



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 2249 OF 2008

IN THE MATTER OF THE ESTATE KURIA GACHERU (DECEASED)

NYAGAITHERI MWANGI.....1STADMINISTRATOR/ APPLICANT

VERUS

HARRISSON IRUNGU KURI.....2NDADMINISTRATOR/ RESPONDENT

RULING

1. The application subject of this ruling is dated 6th February 2019 and supported by the affidavit of the 1st administrator/Applicant Nyagaitheri Mwangi. It seeks to vary and or review the court order of Ougo J dated 14th December, 2018.

The applicant contends that she occupies the residential house situated on ground floor, wing B, whereas her two sons occupy the residential houses on wing B of the 1st and 2nd floor respectively, of L.R. No. 209/9045, which the court failed to take into account, there is a tax liability against the asset which the court failed to give directions on, the court did not distribute two assets; L.R. No. 209/9045 (Kamukunji) and Plot No. 59 Kariobangi(Kariobangi), and due to acrimony existing between the two families there is need for each house to separately collect rent each from one of the two properties.

2. In a replying affidavit dated 26th February 2019 the 2nd Administrator objects to the application. According to him the two properties were given jointly to the two families, and they were to share rent equally, however the 1st administrator continues to collect Kshs.426,000/= a month from the Kamukunji property to the exclusion of the other family. He proposes collection of rent by a neutral party who would pay expenses and taxes and thereafter distribute the balance thereof to all beneficiaries equally, further he deposed that dispute collection of rent the 1st administrator has failed to settle tax arrears.

3. In a rejoinder it was stated that the 2nd administrator collects about Kshs.158,000 from the Kariobangi property.

4. I have considered the ruling of Ougo J which is subject of this application. In the ruling the learned Judge ordered the applicant (widow) to occupying the 1st floor of the Kamukunji property). The learned Judge further ordered rent proceeds of both Kamukunji and Kariobangi properties be shared equally amongst the beneficiaries of the 2 households. The court did not distribute or give out the two properties.

5. I have studied the proceedings as well as the valuation reports that the parties submitted to court and which Ougo J considered.

The parties do not seem to have any problem with the distribution of other assets that formed the estate save the two; Kariobangi and Kamukunji. From the valuation reports the two properties are not of equal value and the income certainly at variance. The court in its wisdom directed that the Applicant/widow and her family would occupy the 1st floor, the rest would raise rent to be shared equally together with rent from the Kariobangi property.

6. What comes out from the averments and submissions is that the parties have failed to comply with the orders relating to the two properties due to the acrimony existing between; the two families are represented by the two administrators. The 1st administrator seeks to collect rent for Kamukunji to the exclusion of the 1st family, and occupation of residences on ground, 1st and 2nd floor exclusively by her family. In her evidence in court she did not wish to have the property sold. She proposes that the other family collects rent from Kariobang property. On the other hand, the 2nd administrator seeks to have an agent collect all the rental income from both properties, pay liabilities and thereafter share the balance of proceeds equally among beneficiaries.

7. Having considered the matter and the reality of the situation on the ground I am of the considered opinion that there is need to review the orders in order to achieve the intent of the ruling of Ougo J in its entirety, be fair to all parties and to bring a closure to this matter which has dogged the beneficiaries for the last 12 years.

8. There is much acrimony as evidenced by the averments of the parties such that to expect the two household to manage the two income generating assets, pay outgoings, including tax & other liabilities and distribute the balance amongst themselves is not achievable, indeed this has failed since the order issued on 14th of December, 2018.

9. Consequently, I direct and order as follows:

- i. That the two administrators do jointly propose a reputable firm of valuers who will give the court the current value and income from the two properties.
- ii. Should the parties fail to jointly agree each to propose two valuers of repute and give their respective profiles to enable the court settle on one.
- iii. The rent from Kariobangi and Kamukunji properties will henceforth be collected by an estate Agent to be agreed upon by the parties, who will manage the same, pay any outgoings, agree with the Administrators on how to settle the tax liabilities and share equally among beneficiaries the balance thereof.
- iv. Should the parties fail to agree on an Agent each to propose two names, and give relevant profiles to allow the court settle on one.
- v. For avoidance of doubt the 1st administrator will occupy only the 1st floor of Kamukunji as ordered by Ougo J on the 14th of December 2018, for now I decline to vary the said order so that occupation of any other portion by a beneficiary ought to attract rent.
- vi. In the interest of justice and in order to bring this matter to a closure the parties do make further submissions on how to distribute the two assets amongst the two household.
- vii. The proposals in line with order 9,(1),(ii) and (iii) and (iv) be presented to court within 7 days of the date hereof.
- viii. Submissions in line with order 9 (vi) be filed within the next 30 days of the date hereof.

DATED AND DELIVERED IN NAIROBI ON THIS 13TH DAY OF FEBRUARY, 2020.

ALI-ARONI

JUDGE