



**REPUBLIC OF KENYA**

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

**Succession Case No. 3467 of 2003**

***IN THE MATTER OF THE ESTATE OF MARY NTHOKI MWONGELA (DECEASED)***

**RULING**

Before me is an amended Chamber Summons dated 20<sup>th</sup> December, 2005 which really amended the earlier Chamber Summons dated 29<sup>th</sup> December 2005 by inserting the correct provisions of laws namely Section 47 of the Law of Succession Act (Cap. 180 Laws of Kenya).

The said section empowers this court to entertain any application and determine any dispute under the said Act by pronouncing any decree or order as may be expedient.

The applicant is the son and the three Respondents are daughter of the deceased whose estate is the subject matter of the succession cause herein.

The said application is supported on grounds listed on the face thereof as well as by two affidavits of the Applicant sworn on 21<sup>st</sup> February, 2005 (sic) and 21<sup>st</sup> February, 2006.

The Respondent have opposed the application and have filed two affidavits sworn on 13<sup>th</sup> January, 2006 which is responded to by the Applicant's last affidavit on 21<sup>st</sup> February, 2006 as well as grounds of opposition filed on 27<sup>th</sup> February, 2006 (which were placed on record as properly filed by consent of both the counsel).

The Applicant complains that the Respondents have failed to deposit in an account the rents collected by them and are using the same by and for themselves. The rent collected is in respect of the property known as L.R. No.209/8104. The Respondents are not denying these averments and have averred that the invoice annexed as **Ann. MMI** is not in the name of the deceased and if proper invoice be produced by the Applicant they would pay the same. It is alleged that the invoices are kept by the Applicant and not shown to them further action which act is not proper. They in turn counterattack the Applicant with the similar act of using a property of the estate being house **No.HF8** situate on L.R.26930 Nairobi by staying there without paying any rent. This fact is not disclosed by the Applicant in his affidavit or otherwise.

They also averred that they are paying Connie Mbithe their sister her share of the property.

The Applicant has sworn his affidavits on behalf of the said Connie and Monica Ndunge who also are daughters of the deceased and sisters to the parties.

Before I go into the matter, I do note from the records of the case that on 26<sup>th</sup> July, 2004 a consent letter dated 6<sup>th</sup> July, 2004 was recorded as an order of the court. The said letter is annexed as **Ann.J.2B** in the replying affidavit of the Respondents. However a further oral agreement is cited and not objected to by

any further affidavit, in the grounds of opposition dated 27<sup>th</sup> February, 2006.

As per the said agreement rent proceeds from the house HF8 (L.R.26930) was to be collected by the Applicant and Monica (hereinbefore referred) but the Applicant is using the same for his sole purpose. As per the said agreement the other three sisters namely the respondents and Connie Mbithe, hereinbefore referred, were to collect and use rent proceeds of property L.R. No.209/8104 which is now under complaint by the Applicant.

I have gone through the records and pleadings in this matter and in my view the matter is seriously contested and involves not only the estate of the deceased herein (the mother of the parties) but also that of their father.

If the confirmation of the grant is not heard, which the parties agreed to prioritize on 16<sup>th</sup> November, 2004 by withdrawal of application of revocation, the matter would be unnecessarily delayed and be made more and more complex and bitter. I say so as the parties have started filing interlocutory applications this application specified by non-disclosure of the material facts which disqualifies the applicant herein for any discretionary orders from this court.

In view of the premises aforesaid I direct that:

- 1. The Respondents to ascertain any due on rent or rates over the property L.R. No.209/8104 and pay any arrears from the rent proceeds.**
- 2. The parties to adhere to the consent order recorded on 26<sup>th</sup> July, 2004 and/or to make addition by consent or apply to the court for amendment thereof.**
- 3. The application for confirmation be heard and determined expeditiously.**
- 4. Mention of the said matter for further direction on 20<sup>th</sup> March, 2006.**

I am making the above orders as per Section 47 of the Act as well as under Rule 73 of Probate and Administration Rules.

Dated and Signed at Nairobi, this 13<sup>th</sup> day of March, 2006

**K.H. RAWAL**

**JUDGE**

**13.3.06**