



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT ELDORET
Succession Cause 7 of 1998

IN THE MATTER OF ESTHER WANJIKU MUMU, DANIEL KAMAU MUNIU,

DAVID NJOGU MUNIU AND PETER KAMAU MUNIU:.....PETITIONERS

AND

IN THE MATTER OF AN APPLICTION BY DANIEL KAMAU MUNIU

AND PETER KAMAU

MUNIU.....RESPONDENTS

RULING

This is an application dated 16th February,2006 brought by summons under the provisions of Section 76 (d) and Rule 44 of the Probate and Administration Rules. It seeks the following orders:-

(i) **THAT** grant of representation issued jointly to **ESTHER WANJIKU MUNIU** and **DAVID NJOGU MUNIU** herein be revoked and/or annulled.

(ii) **THAT ESTHER WANJIKU MUNIU** and **DAVID MUNIU** who are joint administrators be removed from the list of administrators.

(iii) **THAT** the court do confirm **DANIEL KAMAU MUNIU** and **PETER KAMAU MUNIU** as the only Administrators of the Estate of the Late **MUNIU KAMAU** (Deceased).

The main ground for this application is that the Applicants contend that the Respondents in this application, the 1st and 3rd Petitioners are in breach of the Ruling delivered by Justice Dulu on 5th July,2004 in that they have failed to file proper and accurate accounts in respect of the portions or premises of the Estate they have been managing.

Before the Order of supply of accounts made by Justice Dulu on 5th July,2004, Justice Nambuye had determined the questions of distribution of the assets of the Estate of the deceased, the late Muniu Kamau in a judgment delivered on 15th August,2000.

In my view, the assets of the Estate have substantially been distributed by the orders given by the court in the Judgment. None of the parties have challenged the said decision. It appears that the parties may have gone about dealing with the some assets of the Estate without strict conformance with of the terms of the judgment. It would appear disagreements have risen subsequently.

It should be made clear that the only way to vary the distribution of the Estate of the deceased is if the

parties jointly and by consent apply for variation of the mode of distribution. If one was aggrieved by the Judgment, he or she ought to have appealed against the said decision.

As of now the property known as Eldoret Municipality Block 7/99 was ordered to be sold to pay off the loans to both ICDC and National Bank of Kenya. That order remains and must be complied with and enforced. If the beneficiaries want to save this property for the family, then they are obliged to come together and seek variation of the order of sale. There are no two ways about it. This question of management and giving of accounts strictly does not arise. It would be a deviation from the judgment of Justice Nambuye which is the only basis the parties and this court can proceed.

It is my opinion that to grant this orders sought would lead to confusion and desecration of the Judgment of this court. In any case there is nothing to administer as the Estate has been distributed and what remains is only the enforcement of the said distribution. Any orders of accounts in the judgment may still be enforced/complied with after disposal of the assets of the Estate or any transmission to the beneficiaries.

In the premises, I do hereby dismiss the application with no order as to costs.

DATED AND DELIVERED AT ELDORET ON THIS 29TH DAY OF JUNE,2006

M.K.IBRAHIM

JUDGE

29/06/06

Ibrahim J

C.C - Chelanga

Mr. Ngigi for the Respondent also holding brief for Mr. Momanyi.

Mrs. Cheptiga for the Applicant.

Ruling read in their presence.

M. K. IBRAHIM

JUDGE.