



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 474 OF 1992

IN THE MATTER OF THE ESTATE OF EPHRAIM WAIGIGA MWAURA (DECEASED)

RULING

1. Before this Court is the *ex parte* Application dated 25th March 2021 by which the Applicant **ALFRED MBUGUA WAIHIGA** seeks the following orders:-

“1. That the transmission of Nakuru Block 5/136 from the estate of Ephraim Waihiga Mwaura to David Mwaura Waihiga effected by the Ministry of Lands and Planning in its records on 12th and 18th September 2011 respectfully be cancelled and/or reversed in the said records and in its place the Title Deed to Nakuru Block 5/136 do reflect the names of the substituted administrators namely, “Alfred Mbugua Waihiga and Phyllis Wanjiru Waihiga” as administrators of the estate of Ephraim Waihiga Mwaura.

2. That until such a time as this property will be constructed and Sectional Titles issued to the beneficiaries or the property is sold and is no longer under administration that the status of this property do remain as being under administration even if the Administrators change and new ones come.

3. That Alfred Mbugua Waihiga and Phyllis Wanjiru Waihiga, the Administrators of the estate of Ephraim Waihiga Nakuru Block 5/36 being the only estate still under administration do in the meantime share and continue sharing the income from the said property amongst the living children/beneficiaries of deceased in equal shares that the income to be shared to be net income after deducting all statutory levies, county government rates, all expenses for maintenance, remuneration of any workers or staff and any other unforeseeable expenses used to maintain the said property or such as are or may be by law required now and in future.

4. That where a beneficiary mentioned in this cause has died the Administrators do pay such beneficiary’s portion of the income to the children of the dead beneficiary who have obtained letters of administration and/or have been named as defendants and which letters of administration have been confirmed by the court.

5. That Administrators keep proper accounts which should be provided to the beneficiaries on or before the 28th February of each successive year.

6. That the administrators be at liberty to enter into any agreements for lease, license, hire out this premises or enter into any arrangements that will yield higher income to the beneficiaries so long as such arrangements are not in the category of those that require consent of the court.

7. That the certificate of grant dated 1st August 2010 be amended to reflect the orders that David Mwaura Waihiga the former administrator of this estate and Alfred Mbugua Waihiga and Phyllis Wanjiru Waihiga the current/substituted administrators, have been holding this property as Administrators but not beneficiaries.

8. That costs of this Application be paid from the Estate.”

2. The application is premised upon Rule 49 and 73 of the Probate and Administration Rules, section 61, 62 and 80 of the Land Registration Act, 2012 section 50 (1) 51 and 54 of the Land Act Cap 20 and all other enabling provisions of Law and is supported by the Affidavit of even date sworn by the Applicant.

BACKGROUND

3. This matter relates to the estate **EPHRAIM WAIHIGA MWAURA** (at the Deceased) who died on 1st April 1992 at the Nakuru War

Memorial Hospital. Following the demise of the Deceased letters of Administration in respect of his estate were issued to **DAVID MWAURA WAIHIGA** on 22nd July 1992. The Grant was later confirmed in the name of the sole Administrator on 26th May 1994.

4. During the period of his Administration all the assets of the estate were shared out amongst the beneficiaries to the office save for the property known as **Nakuru Block 5/136** (hereinafter the ‘**suit property**’) which due to its small size could not be subdivided as per the **Nakuru Municipal Laws**. The suit property was then transferred to the name of **David Mwaura Waihiga** erroneously leaving out the words “**as administrator** of the estate of the late **Ephraim Waihiga Mwaura**” which would have indicated that the property was still under administration.

5. On 30th July 2010 the sole Administrator filed an application seeking the following orders:-

“1. That DAVID MWAURA WAIHIGA the sole administrator of the remainder of the estate of EPHRAIM WAIHIGA MWAURA (Deceased) be substituted with ALFRED MBUGUA WAIHIGA and PHYLLIS WANJIRU WAIHIGA as Administrators.

2. THAT the said ALFRED MBUGUA WAIHIGA and PHYLLIS WANJIRU WAIHIGA do jointly administer the remainder of the said estate on behalf of and in trust for all the defendants and as assignees of any legal document in place of DAVID MWAURA WAIHIGA”

6. This application was allowed and Grant of letters of Administration were issued to the new Administrators **ALFRED MBUGUA WAIHIGA** and **PHYLLIS WANJIRU WAIHIGA**. A certificate of confirmed Grant in the name of the two new Administrators was issued on 30th July 2010.

7. The parties now wish to have the un-administered portion of the estate which consists of the suit property transferred to the new administrator. Hence the present application.

ANALYSIS AND DETERMINATION

8. I have considered this *ex-parte* application the Affidavit in support as well as the written arguments dated 25th March 2021.

9. It is manifest that the Grant which had been issued to **David Mwaura Waihiga** is now spent. The court appointed and confirmed new Administrators to the estate of the Deceased namely **Alfred Mbugua Waihiga** and **Phyllis Wanjiru Waihiga**. The only asset of the estate remaining unadministered is **Nakuru Block 41136**. It is only fair and just that the suit property be transferred into the name of the new Administrators to hold in trust and administer on behalf of the beneficiaries of the estate.

10. The previous Administrator **Mr David Mwaura Waihiga** has no objection to the application and is ready and willing to have the suit property, which is currently registered in his name transferred to the Administrators.

11. **Section 47** of the Law of Succession Act provides that:-

“The High court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders as may be expedient.”

12. I find that the present application has merit and I do allow the same in terms of **prayers (1), (3), (4), (5), (6) and (7)**. The costs of this application to be met by the estate.

DATED IN NAIROBI THIS 3RD DAY OF DECEMBER 2021.

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MAUREEN A. ODERO

JUDGE