PETER JAMES MATHENYU** and **TERESIA WANJIKU NGUGI** to account for the proceeds of Plot No.21 in Kiambu Town which forms part of the deceased estate.

What I gather from paragraph 8(b) aforesaid is that the three persons named share equally the half portion and the share of Mary Njoki be registered in the name of herself and Peter Mathenya who shall hold in trust for her.

Vide an affidavit filed on 13th December 2006, the aforesaid persons tried to account for their use of sale proceeds.

It is stated in paragraph 3 of the affidavit that the plot was sold for Shs.400,000/-. Out of the said sum James Peter Mathenyu received Shs.170,000 and used for medical treatment for Mary Njoki his mentally retarded sister.

Teresia Wanjiku received KShs.150,000 and invested the same in a butchery business (See paragraph 6).

It is finally stated that a sum of Shs.80,000 has yet to be paid by the purchaser.

These two deponents have not given any documents to prove the purchase price and also the expenses on medical treatment of Mary Njoki.

I do agree with Regina Ann Mata that the two administrators have committed acts of fraud by usurping the sale proceeds of Shs.400,000 for themselves and also of selling the estate property without consent and/or order of the court. They have contravened Section 82 and Section 95 of the Laws of Succession Act.

They have also not shared the sale proceeds amongst other beneficiaries without explanation and/or reasons.

In the circumstances I do hold the two, namely James Peter Mathenyu and Teresia Wanjiku Ngugi, liable to refund to the estate amount of sale proceeds and to propose mode of distribution of the said sale proceeds agreed by all the beneficiaries.

Before I give my final order on the distribution of the estate, I shall once again hear the parties to explain the comment as per the affidavit which I have enumerated hereinbefore.

Dated and signed at Nairobi this 27th day of February, 2007.

K.H. RAWAL

JUDGE

27.2.07