



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 72 OF 2016

SARAH WAMBUI MUIRI.....1ST APPLICANT

STEPHEN IRUNGU MUIRI.....2ND APPLICANT

-VERSUS-

DAVID KARIUKI MUIRI.....RESPONDENT

RULING

This ruling is in respect of an application dated 14 June 2019 in which the applicants are seeking variation of the order of this Honourable Court made on 12 October 2016; according to that order, the applicants and the respondents were appointed as joint administrators of the estate of the late Francis Muiiri Ngacha alias Hudson Muiiri Ngacha who died intestate on 27 June 2013. They have also sought to have all the income accruing and due to the deceased's estate paid to the 1st applicant.

The 1st applicant is the surviving widow of the deceased and the 2nd applicant and the respondent are two of the deceased's ten children.

On 12 October 2016, the three of them were appointed joint administrators of the estate of their departed relative.

A little less than six months after this appointment, more particularly on 28 February 2017, the 1st applicant applied to have the order of 12 October 2016 reviewed to the extent that Gladwell Wanjiru Mucheru be appointed and added to the list of administrators. In the affidavit in support of the application, the applicant described Gladwell as her daughter-in-law who, in her opinion, related well with all the deceased's children. She also expressed her reservations on the respondent being appointed as an administrator of the estate.

For reasons given in the ruling I delivered on 18 May 2018, I dismissed the application and in the same breath I ordered the administrators to produce a full and accurate inventory of the assets and liabilities of the deceased's estate and a full and accurate up-to-date account of all dealings relating to the estate. In order to resolve all disputes arising out of this estate and bring this matter to a close, I also directed them to file the summons for confirmation of grant notwithstanding that six months had not lapsed since the grant took effect.

The present application is no different from the previous application that was dismissed to the extent that it seeks a review or variation of the order of 12 October 2016. The only difference, this time round, is that apart from the order for review or variation of the order, the applicant also wants to access all income due the estate. The other difference, as far as I can see, is the reason for review or variation; she is saying that the respondent has been uncooperative as a joint administrator as a result of which the joint bank account which this Honourable Court ordered to be opened and in which the income due to the estate was to be preserved has not been opened.

The respondent opposed the summons by way of a replying affidavit in which he has denied that he is the responsible for the delay in the opening of the account; he instead accuses the applicants for colluding with an officer from the bank in which they intend to open the bank account to frustrate him in some way.

As it was in the application dated 28 February 2017, the rest of the arguments for and against the application are arguments that are to do with the distribution of the deceased's estate which may very well be canvassed in the confirmation proceedings. The submissions filed, more or less regurgitate the arguments that were posed in the previous application.

With these state of affairs, I would be of the humble view that if the applicants or any of them was not satisfied with the decision of the court of 18 May 2018, the proper cause would have been to appeal against it rather than file an application similar to the one that was earlier dismissed. To the extent that they have done so, their present application is largely an abuse of the court process.

My little experience with this sort of matters is that until such a time that the estate is distributed and the administration of the estate is complete, there are bound to be applications and counter-applications over one issue or the other. More often than not, these secondary contests tend to cloud the primary task with which the Court ought to be concerned which is to ensure that, in the ultimate, the administration of the deceased's estate which, no doubt includes its distribution, is properly done and, at any rate, the administration strictly complies with the law.

It is for this very reason that at the conclusion my ruling of 18 May 2018, I allowed the administrators to take immediate steps to file summons for confirmation of Grant notwithstanding that six months had not lapsed since the grant took effect; my order to this end was informed by the need to bring this matter to an expeditious conclusion and, in the process, avoid a multiplicity of applications that, to a greater degree, are unnecessary and which only serve to delay the determination of the cause.

The respondent appears to have taken cue and filed the summons for confirmation of Grant on 3 September 2018; the same is dated 31 August 2018. On their part, the applicants filed their own summons for confirmation of Grant dated 26 November 2018.

Apart from the two summonses, there is an affidavit of protest by John Ngacha Muiiri, one of the deceased's children; the affidavit was sworn on 9 July 2019 and filed on 10 July 2019.

The summonses and the protest are what, in my humble view, this Honourable Court ought to be more concerned with for the simple reason that their determination will not only determine all the issues that have been raised in the present application but will also, hopefully, bring this cause to a fruitful conclusion.

I therefore direct that this cause be mentioned on 15 July 2020 for directions on the hearing of the summonses for confirmation of Grant and the protest against them. For the reasons I have given and for avoidance of doubt, the applicants' summons dated 14 June 2019 is dismissed. Costs shall be in the cause.

Signed, dated and delivered this 10th day of July, 2020

Ngaah Jairus

JUDGE