



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NUMBER 1153 OF 2011

IN THE MATTER OF THE ESTATE OF ANDERSON NJIRI MURIGU (DECEASED)

JAMES MURIGU NJIRI.....PETITIONER

VERSUS

WATSON MURIGU NJIIRI & 7 OTHERS.....DEFENDANT

RULING ON DIRECTIONS

1. In the judgement delivered by Matheka J on 13th January 2020, the court distributed the assets of the deceased in this case Anderson Njiiri Murigu who died on 21/12/2007 at the age of 92 years.
2. The estate of the deceased was distributed equally among the surviving children of the deceased. In the same breath, the court gave the following orders:-
 - i. All the rents collected from B11/215 since 2011 and the shares of the deceased in the Makutano plot since 2010 be deposited in a joint account to be opened in the names of the three administrators in trust for themselves and the rest of the beneficiaries. This account be opened within thirty(30) days hereof.
 - ii. Solomon Thirimu to file in this court a bank statement supporting the deposits made against the shareholding of the deceased since 2010.
 - iii. The deceased estate to be shared equally among all the nine(9) beneficiaries
 - iv. The share of Joe Njiri Murigu to be subject to his compliance with order No. 1 above and making good the rent collections from B11/215
3. This matter came before me for mention to confirm compliance of the orders by the persons named in the said orders.
4. It was reported in respect of Order No. 2 that Solomon Thirimu had fully complied with order No. 2 by filing a bank statement dated 21/05/2021 in respect of deposits made in favour of the deceased's share holding in L.R 7235/263 Karatina otherwise known as the "Makutano building". This is in respect of Savings Account No. 03-6531-012-01131 in the names of Solomon Thirimu and Anderson held at Wananchi Sacco. A statement filed on 26/03/2021 for A/C No. 03-6531-012-06094 in the name of Solomon Thirimu and was also filed by Solomon Thirimu.
5. As for Order No. 4, Joseph Rukwaro alias Joe Njiri Murigu appeared in court in person having been issued with summons requiring attendance. His advocate Wahome Gikonyo who was present in court had informed the court that he had lost touch with his client for a long time. When appeared, he Joe Murigu explained that he had not complied with the order of the court. He said he had funds belonging to the estate from collection of rent L.R. No. BII/215 Karatina amounting to Kshs.1,600,000 which he used in payment of his hospital ill and hiring a lawyer for his son who had been arrested in Dubai. He said that having not complied with the order of the court, he was ready to forfeit part of his share in the estate equivalent to the funds he had squandered.
6. Mr. Wahome said that that kind of arrangement was supported by order No. 4 in the ruling of Matheka J and that his client should forfeit his share to make good the loss he had caused to be incurred in the estate assets.
7. Mr. Nderi opposed the proposal of Mr. Wahome and his client and said that action should be taken against Joe Njiri Murigu for contempt of court. He as blatantly disobeyed the orders given by the court. Mr. Nderi further submitted that the conduct of Mr. Joe Murigu amounted to intermeddling with the estate. He further argued that Order No. 4 was not available as a relief for Joe Murigu.

8. Mr. Omoke sought directions/orders for operationalization of the two named accounts in respect of the funds deposited therein belonging to the deceased's estate.

9. Having captured the submissions of the parties and their counsels in this regard, I hereby make some observations:-

i. That the judgement of Matheka J delivered on 13th January 2020 and which was seized of all the facts regarding vehicle Registration No. KAM 686E did not make any orders. Joe Murigu told the court he had sold the vehicle which belonged to the deceased at Kshs.300,000. The beneficiaries have the option of applying for review of the said judgement or let the matter rest.

ii. Joe Murigu said that a bank account had been opened by his two co-administrators at Absa Bank Karatina. It was not clear whether Joe Murigu was a signatory of the account as the court ordered in its judgement. If he is, then, that is well. If he is not, for reason of having failed to obey the court order, one of the beneficiaries may be authorised to be join in as a signatory of the account alongside the two administrators for purposes of operationalization of the account.

iii. It is apparent that out of the four orders given by the court in the judgement, only order No. 2 has been complied with save for deposit of the funds in the joint accounts of the administrators. However, the funds in question already identified as belonging to the accused are still held in the joint accounts of the deceased and his now deceased partner Solomon Thirimu. The counsel for Solomon Thirimu's family explained the predicament he was facing following the death of Solomon and sought directions on the way forward.

iv. That Order No. 3 cannot be implemented until Orders No. 1 and 2 are fully complied with.

v. As for Order No. 4, my understanding is that it was made by the court with the purpose of addressing any misappropriation of rent collection that Joe Njiri Murigu may have committed because he had failed to account for the rent proceeds up to the date of judgement. It expressly states that the share of Joe Njiri Murigu will be subject to his compliance with Order No. 1. This Order No. 1 required Joe Murigu and the late Solomon Thirimu to deposit all the rent collections in LR No. BII/215 since 2011 and in LR 7235/263 since 2010 respectively in the joint account to be opened in the names of the administrators. The said Joe Murigu has told the court that he has no capacity to deposit the amount which he has misappropriated. He said he is ready to forfeit his share in the estate to repay the sum he has misappropriated in order to allow the implementation of Order No. 3. My understanding of Order 4 is that the administrators who too are collecting the rent must deduct the amount misappropriated by Joe Murigu from his share in the estate before he can be given what is due to him.

vi. That with the existence of Order No. 4 which gives a window for recovery of the misappropriated estate funds, it is not lawful to take out contempt proceedings against Joe Murigu at the moment.

Based on the above observations, I give the following directions/Orders:-

a) That Joe Njiri Murigu do file and serve accounts of the rent collected by himself from LR BII/215 Karatina for the period between 2011 to date within 30 days.

b) That for ease of operationalization of the Absa account the 2nd and 3rd administrators in consultation with other beneficiaries are hereby authorised to pick one of the beneficiaries as the 3rd signatory of the Absa bank accounts and that the name of Joseph Rukwaro alias Joe Murigu be removed as signatory, should it have been included. Action to be taken within 30 days.

c) That as soon as the Absa accounts become operational in accordance with Order(b) herein, the share of the deceased out of the rent collections in respect of L.R. 7235/263 be deposited in the Absa accounts.

10. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 21ST DAY OF JULY, 2021.

F. MUCHEMI

JUDGE

Ruling delivered through video link this 21st day of July, 2021.