



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO.38 OF 2008**

**IN THE MATTER OF THE ESTATE OF FRANCIS KAMBO NDIRANGU (DECEASED)**

**HANNA WANJIKU KAMBI.....OBJECTOR/APPLICANT**

**-VERSUS-**

**DORCAS WAIRIMU KAMBO.....PETITIONER/RESPONDENT**

**RULING**

1. This is a ruling on application dated 29<sup>th</sup> May 2019. It seeks to restrain the respondent herself, servants or agents from collecting rent from **LR No.451/16/111** pending valuation and distribution; further that he be ordered to file and explain the arrears of rent on the property **LR No.451/16/111** known as **Makambo House**.
2. Grounds on the face of the application are that the respondent is in abuse of the limited Grant of *Ad Colligenda Bona* where he collects rent but does not put it to the estate of the deceased.
3. Further that the objector has children who still attend school and need money for school fees and upkeep from the estate; that the said property is the only property of the deceased and objector has no other source of income.
4. The application is supported by affidavit of **Hannah Wanjiku Kambo** sworn on 29<sup>th</sup> May 2019. She averred that the limited grant gave the respondent powers to collect rent and manage the deceased's property known as **L.R.No.451/16/11(Tile I.R 6966 Nakuru** known as **Makambo**)
6. She averred that the conduct of the respondent is prejudicial to the beneficiaries of the deceased's estate as the estate is at the risk of being wasted. She further averred that the status quo is unfair not only to her but to other beneficiaries.
6. That the respondent has been collecting rent and spending on personal needs and that it is necessary to preserve the property and for the respondent to give account of arrears.
7. In response, the respondent/petitioner filed replying affidavit dated 18<sup>th</sup> June 2019. She averred that the applicant is the petitioner and holder of letters of administration; that she filed application for confirmation of grant and sought to be declared sole beneficiary of the estate. That following her protest, the court found that the property could not be distributed as it had not been valued.
8. That the court directed that the property be valued before distribution but applicant being the administrator of the estate has not procured a valuer to value the property; that she has not established cost of valuation and the distribution is incomplete on account of her lethargy.
9. Respondent further averred that the applicant sold motor vehicle registration number RVC418 Toyota Celica and never accounted for the money and further that she has been utilizing plot **no.326/1 Ngongongeri Farm** in **Njoro** and has never accounted for proceeds.
10. She further denied that she administers the estate and stated that the parcel of land LR No.451/16/11 was jointly owned by their late husband and his brother a fact admitted by the applicant and was noted by court.
11. In respect to issue of school fees, she stated that the applicant has not explained what she has been doing with the farm in Ngongongeri.
12. She averred that their deceased husband left her at LR No.451/16/111 and applicant at the farm in Ngongongeri.

13. She concluded that the application is made in bad faith and it is an attempt to make up for failure to procure a valuer.

**ANALYSIS AND DETERMINATION**

14. Record show that the applicant herein filed petition describing herself as deceased’s widow and was issued with temporary grant in June 2010. The respondent filed a protest describing herself as sole widow and had obtained limited grant of administration (*ad litem*) on 3<sup>rd</sup> September 2008.

15. I note from that Grant of letters of Administration *Ad colligenda Bona* attached that it was issued to respondent/petitioner on 3<sup>rd</sup> September 2008 for purposes of collecting rent and managing property known as LR. No 451/16/111 Makambo. The respondent has not denied that she has been collecting rent.

16. The applicant’s contention is that, the respondent is collecting rent and putting it in her personal use. From the judgment delivered by **Justice Ndungu** following protest filed by the respondent, the court directed that each party file affidavit stating size and value of each property for court to be able to make fair assessment. The judgment was delivered on 3<sup>rd</sup> February 2012.

17. The respondent alleges that the distribution of the estate has delayed due to failure by the applicant to engage a valuer. However from the judgment delivered on 3<sup>rd</sup> February 2012, it is clear that each party herein had a role to play in ensuring determination on distribution of the estate of the deceased. Respondent is blaming applicant for failing to engage surveyor. From the judgment both are to blame for the delay in disposal of this matter. I however find that there is need to ensure that the estate is not wasted during the pendency of this matter.

18. I therefore find it appropriate to direct the respondent to avail accounts for the estate since she started collecting rent as holder of letters of Administration *Ad Colligenda bona*; the accounts will assist the court to establish whether the estate is being wasted.

**19. FINAL ORDERS**

1. The respondent to file statement of accounts in respect of rent received from 3<sup>rd</sup> September 2008 within 30 days from the date of this ruling.
2. Further directions to be given by the court after filing of statement of accounts by the respondent.

**Ruling dated, signed and delivered at Nakuru this 6<sup>th</sup> day of February, 2020.**

.....

**RACHEL NGETICH**

**JUDGE**

**IN THE PRESENCE OF:**

Jeniffer – Court Assistant

No appearance for Applicant

No appearance for Respondent