



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2456 OF 2012

IN THE MATTER OF THE ESTATE OF MUGO NG'ANG'A (DECEASED)

ANASTACIA NJERI MUGO.....APPLICANT

VERSUS

PETER NYAMU MUGO.....1ST RESPONDENT/ADMINISTRATOR

NGUGI MUGO.....2ND RESPONDENT/ADMINISTRATOR

RULING

1. Before this court for determination is the chamber summons dated **26th April 2021** by which the Applicant **ANASTASIAH NJERI MUGO** seek for the orders **THAT:-**

“1. Peter Nyamu Mugo and Ngugi Mugo the surviving Administrator of the Estate of Mugo Ng’ang’a (Deceased), be ordered to produce to this Honourable Court, or as the court shall order, the following:-

“a) A full and accurate inventory of the assets and liabilities of the deceased from 21st March 2013 to date;

b) An accurate account of all the rents, profits, income and dividends received from the assets of the deceased from 21st March 2013 to the date of the account; and

c) An accurate account of all dealing therewith from 21st March 2013 to date.

2. The costs of the application be borne by the Estate of the Deceased.”

2. The Application was premised upon **section 83 (b)** of the **Law of Kenya** and all other enabling laws and was supported by the Affidavit of even date and the Supplementary Affidavit dated **30th May 2021** both sworn by the Applicant.

3. The Administrators of the estate namely **PETER NYAMU MUGO** (the 1st Administrator/Respondent) and **NGUGI MUGO** (the 2nd Administrator/Respondent) both opposed the application vide the Replying Affidavit dated **9th August 2021**. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated **30th May 2021** whilst the Respondents relied upon their written submissions dated **28th September 2021**.

BACKGROUND

4. This Succession Cause relates to the estate of **MUGO NG’ANG’A** (hereinafter ‘the **Deceased**’) who died Intestate on **9th November 2011**. Following the demise of the Deceased letters of Administration Intestate were issued on **21st March 2013** to **Margaret Wamaitha Mugo, Ngugi Mugo and Peter Nyamu Mugo**, the Widow and sons of the Deceased.

5. By way of a Chamber Summons dated **16th July 2019** the Administrators applied to have the Grant confirmed. Before that summons could be heard the Applicant who is a daughter to the Deceased filled this present application seeking orders to compel the Administrators to file an

accurate account of all dealings in the estate from 21st March 2013 to date.

ANALYSIS AND DETERMINATION

6. I have carefully considered the summons before the court, the Reply filed by the Administrators as well as the written submissions filed by both parties.

7. The Applicant submits that there is income being generated from the assets which were left behind by the Deceased as well as dividends and profit. As such, the Applicant states there is need for the Administrators to account for all the income derived from the estate before the Grant can be confirmed.

8. The Applicant averred that the Administrators have not kept her informed of the manner in which the estate has been administered nor is she informed of the current status of the assets and liabilities comprising of the estate of the Deceased.

9. In opposing the application the Administrators state that it was agreed by **ALL** the beneficiaries that all the assets comprising the estate of the Deceased save for **L.R. No. 162 Limuru** were to be vested in a company known as **Gatonga Investments Limited** in which company all the beneficiaries hold equal shares. That all the income generated from said assets is deposited into the company account to which the Applicant is also a signatory. Therefore the Administrators assert that the Applicant is fully abreast with all dealings in the estate.

10. **Section 83** of the **Law of Succession Act** sets out the duties of Personal Representatives. **Section 83(h)** provides as follows:-

“personal representatives shall have the following duties-

(h) to produce to the court if required by the court either of its own motion or on the application of any interested parties in the estate a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.”

11. The duties of personal representatives to an estate are set out in **Rule 85** of the **Probate and Administration Rules**. The said Rules provide *inter alia* that:-

“(e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and full and accurate account of all dealings therewith up to the date of the account.

(f)

(g)

(h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.”

12. The relationship between personal representatives of an estate and the beneficiaries of the estate is a fiduciary one. The representatives have a duty to account to the beneficiaries regarding all the activities in respect of estate property.

13. The duties of personal representatives were expanded upon by **Hon Justice William Musyoka** in the **RE: ESTATE OF JULIUS MIMANO (Deceased) [2019] eKLR** as follows

“Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the Trustee Act, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.” (own emphasis)

14. Based on the foregoing I find merit in this application. Accordingly, I do allow the summons dated 26th April 2021 and I make the following orders: -

1. That Peter Nyamu Mugo and Ngugi Mugo (the surviving Administrators) do produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith from 21st March 2013 up to the date of the account within 60 days of the date hereof;

2. This being a family matter each party will bear its own costs.

DATED IN NAIROBI THIS 3RD DAY OF DECEMBER, 2021.

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MAUREEN A. ODERO

JUDGE