



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 307 OF 2006

IN THE MATTER OF THE ESTATE OF PETER CHARLES NDERITO (DECEASED)

ANGELA WAMBUI NDERITO..... APPLICANT

V E R S U S

JOHN KANGETHE NDERITO 1ST RESPONDENT

FLORENCE AUMA NDERITO 2ND RESPONDENT

ELIZABETH WARIARA NDERITO 3RD RESPONDENT

RULING

(1) The Applicant herein **ANGELA WAMBUI NDERITO** filed in Court the Notice of Motion dated **3rd November 2020** seeking orders as follows:-

“1. SPENT

2. THAT the whole value of the Standard Chartered

Share dividend cheques which are worth approximately Kshs. 200,000/- be transferred to the Applicant immediately to pay her outstanding rent arrears and cater for her maintenance as she continues to struggle to manage her medical condition in order to resume work.

3. THAT this Honourable Court orders that this total figure be subtracted from the total value of the Applicant’s share in the deceased estate which is worth approximately Kshs. 500 million.”

(2) The Application which was premised upon **Sections 26, 27, 28, 29 and 30** of the **Law of Succession Act** and all other provisions of the law was supported by the Affidavit of even date sworn by the Applicant.

(3) The 2nd Respondent **FLORENCE AUMA NDERITO** filed a Replying Affidavit dated **15th December 2020** opposing the application. The application was canvassed by way of written submissions. The Applicant filed her written submissions dated **1st February 2021** whilst the 2nd Respondent relied upon the written submissions dated **16th February 2020**.

BACKGROUND

(4) This Succession Cause relates to the estate of **PETER CHARLES NDERITO** (hereinafter “**the Deceased**”) who passed away on **9th February 1999**. On **15th November 2006** the widow of the Deceased **ELIZABETH WARIARA NDERITO** was issued with a Grant of Letters of Administration to the estate. Thereafter no action took place until vide the Judgment delivered on **28th August 2015** **Hon. Lady Justice Margaret Muigai**, revoked the Grant which had been issued to the widow and issued a new Grant to the Applicant **ANGELA WAMBUI NDERITO** with instructions that she trace and distribute the assets of the deceased. To date the Grant has never been confirmed. The Applicant as Administrator filed a Summons for Confirmation of Grant dated **15th December 2015**. However this was objected to by

the Respondents.

(5) The matter proceeded for hearing before **Hon. Justice Asenath Ongeri** who vide a Ruling delivered on **29th November 2019** directed that the former Administrator of the estate file an accurate inventory of the estate from **2006-2015** as per the Court orders of **28th August 2015**. Following the transfer of **Justice Ongeri** to **Kericho High Court** I took over the matter. The Applicant then filed the present application.

ANALYSIS AND DETERMINATION

(6) I have considered the present application, the Reply of the 2nd Respondent as well as the written submissions filed by both parties. The Applicant seeks that the whole value of the Standard Chartered Bank Share Dividend cheques amounting to approximately **Kshs. 200,000/-** be transferred to her immediately to enable her pay her outstanding rent arrears and cater for her maintenance. The Applicant also states that due to an ongoing medical condition she is unable to attend to her Fashion/Baking business which provided her with some sustenance but is now at risk of collapse.

(7) The Applicant further prays that the Court order that this amount of **Kshs. 200,000/-** be deducted from her share in the estate of the Deceased which she surmises to be worth about **Kshs. 500 million**.

(8) In opposing this Application the 2nd Respondent avers that the Applicant is not as destitute as she is making out. That the Applicants mother sold a property in **Rosslyn Estate** which realized **Kshs. 175 million**, thus there exist available funds from which the Applicant can tap on for her sustenance.

(9) Further the 2nd Respondent submits that the present application is almost identical to an application dated **21st October 2020**, which the Applicant had filed earlier, which Application **Hon. Justice Dulu** declined to certify as urgent on grounds that the funds in question had already been transferred to the **Unclaimed Financial Assets Authority ('UFAA')**. The 2nd Respondents submits that the **UFAA** cannot release funds held by itself until the Grant has been confirmed. Therefore the 2nd Respondent urges the Court to dismiss this present application as an abuse of Court process.

(10) I have carefully perused this file. I note that the Applicant did

indeed file a Notice of Motion dated **21st October 2020** seeking the following orders:-

“1. THAT this Application be certified as urgent and service be dispensed with in the first instance ex parte by the Duty Judge.

2. THAT the whole value of the Standard Chartered Share Dividend cheques that have been submitted at UFAA, (Unclaimed Financial Assets Authority), which are being worth approximately Kshs. 200,000/-, be transferred to the Applicant immediately for medical expenses, possible travel to Mombasa for specialized treatment as I live in Malindi and maintenance whilst undergoing treatment.

3. THAT this Honourable Court orders that this total figure be subtracted from the total value of the Applicant's share in the Deceased estate which is worth approximately Kshs. 500 million.

WHICH APPLICATION is based on the following grounds inter alia and grounds to be adduced at the hearing hereof.

1. THAT the Applicant is the only daughter of the Deceased and hence a dependant of the estate.

2. THAT the Applicant worked in the family business for 20 years which was located on family land and was never compensated when the property was sold.

3. THAT the Applicant's Fashion/Baking business requires her vibrant physical participation and has ground to a standstill without this critical element due to the illness that is crippling her.”

(11) The Application of **21st October 2020** is identical literally word for word with the present application. On **22nd October 2020** **Hon. Justice Dulu** declined to certify the Application as urgent and directed that the Application be served upon the three (3) Respondents for hearing in the normal manner. The Applicant did not pursue that application and failed to prosecute the same. It would appear that having failed to secure orders in her favour before **Justice Dulu** the Applicant is now seeking to have a second bite at the cherry by filing an identical application before a different Judge.

(12) Furthermore despite her submission that the Application dated **21st October 2020** was withdrawn I find no evidence in the Court file to support this contention. There is no evidence that the Application of **21st October 2020** was formally withdrawn. Thus the Applicant has **two (2)** applications of a similar nature pending before the same Court which amounts to an abuse of Court process.

(13) I note that the hearing on the Objection to Summons for Confirmation of Grant which had commenced before **Hon. Justice Ongeri** was at its tail end. The record indicates that on **27th July 2020** **Hon. Justice Dulu** gave directions for hearing of the Amended Summons for Confirmation of Grant dated **15th May 2020**. This case appears to be going round and round in circles instead of moving forward. By her

application the Applicant is seeking to have the estate distributed in a piecemeal manner. In my view it would better serve the Applicant to have this matter heard and concluded and a final decision rendered rather than to file multiple applications which only serve to delay the final conclusion of the matter.

(14) Finally I find that since **Justice Dulu** had handled a similar application, to the present one which application remains unprosecuted, this Court has no power to deal with the same issue a second time. For that reason I decline to grant the prayers sought in this Application. The same is struck out in its entirety with no orders on costs.

Dated in **Nairobi** this **18TH** day of **JUNE, 2021**.

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MAUREEN A. ODERO

JUDGE