



In re Estate of the Late Wolles Kariuki Kangethe (Deceased) (Civil Appeal E030 of 2020) [2024] KEHC 9142 (KLR) (Family) (18 July 2024) (Judgment)

Neutral citation: [2024] KEHC 9142 (KLR)

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

FAMILY

CIVIL APPEAL E030 OF 2020

HK CHEMITEI, J

JULY 18, 2024

**IN THE MATTER OF THE ESTATE OF THE LATE WOLLES
KARIUKI KANGETHE (DECEASED)**

BETWEEN

ANTHONY KANGETHE KARIUKI APPELLANT

AND

PAUL NGIGI KARIUKI RESPONDENT

*(Being An Appeal From The Judgement Of Hon. C N Mugo (spm)
Dated 14Th July 2020 In Succession Cause No 219 Of 2016 (Limuru)*

JUDGMENT

1. The Respondent filed an application dated 28th February 2020 at the trial court seeking orders among others that a fresh grant of letters of administration be issued to him as the Applicant and one David Waruru Kariuki had renounced their appointment as administrators.
2. When the matter came up for hearing on 14th July 2020 the court allowed the application on the grounds that the Respondent had renounced the right to be an administrator.
3. The Appellant being dissatisfied with the said ruling has filed this appeal citing several grounds. The summarised grounds are that the Applicant was never served with the application dated 19th May 2020 ;that the trial court failed to offer the beneficiaries opportunity to be heard; the court failed to consider the misappropriation of funds at the deceased account at K-UNITY ,Limuru branch ;that the Respondent was in the process of disposing the deceased parcels namely Limuru/Bibirioni/3301 and Naivasha Mwachiringiri Block 1/4523 and that the Respondent had been collecting rent from the Limuru premises to a tune of kshs 615,000 a year.



4. When the matter came up for hearing the court directed that the same be determined by way of written submissions. The parties have complied.

Appellants submissions

5. The Appellant submitted that the actions by the Respondent were in breach of Section 76 of CAP 160.
6. That the affidavit of service relied on by the trial court was defective as the process server did not attach a copy of his practicing certificate. Further that there was no evidence of service upon other beneficiaries especially the girls.
7. That there was material concealment by the Applicant on two issues namely the deceased account at K-UNITY Limuru branch and the rent collected by the Applicant in Limuru /Bibirioni /3301 property.
8. For the above reasons the Appellant prayed that the appeal be allowed.

Respondent's Submissions

9. On his part the Respondent supported the findings by the trial court. He submitted that the Appellant was present in court on the material day and he cannot turn around and claim that he was never served.
10. That it was not true that the other beneficiaries were not notified and in any event especially the girls none of them has appealed against the said ruling.
11. On the issue of funds, he submitted that there was no evidence of such misappropriation as the amount from the account was distributed to all the beneficiaries and the same was contained in the application earlier filed and granted.
12. The Respondent deponed that the issue of disposing the Limuru land was well agreed with the family members and in fact the Appellant had been granted the chance to buy but he failed hence the agreement that it be sold and the proceeds distributed to the beneficiaries.
13. On rent collection he submitted that the 23 units had been distributed to each one of them as of 9th October 2019 and it was not true that he was solely collecting the rent.
14. The Respondent prayed for the appeal to be dismissed.

Analysis and determination

15. The court has the duty of arriving at an independent finding in this appeal noting that it did not have the luxury of hearing the matter and seeing the parties as was the trial court.
16. The main issue in my view in the grounds of appeal which is germane is whether the Appellant was served and therefore aware of the date and the matter in court.
17. I have perused the affidavit of service by one Joseph Mbugua sworn on 10th July 2020. He said that he served the Appellant on 1st July 2020 with the summons dated 28th January 2020 and listed for hearing on 14th July 2020. According to him he knew the Appellant having served him previously.
18. I have also perused the trials court record of 14th July 2020 and it is apparent that the Appellant was present in court on the material day. The court allowed him to address it where stated that

“...what counsel has told the court is not true, parties to the estate were not served, I only realised the summons have been filed later.”



19. His former co administrator David Waweru Kariuki denied the allegations immediately. He challenged him to take any other action if dissatisfied with the said administration by the Respondent.
20. I think the issue which the court faced was whether the application was merited or not. What is before this court and what the Appellant is challenging was not what was presented before the trial court. The issue of the estate had been dealt with when the grant was confirmed as rightfully found by the trial court.
21. The application before the court was not challenging the grant but giving it effect after the two administrators had renounced their administration.
22. The Appellant was therefore present in court contrary to his submissions. Whether he took himself to court unknowingly or through the service mentioned above is in my view irrelevant. He participated in the proceedings orally. There is no evidence that he challenged the application by way of affidavits and thus the trial court was right in allowing it.
23. The issue of service was never challenged. The process server was not called to be cross-examined on the veracity of the affidavit of service.
24. The other prayers on how the estate was to be managed after the grant was confirmed was not within what the trial court was asked to do on 14th July 2020. It appears to me that the Appellant was seizing a lost opportunity to challenge the confirmed grant within this appeal. That issue was not within the impugned ruling of the trial court.
25. In essence the Appellant cannot be allowed to introduce fresh issues in the submissions which were not tackled by the trial court. He should seek another forum.
26. The same goes with the issue of the sale and sharing of proceeds of the Limuru property. If the parties agreed and placed it on the grant then unless the same is set aside, it remains the order of the court.
27. As regards the Naivasha property, it is evident that it was to be shared out among the deceased girls. That information is contained in the grant. They have not complained or raised an appeal against it. The Appellant cannot therefore complain on their behalf.
28. The same argument should go to the collection of rent and the deceased account at K-UNITY Limuru branch. The parties seemed to have agreed on the utilisation of the amount therein. If that was not the case, then the Appellant should have raised it when the grant was being confirmed.
29. The sum total of my findings are that this appeal is not meritorious. The Appellant having renounced his role as an administrator should allow the current administrators to finalise their job which he will also benefit.
30. The appeal is dismissed, the interim orders earlier granted are hereby set aside.
31. Costs in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 18TH DAY OF JULY 2024.

H K CHEMITEI

JUDGE

