



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 590 of 1985

KENYA COMMERCIAL BANK LIMITED.....1ST APPLICANT

TERRY WACEKE MUIGAI.....2ND APPLICANT

Versus

DORCAS WANGARI MUIGAI.....1ST RESPONDENT

AGNES WAMBUI MUIGAI.....2ND RESPONDENT

RULING

This ruling determines the Summons dated 11th June 2004 brought by the Administrator, Kenya Commercial Bank Ltd. (Trustee Department). The orders sought are directed against Dorcas Wangari Muigai who is required to furnish the Administrator with a true account of the estate of the deceased from 5th May 1984 to date. The particulars of the accounts sought by the applicant are stipulated under prayer Nos. 3, 4, 5 and 8 of the Summons herein under consideration.

The Summons is supported by an affidavit of Terry Waceke Muigai, one of the widows of the deceased who states that “being familiar with the suit I have been requested by the administrator to swear this affidavit”.

According to the applicant the trustee Department of the Kenya Commercial Bank was issued with Letters of Administration intestate of the estate of Eliud Muigai Macharia on 26th October 1995. The 1st respondent is accused of intermeddling with the deceased estate and interfering with the Administration of the estate in such a manner that it has been difficult for the administrator to administer the estate. The gist of the affidavit by Terry Waceke Muigai is that the 1st respondent is controlling the entire estate since the death of the deceased by collecting rent from the deceased properties being flats built on LR No. 269/388/1 Ngong Road, Nairobi, rent from Ngando Timber Houses (near Lenana School). The respondent is also alleged to have

- (i) subdivided and sold the deceased properties known as LR No. 12494/8 Langata/Karen
- (ii) carried out dairy activities at LR No. 12495/25 Karen.
- (iii) carried out tea and coffee farming on Loc 1/Chomo/239

(iv) constructed a school called Bunks and Biddles with funds from LR No. 12495/25

(v) Sold various motor vehicles and received money from ALICO Insurance Co. Ltd. being the deceased life policy.

For the above reasons the applicant sought for accountability and sought for restraining orders to be issued against the 1st respondent from further interference with the deceased estate.

The 2nd respondent supports this application. The 1st respondent opposed the application and relied on her affidavit sworn on 14th July 2004 whereby she also sought to rely on her replying affidavits sworn on 16th May 2003 and other pleadings.

The gist of the matter deposed to by the 1st respondent can be summarized as follows:

i) The information sought was supplied by the 1st respondent in an affidavit she swore on 27th May 1996

ii) As at the time the deceased died he held several properties that are stipulated under paragraphs 1 of the Originating Summons that was filed on 10th July 2003 against the applicant, Terry Waceke and Agnes Wambui. That application seeks the determination of the deceased share of property before the grant can be confirmed. This suit has not been determined and accordingly the respondent states that it is not possible to give an account of the estate to date before the determination of her share which she claims should be 70% of the estate. The 1st respondent also makes reference to the affidavit in support of the Originating Summons whereby she has given a detailed account of her contribution to the acquisition and development of the estate properties.

iii) That the property held in trust cannot be handed over to the Administrator until the 1st respondents share is determined in the Originating Summons.

I have given due consideration to this Succession Cause that has been outstanding for two decades. I am aware there are also several substantive issues that are still outstanding and accounts is one of them. On 11th July 2003 I struck out the application that was filed by Terry Waceke Muigai seeking for confirmation of the grant. That application did not comply with the Law of Succession and the rules made thereby. The Administrator has now sought for the orders stipulated above to enable him administer the deceased estate and perhaps file a proper application for confirmation of the grant and eventual distribution of the assets to the beneficiaries.

For that to happen, the estate of the deceased should be ascertained and the shares to be allocated to the beneficiaries should be ascertained.

In order to be able to do that I find that accounts are necessary. It is not denied that the 1st respondent has been in control of most of the estate since the demise of the deceased, indeed by virtue of a limited grant of Letters of Administration ad colligenda bona issued to her on 5th May 1984 which was issued for purposes of collecting and preserving the deceased estate, she took control of the estate. As the records will show there has been numerous applications and counter application in this matter including an appeal against the order appointing the applicant as the administrator of the deceased estate.

In the meantime the administrator has not done anything nor has he exercised the powers conferred upon him under Section 82 or to apply for the confirmation of the grant.

I am of the humble view that the 1st respondent's application by way of Originating Summons in H.C.C. No. 18 of 2003 (OS) should be determined as soon as possible. I say so because of the express provisions of Rules 41 (3) of the P & A Rules which provides:

“Where a question arises as to the identity, share or estate of any person claiming to be beneficiary interested in or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of Section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXV1 Rule 1 of the Civil Procedure Rules and may thereupon subject to the provision to Section 71(2) of the Act proceed to confirm the grant.”

I found that the Originating Summons was filed as per Order 36 Rule 1 of the Civil Procedure Rules, the application has listed virtually the entire estate. I am also of the view that pending the determination of the said application, these properties are in the name of the deceased and therefore the 1st respondent should give an account of the rents and income and expenses derived therefrom to the court and to the administrator indeed the administrator should have been the one controlling the deceased estate. The 1st respondent claims that she had given accounts before in previous applications. The law of Succession Act has provided the powers, duties and responsibilities of personal representation and it should be followed strictly. Since this court appointed an administrator, his powers are stipulated under Section 82 of the Law of Succession. The fact that the 1st respondent has filed a suit does not give her the right over the properties in the deceased name until the suit is determined she cannot also withhold the accounts, because these assets are in the name of the deceased. It is my considered opinion that if accounts and valuation reports are provided, that will assist the 1st respondent in determining her share in the Originating Summons it will not be tantamount to harassment, I however agree that a period of 14 days is inordinately too short a period to render accounts for activities spanning for 20 years. Accordingly I grant the following prayers:

- 1) That the 1st respondent do furnish the Trustees, namely Department of Kenya Commercial Bank Limited with a true account of the estate of the deceased from 5th May 1984 to date within a period of four (4) months from to day's date.
- 2) That the deceased estate be valued by M/s Lloyd Masika Ltd and the valuation fees be paid from the estate, within 4 months.
- 3) Terry Waceke Mungai also do give an account of property known as Title No. Nairobi Block 60/381.

I decline to grant the other restraining orders as the powers of the Administrator who was issued with the grant of letters of administration are clearly stipulated in the Act and there is no evidence by the administrator that he has been prevented from carrying out his duties by the 1st respondent he did not file any affidavit to this effect.

Costs of this application be in the cause.

It is so ordered.

Ruling read and signed on 10th December, 2004.

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MARTHA KOOME

JUDGE