



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 50 OF 2017

IN THE MATTER OF THE ESTATE OF JORAM NJENGA MBUGUA (DECEASED)

JANE WANJIRU NJENGA.....2nd ADMINISTRATOR

VERSUS

MARY WANJIKU NJENGA.....1ST ADMINISTRATOR/OBJECTOR

ELIZABETH WANJIKU MBUGUA.....BENEFICIARY

RULING

1. The 2nd administrator raised issue with the manner in which the income generating properties of the estate were being managed. Through her counsel Ms. Kinuthia the court was told that the 1st administrator was solely collecting rent from the four properties namely:

- i. Title No. Mau Summit/ Molo Block 1/941 (Mutirithia)**
- ii. Title No. Mau Summit/ Molo Block 1/547 (Mutirithia)**
- iii. Title No. Mau Summit/ Molo Block 1/356 (Mutirithia)**
- iv. Title No. Mau Summit/ Molo Block 1/430 (Mutirithia)**

The 2nd administrator proposed that an estate agent be agreed upon or be appointed by court.

The 2nd Administrator in Affidavit sworn on the 24th of July 2020 on the appointment of an estate agent, stated as follows:

- a. Pursuant to the Court's direction on the 7th of July 2020 where the Court directed that parties propose an estate agent to collect rent from the properties generating income for the Honourable Court to consider, the parties were unable to agree.***
- b. The rent from the premises is collected by the 1st Administrator. Since the demise of the deceased, the rent has not been accounted for and such it is only fair and just that the same be collected by an agent pending the hearing and determination of this cause***
- c. The income realized ought to be utilized by all the beneficiaries and not one as is the current state of affairs.***
- d. Muigai Commercial Agencies Limited, Nakuru to collect rent from the said premises pending the conclusion of this matter. To avoid wastage of the estate herein and especially the said property, its only fair that this Honourable Court appoints the said agents***
- e. The beneficiaries from the first house which she hails from are agreeable to the appointment of the said estate agents***
- f. There is no personal interest leading to the proposal of the said agents. The proposal arises from good reputation of the said estate agents***
- g. There has never been any objection by the 1st administrator on appointment of the said estate agents and neither has she proposed who she prefers***

2. The 2nd administrator responded vide the affidavit sworn on the 29th of July 2020 stating as follows:

a. The Affidavit of the 2nd Administrator is full of lies as she proposed Muigai Commercial Agency be allowed to collect rent from the income generating properties from the Estate of the deceased which suggestion they did not agree and this Court ordered the 1st Administrator to file their affidavit to give a clear picture on the ground

b. The 2nd Administrator is well conversant with what is on the ground and is misleading Court as immediately after the burial of the deceased on the 27th of November 2015, in December of the same year, the 1st Administrator convened a meeting at the home and handed over properties to the beneficiaries as was directed by the deceased and is shocked that the 2nd Administrator indicated that she had been collecting rent.

c. The true picture is that:

i. Title No. Mau Summit/ Molo Block 1/941 (Mutirithia) is collected by the 2nd Administrator from the 12th of August 2019 when the owner Samuel Gituanja Njenga passed away (who is from the 1st family)

ii. Title No. Mau Summit/ Molo Block 1/547 (Mutirithia) is collected by Joseph Njuguna Njenga from the 1st family

iii. Title No. Mau Summit/ Molo Block 1/356 (Mutirithia) is collected by Mary Wanjiku Njenga, Dennis Mbugua Njenga and Vincent Njogu Njenga from the 2nd family

iv. Title No. Mau Summit/ Molo Block 1/430 (Mutirithia) is collected by Peter Ndichu Njenga from the 1st family

v. Mau Summit Shopping Centre Plot (without title) is collected by Elizabeth Wanjiru Mbugua from the 1st family.

vi. The Honourable Court can summon the beneficiaries and cross examine them if this is not true and correct picture.

vii. The 2nd Administrator is a beneficiary of the rent of the rent collected from his late brother's property since 12th of August 2019 and should stop pretending to be an aggrieved party

viii. The 4th and 5th income generating properties are collected by the 1st family where the 1st Administrator hails from and they are not agreeable to the appointment of an estate agent to collect rent on their behalf and indeed there was no meeting held to come to an agreement as purports the 2nd Administrator

ix. She has a son who uses part of the proceeds from the rent collected as school fees which was his father's wishes

x. The 2nd Administrator is selfish and only wants to cause mayhem in the family which her late husband and her father left intact and peaceful.

3. The issue is whether on the affidavit evidence before me the orders sought on the appointment of an Estate Agent can issue.

4. It is evident from the two rival affidavits that the two administrators are not administering the estate together. It is either that the 2nd administrator is collecting all the rent, or that beneficiaries to the estate including the 1st administrator are collecting rent from these properties. It is the word of one administrator against that of the other one.

5. The 2nd administrator has stated on oath that what the 1st administrator is saying is not true. She has given names of the beneficiaries collecting the rents, and according to her, that is in accordance with the wishes of the deceased.

6. It is evident that the issue at hand is the distribution of the estate which will not be resolved by interim measures.

7. Hence, instead of going round in circles over these issues I direct that the Summons for Confirmation of Grant dated 15th December 2018 and the objection (which is a protest against the proposed distribution) dated 30th January 2019 be heard at the earliest so as to settle these issues once and for all.

8. Parties to agree on a date for viva voce evidence

Delivered, signed and dated at Nakuru this 8th October 2020

Mumbua T Matheka J

Via ZOOM.

Present:

CA Edna

For 1st Administrator N/A

For 2nd Administrator Ms. Kinuthia

Ms. Kinuthia: We can take directions for the hearing. I will serve.

Court: Within 21 days hereof:

1. Each party mentioned as collecting rent to file an affidavit of accounts on the property they are collecting for.
2. Parties are at liberty to file and exchange witness statements and any relevant documents they wish to rely on.
3. Mention on 2nd November 2020 for compliance.
4. Ms. Kinuthia to serve

Mumbua T Matheka J

8th October 2020