



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

In re Estate of Scholastica Wanjiru Wanyee (Deceased) (Succession Cause 2491 of 1999) [2004] KEHC 1461 (KLR) (Family) (30 July 2004) (Judgment)

In the matter of the estate of Scholastica Wanjiru Wanyee (Deceased)[2004] eKLR

Neutral citation: [2004] KEHC 1461 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 2491 OF 1999

MK KOOME, J

JULY 30, 2004

JUDGMENT

1. One of the Co-Administrators of the Estate of the late Scholastica Wanjiru Wanyee namely Stephen Wanyee Kamau applied for confirmation of the Grant of Letters of Administration issued on 12th September, 2002.
2. The deceased passed away on 14th July 1996 and the Letters of Administration was re-issued to Stephen Wanyee Kamau and Christine Wambui Wanyee son and daughter of the deceased respectively. The applicant, Stephen Wanyee Kamau presented this application in the first instance on 6th October, 2003 *ex parte* and urged the court to confirm the grant and the schedule of distribution proposed in his supporting affidavit. However, the court declined to confirm the grant and directed that the application be served upon all the beneficiaries who were at liberty to file a consent or a protest affidavit.
3. The Co-Administrator Christine Wambui Wanyee filed an affidavit on 10th January 2003 protesting the mode of distribution proposed by Stephen. She proposed an alternative mode of distribution which is supported by the other Beneficiaries of the deceased. The other Beneficiaries of the deceased have also filed a consent supporting the mode of distribution suggested by Christine Wambui Wanyee. They also reject the mode of distribution that is proposed by Stephen Wanyee Kamau.

The beneficiaries who have consented are as follows:

1. Martha Njeri
2. Maria Njeri
3. Peter Kamau Njui
4. Patrick Roki
5. David Gathuku



6. Mary Wanjiku Mwihia
7. Paul Kinuthia Wanyee
4. The other beneficiary Stephen Wanyee Nyambura is a minor and he is not capable of giving a consent.
5. Parties agreed that this dispute over the distribution of the deceased assets should be resolved by way of affidavits and submissions. During the hearing the parties agreed that the following assets are the undisputed assets of the deceased that fall for distribution.
 - a) Plot at Njiru Ageria Development Co. Ltd
 - b) LR No. Ngong/Kajiado/12886
 - c) Title No.Dagoretti/Riruta 4731,4732,4733
 - d) Title No.Kikuyu/Kikuyu Block 1/254
 - e) Longonot/Kijabe 2/5191
 - f) Plot No.Kenya Ihenya Co. Ltd
 - g) Share in Dandora Ageria Development Co. Ltd

Money at:

1. Commercial Bank of Africa A/C No.5150-xxx
2. East African Building Society A/C 40 xxxx
3. Money held at the Rent Dissolution Tribunal Case No. RT 70/2001

The following assets are disputed

4. a) A sum of Kshs.86,000/= advanced to the 2nd administrator on account of the deceased estate
- b) A sum of Kshs.128,000/= paid to the 1st administrator by M/s Alico Insurance being a policy taken out by the deceased for the minor child.
5. Rent collected by Stephen Wanyee before the court order directing the rent be deposited in the Tribunal was issued.

Counsel for each party made submission and justified their clients mode of distribution.

6. Counsel for Christine Wambui Wanyee applied to amend the Schedule of distribution and struck off paragraphs 10(f), (i), (k) and (i) of the proposed distribution. He urged the court to accept that mode of distribution which despite the adjustment of the value present – equitable distribution. He argued that this mode of distribution is reasonable and equitable and has duly been agreed upon by all the beneficiaries who have filed their requisite consent.
7. As regards the issues in dispute counsel submitted that the money held at the Tribunal should be distributed equally among all the beneficiaries less the amount the Administrators have expended on the property of the Estate.
8. This Co-Administrator concedes that she obtained Sh.86,000/= as a gift inter vivos before the deceased died. However in the event that the court should deem this money as part of the estate, the 2nd Administrator has given an account of how part of the money has been spent to support a minor and disabled child who is a beneficiary. She claims to have paid school fees for that child.



9. On the other hand, counsel argued that Stephen the other Co- Administrator should be made to account Ksh.128,000/= which he withdrew from Alico Insurance Co. The Policy was placed by the deceased for the benefit of Stephen Wanyee Nyambura. Counsel argued that the money was withdrawn on 6th September, 1996 irregularly. The 1st Administrator claims to have used the money to settle hospital bills for the deceased which should not have been the case as the policy was taken out specifically for the benefit of the disabled child. There were specific funds raised to settle the hospital bills and in any case there are no receipts to support the allegation this sum should therefore be regarded as a debt to the Estate and be deducted from 1st Administrator's share and if there is a shortfall, the 1st administrator should be made accountable.
10. Counsel for the 1st Administrator submitted extensively in support of the proposal by his client Stephen Wanyee Kamau. He argued that the proposal by the second Administrator is not realistic, nor is it equitable. He argued that the proposal by the 2st Administrator is one flawed or it seeks to subdivide properties that cannot be subdivided legally. Some of the properties especially the plot in Njiru cannot be subdivided. He argued the court to take into account that property No.3 in the list of agreed properties has already been transferred into the names of the beneficiaries. He also urged the court to disregard the consent filed by the other beneficiaries dated 20th May 2004 as having no consequence and approve the proposal of distribution by the 1st Administrator.
11. Counsel for the 1st Administrator argued further that the 2nd Administrator should be made to account for Ksh.86,000/= which was advanced to her by a third party who held the money on behalf of the deceased. It cannot be a gift and the purported expenditure on the minor's school fees was effected without any authority. The guardian of the minor is the 1st Administrator. The 1st Administrator argued that he withdrew the sum of Ksh.100,800/= which was due to him as the guardian of the minor child.
12. This money did not belong to the estate. The insurance policy was specifically taken out for the benefit of the minor child. He has duly explained how the money was used to offset the deceased medical bills. The 1st Administrator denies that he collected any money from the deceased rental premises and since there are no document to support this allegation, this item should be disregarded.
13. I have given very careful consideration to the issues raised in the affidavits and submissions herein. There is no dispute as to who are the beneficiaries of the deceased estate. The dispute is in regard to the mode of distribution. Which mode of distribution should the court adopt between the two proposals given by the Administrators? Secondly how should the properties in dispute namely the moneys held by each Administrator be regarded. These are the twine issues for determination. First, I will deal with the issue of distribution. I have given due consideration to both proposals by both the Administrators. I am satisfied that the proposal by the 2nd Administrator as amended is a reasonable and equitable preposition. This is because it has been agreed by all the other beneficiaries. There are 8 beneficiaries who have consented except the 1st Administrator. Although the 1st Administrator urged the court to disregard the consent. The consent is an expression of the other beneficiaries views on the distribution. They are interested parties in these proceedings and by virtue of Rules 40 and 41 of the P & A Rules, their consents cannot be disregarded. The identity of the shares having been established the grant should be confirmed and the two properties that are not allocated namely shares in Kenya / Ihenya Co. Ltd and Dandora Ageria Development Co. Ltd be held jointly by the Administrators in trust of all the beneficiaries.
14. I agree with the 1st Administrator that some properties may not be divisible but that challenge can be overcome by the beneficiaries agreeing each to buy one another out or sell the entire asset and the proceeds are shared equally among themselves.



15. As regards the disputed money's taken by the Administrators, the 2nd Administrator does not dispute the sum of Kshs.86,000/= being the sum advanced to her on behalf of the deceased in 1996.
16. She claims that Kshs.56,000/= was used to pay school fees for the minor child and there are receipts from the year 2002 and 2003 to suggest the expenditure. The second Administrator may very well have paid this school fees but I am afraid she ought to have sought the authority of the Co-Administrator. Accordingly the sum of Ksh.86,000/= should be refunded by the 2nd Administrator and/or alternatively be deducted from her share of the sum due from the estate.
17. As regards the proceeds of the insurance policy by M/S Alico Kenya Ltd. I am satisfied that the deceased had taken out the policy for the benefit of Stephen Wanyee Nyambura and the proceeds therefore should not have been utilized for any other purpose. The 1st Applicant's explanation that the money was utilized to settle the deceased hospital bills is not satisfactory. There is no material to support that the money was used to pay the hospital bills, and in any case it was not intended to pay the hospital bills. In the circumstances the 1st Administrator should provide to the estate the proceed of the Insurance Policy paid by Alico Kenya, which should be invested for the welfare of the minor child. I am cognizant of the fact that the minor child who is also disabled will have a multitude of needs that require a lot of resources.
18. I am unable to determine the amount of rent that was collected by the 1st Administrator in the absence of documents. I have looked at the affidavits sworn by the 1st Administrator on 2nd May 2000 and 5th October 2000 in opposition to the application for dependency. In those affidavits he admits that he collected rent of Kshs.14,800/= per month which he claimed to have used on the minor child. In this application the 1st Administrator denies vehemently that he collected rent; I find his denial less than candid, the least he could have done was to provide the accounts for the said rent. Since I am unable to make a finding, the beneficiaries shall be at liberty to seek for accounts if they so wish or pursue the matter further in any other proceeding.

In view of the above findings I make the follow orders;

1. The Grant of Letters of Administration issued to the two Administrators Stephen Wanyee Kamau and Christine Wambui Wanyee on 12th September, 2002 be and is hereby confirmed.
2. The deceased Estate be distributed according to the schedule of distribution contained on paragraph 10 of the affidavit of the 2nd Administrator filed on 10th November 2003 save that the said schedule is amended and sub-section 10 (f), (i), (k) and L are struck off.
3. Shares in Kenya Ihenya Co. Ltd and Dandora Ageria Development Co. Ltd shall vest upon the Administrators, jointly in Trust of all the beneficiaries with liberty to sell and convert into money to be shared by all the beneficiaries as they deem fit.
4. Both the Administrators shall refund to the Estate the respective sum of Ksh.128,000/= or the equivalent of the proceeds of the policy paid by Alico Insurance Co. Ltd. and Ksh.86,000/= respectively:
 - (a) The proceeds from Alico shall be invested by the Administrator for the benefit of the minor and Stephen Wanyee Nyambura.
 - (b) Kshs.86,000/= will be shared amongst all the beneficiaries as suggested in paragraph 11 of the 2nd Administrator's affidavit.
5. Each party shall bear their own costs of this litigation.

It is so ordered.



JUDGMENT READ AND SIGNED ON 30TH JULY 2004.

MARTHA KOOME

JUDGE

