



In re Estate of the Late Isabella Nyambura Mbuthia (Deceased) (Succession Cause 2374 of 2013) [2024] KEHC 11624 (KLR) (Family) (3 October 2024) (Ruling)

Neutral citation: [2024] KEHC 11624 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2374 OF 2013
HK CHEMITEI, J
OCTOBER 3, 2024
IN THE MATTER OF THE ESTATE OF THE LATE ISABELLA
NYAMBURA MBUTHIA (DECEASED)**

BETWEEN

ALICE WANJIRU MBUTHIA APPLICANT

AND

DAVID MAINA MBUTHIA 1ST RESPONDENT

JAMES MBUTHIA 2ND RESPONDENT

RULING

1. In her application dated 14th June 2022 the Applicant prays for orders that:-
 - (a) The Applicant and the Deputy Registrar to sign all forms and undertake all actions required to effect transfer of shares accruing to Alice Wanjiru in Limuru Dairy Cooperative Society in execution of earlier orders issued by the court.
 - (b) The court grants leave to the Applicant and the Deputy Registrar to execute all forms and undertake all actions for opening a joint account in the names of James Mbuthia and David Maina and Alice Wanjiru Mbuthia for the deposit of dividend cheques issued in their joint names.
 - (c) The titles of land accruing to the beneficiaries David Maina Mbuthia and James Mbuthia be deposited with the court for safe keeping.
 - (d) The sum of money accruing to the beneficiaries David Maina Mbuthia and James Mbuthia be deposited with the court for safe keeping.



2. The application is supported by the Applicants sworn affidavit dated the same date.
3. The gist of the application is that the Respondents have failed and refused to collect their titles as enumerated under paragraph five of the supporting affidavit.
4. That they have also refused to collect the sum of Kshs.3,685,251 which was the balance of the amount realised after selling some land.
5. Further that the Applicants have refused to have a joint account opened in their three names so that they could deposit the dividend cheques from Equity Bank.
6. As regards Limuru Dairy Cooperative shares she accused the 2nd Respondent of fraudulently transferring shares to himself.
7. The second Respondent has opposed the application vide the replying affidavit dated 11th April 2023. He said that it was the Applicant who refused to render accounts after the sale of the land hence they could not collect the money.
8. That the titles in question could not be collected as they had boundary disputes hence they were not complete.
9. As regards the dividend cheques he deponed that the Applicant alone could as well open the account as she was a sole administrator after the Respondents were removed.

Analysis and determination.

10. I have perused the application herein and I think that all that the parties are doing are simply flexing their muscles and the Deputy Registrar of this court has been roped in as one of the body builders so to speak. In short it is not lost to me that the parties have lost trust in each other and the way to deal with each other is through the application to this court even for matters so mundane like opening a joint bank account.
11. Whether for example the titles had any boundary disputes has not been brought to the attention of the court from 14th May 2018 and it has only resurfaced in the replying affidavit and upon the Applicant making this application.
12. The issue of the dividend cheques clearly shows that the cheques are in their joint names. How then do the Respondents expect the Applicant to open an account in her name alone?
13. I think the issue of Limuru Dairy Cooperative Society could as well be dealt with independent of this cause since if there is any fraud on the part of the 2nd Respondent then the Applicant ought to pursue in another forum and not in the current application.
14. In the premises and without wasting much judicial time I direct as follows:-
 - (a) The Applicant within 14 days from the date herein shall deliver through her counsel on record all the eight titles enumerated in paragraph five of her affidavit to the Respondent's counsels for onward transmissions to their clients.
 - (b) Within 14 days from the date herein the Applicant through her counsel on record shall submit the sum of Kshs.3,685,251 to the Respondent's counsel on record for onward transmission to them.



- (c) The parties herein are directed to open a joint bank account within 14 days from the date herein so as to deposit the dividend cheques in their joined names and in default the Applicant to open the same without further reference to the Respondents.
- (d) Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 3RD DAY OF OCTOBER 2024.

**H K CHEMITEI
JUDGE**

