



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1515 OF 2009

IN THE MATTER OF THE ESTATE OF PAUL MAINGI KATHUKYA (DECEASED)

VICTOR KATHUKYA MAINGI.....1ST APPLICANT

PETER MAINGI.....2ND APPLICANT

JOSEPH MWANZIA MAINGI.....3RD APPLICANT

JAMES MBUNGI MAINGI.....4TH APPLICANT

JONES MUSEMBI MAINGI.....5TH APPLICANT

INNOCENT KYALO MAINGI.....6TH APPLICANT

VERSUS

MICHAEL MUTUNGA MAINGI.....RESPONDENT

AND

FRANCIS NDOLO MAINGI.....PETITIONER

RULING

1. Under **section 66** of the **Law of Succession Act (Cap. 160)**, the court shall have the final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made. It also makes sense that where the deceased was polygamous, and the court had appointed an administrator to represent each house, upon the death of the administrator the court will replace him with a representative from the house in question (**In re Twaruchiu Marete (Deceased) [2019]eKLR**). The best interests of the house in question shall be served if the members of that house will be the ones to pick a replacement to take the place of their deceased administrator.

2. The deceased Paul Maingi Kathukya died intestate on 17th May 2008. He left two houses. On 2nd December 2009 the grant of letters of administration intestate was issued to Patrick Kivuva Maingi (representing the 1st house) and Francis Ndolo Maingi (representing the 2nd house). The grant was confirmed on 25th January 2011. Patrick Kivuva Maingi died on 5th June 2019. On 8th April 2020 this court appointed Michael Mutunga Maingi (the respondent) as co-administrator. He is the one who had applied for the revocation of the grant. He had also sought injunctive orders. The application was followed by the death of Patrick Kivuva Maingi. The general complaint by the respondent was that the completion of the administration of the estate of the deceased had taken too long. He wanted to replace the administrators. The court heard the application. On 8th April 2020 it did not revoke the grant but allowed the respondent to join in the administration of the estate, along with Francis Ndolo Maingi.

3. The applicants Victor Kathukya Maingi, Peter Maingi, Joseph Mwanzia Maingi, James Mbungi Maingi, Jones Musembi Maingi and Innocent Kyalo Maingi have complained that the effect of the orders issued on 8th April 2020 was that the 1st house is not being represented in the administration of the estate of the deceased. This is because both the respondent and Francis Ndolo Maingi are from the 2nd house. That is a legitimate complaint which the court ought to have taken into consideration. The applicants have proposed that the 6th applicant (Innocent Kyalo Maingi) replaces the respondent so that each house will have one administrator. Francis Ndolo Maingi did not oppose the

application. It is notable that the 3rd (Joseph Mwanzia Maingi) 4th (James Mbungi Maingi) and 5th (Jones Musembi Maingi) applicants are from the 2nd house. They are brothers of the respondent. They support the request that the 1st house should have a representative in the administration of the estate of the deceased, and that the representative be the 6th applicant.

4. The respondent opposed the application, stating that it had been made in bad faith and that the real borne of contention was over the distribution of share No. 5 Komarock Housing Cooperative Society Limited. However, there is no dispute that the estate of the deceased was distributed, and that the certificate of confirmation is clear about the entitlement of each beneficiary.

5. The respondent indicated that he was willing to work with any person picked to represent the 1st house. I have stated in the foregoing that it is in the best interest of the members of the 1st house that the house be involved in the administration of the estate, and the representation be by a person the members are comfortable with.

6. I also consider that, in his replying affidavit filed on 9th September 2019, Francis Ndolo Maingi had indicated his willingness to relinquish his -

“administrative duties to any family members who will be nominated by the family and appointed by the court.”

He does not appear enthusiastic anymore, but his role can only end upon his completing the administration of the estate of the deceased and accounting to the court. Lastly, there is nothing that has been demonstrated to show that, since his appointment, the respondent has failed in his responsibilities under **sections 82 and 83** of the **Act**.

7. In conclusion, I recall and review the orders of 8th April 2021. In their place, Francis Ndolo Maingi and Michael Mutunga Maingi shall represent the 2nd house and Victor Kathukya Maingi and Innocent Kyalo Maingi shall represent the 1st house in the administration of the estate of the deceased Paul Maingi Kathukya. The grant and certificate of confirmation herein shall be rectified and amended to reflect this new position. The orders are made under **sections 47 and 66** of the **Act** and **rule 73** of the **Probate and Administration Rules**.

8. I make no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF JUNE 2021.

A.O. MUCHELULE

JUDGE