



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**SUCCESSION CAUSE NO. 134 OF 2014**

**IN THE MATTER OF THE ESTATE OF SEBASTIAN KAGOCHE M'NJAU ALIAS SEBASTIAN KAGOCHE ALIAS SEBASTIANO KAGOCHE ALIAS M'NJAU SEBASTIAN (DECEASED)**

**PATRICK KIVUTI MURIITHI.....APPLICANT**

**VERSUS**

**TARACISIO NYAGA KAGOCHE.....1<sup>ST</sup> RESPONDENT**

**PETER MUCHANGI MURIITHI.....2<sup>ND</sup> RESPONDENT**

**AND**

**VICTORIA MUCECE GICHUNGE.....INTERESTED PARTY**

**R U L I N G**

1. This is the application dated 26/02/2018 seeking for orders that the 2<sup>nd</sup> respondent be ordered to give a comprehensive account of all the monies received and any amount due from the sale of **Embu/Municipality/62** up to the date of this application. It also seeks that the 1<sup>st</sup> interested party to be ordered to provide a full and accurate account of all the monies paid to the 2<sup>nd</sup> respondent and due from the purchase of Embu/Municipality/62.
2. The grounds supporting the application are that the 1<sup>st</sup> respondent who is the administrator of the estate of the deceased while the 2<sup>nd</sup> respondent is a beneficiary and a trustee on his own behalf and that of his six (6) siblings who are all children of the late Venjerina Muthanje Muriithi who include the applicant. The first interested part is the purchaser of LR. Embu/Municipality/62 one of the assets in this cause.
3. The 2<sup>nd</sup> respondent is said to have received part of the sales of the property for his benefit and that of his siblings but has refused to account for the said funds. It was stated that the 1<sup>st</sup> interested party purchased the property and paid the administrator who in turn released to the 2<sup>nd</sup> respondent part of it being the share for the applicant and his siblings. The applicant states that the 2<sup>nd</sup> respondent despite demand has failed/refused to account for the funds paid to him.
4. The fear of the applicant and his siblings is that the 2<sup>nd</sup> respondent is likely to disinherit them of their rightful shares in the estate by denying them proceeds of their late mother's share in the said estate.
5. The applicant states that he has information the property was sold at Kshs. 16,000,000/= and that the 2<sup>nd</sup> respondent received Kshs. 1,454,454/= for himself and siblings of the late Venjerina Muthanje. The applicant states that his siblings and himself are entitled to Kshs. 1, 246,752/= and states in the supporting affidavit that he has authority to swear the affidavit on their behalf.
6. The 2<sup>nd</sup> respondent denied having been paid the proceeds for himself and his siblings. He deposes that some of his siblings cooperated with him and signed for their shares while others declined to receive the funds available. It is stated that the balance of the purchase price is yet to be paid. He further states that the amount available for him and his siblings is not Kshs.1, 454,545/= but Kshs. 988,165/= which is still available. The amount reduced because the purchaser had to pay the County Government rates and other dues from the purchase price.
7. The 2<sup>nd</sup> respondent says the applicant's money is still held by the purchaser but those siblings who signed were paid their shares.
8. The 1<sup>st</sup> respondent did not file any replying affidavit. Neither did the interested party who is said to be the purchaser.

9. In this cause, the grant was confirmed distributing the assets to the beneficiaries. The confirmation was done by consent of the parties. It is not in dispute that all the beneficiaries agreed to the shares each was to get. The certificate of confirmation dated 7/02/2017 was issued in this cause.

10. The applicant, the 2<sup>nd</sup> respondent and his five (5) siblings were to take the share of their late mother Venjerina Muthanje Muriithi in several properties alongside other beneficiaries who are the children of the deceased.

11. The applicant annexed a copy of the sale agreement between the administrator Tarasisio Nyaga Kagoche and eight beneficiaries who include the 2<sup>nd</sup> respondent on one hand and the interested party Victoria Mucece Gichenge dated 17/12/2014. The purchase price was Kshs. 16,000,000/=. The 2<sup>nd</sup> respondent did not oppose the figure of the purchase price shown herein.

12. The agreement signed by all the beneficiaries demonstrates that the plot was sold by consent of all the parties with a view of sharing the proceeds based on the shares in the grant.

13. From this application and from other records in this cause, it seems that the grant has not been fully implemented. The administrator has a legal obligation to ensure smooth transmission of the shares to all the beneficiaries as per the grant. It is his duty to ensure that the grant is implemented to the letter as well as any other orders of the court that may be made after the grant.

14. The applicant filed an application after the grant was confirmed, to be included as a co-trustee with the 2<sup>nd</sup> respondent for themselves and the rest of the children of the late Venjerina Muthanje Muriithi. The application was allowed on 26/11/2016. The applicant is therefore possessed of the capacity to defend his legal interest in the estate as well as that of his siblings from the date he was appointed a co-trustee.

15. In his replying affidavit, the 2<sup>nd</sup> respondent states that some beneficiaries in the house of Venjerina were paid their entitlements from the proceeds while others declined to sign and collect.

16. Those named as having signed for their funds are: -

1. Peter Muchangi – 2<sup>nd</sup> respondent
2. Anderson Murage
3. Florence Wanja
4. Beatrice Wanjiku Munene

17. In a joint affidavit sworn on 11/09/2018 by Martin Kariuki, Florence Wanja and Dennis Mukundi, it is denied that any proceeds have been paid to them.

18. The 2<sup>nd</sup> respondent did not attach any documents to show that some of the siblings have been paid. It remains doubtful that any payment has been disbursed to the beneficiaries in the house of Venjerina, may be except to the 2<sup>nd</sup> respondent himself.

19. The dispute herein is only in respect of the amount the house of Venjerina was entitled to and as to how much each of them ought to receive. The 2<sup>nd</sup> respondent said the amount reduced because the purchaser paid the County Government rates from the purchase price.

20. However, the purchase agreement does not support this argument. The purchase price was to be cleared in installments with the final one of Kshs. 14,700,000/= being payable on execution of the transfer documents. Once again, this is a duty of the administrator to ensure transmission to the beneficiaries or to other persons as agreed by the beneficiaries.

21. The 2<sup>nd</sup> respondent did not annex evidence to show whether the final instalment has been paid. The 1<sup>st</sup> respondent who is the administrator and who is possessed of the legal powers and duties to execute the grant did not oppose this application or even volunteer an information to assist this court in determining this application.

22. I reach a conclusion that the applicant has demonstrated that there is a dispute on the amount received in respect of LR. Embu/Municipality/62 for the share of the house of Venjerina Muthanje Muriithi. It has also not been demonstrated that the respondents have not disclosed the relevant information on the sale proceeds in regard to the share of Venjerina Muriithi to which the applicant is a co-trustee with the 2<sup>nd</sup> respondent.

23. I am of the considered view that both the administrator and the 2<sup>nd</sup> respondent in his capacity as the sole trustee of the house of Venjerina Muriithi at a time of execution of the agreement, are duly bound under the law to produce accounts for the benefit of the beneficiaries.

24. It was observed in the matter of **The Estate of Nyamo Mariko M'Ibiri (deceased) Meru HC Succession Cause No. 368 of 2008** in a case with similar facts that: -

**Accordingly, as a Trustee, the administratrix are under the equitable jurisdiction, the trustee must produce accounts of his or her stewardship of the trust to the beneficiaries.**

25. The 2<sup>nd</sup> respondent never rendered accounts to the beneficiaries before asking them to go and sign for amounts of money that was disputed. It is not known how much funds the administrator released to the 2<sup>nd</sup> respondent because he avoided participating in this application.

26. The interested party is bound by the terms of the agreement and has no obligation to the applicant herein in so far as the proceeds of sale are to be shared. I find no fault on her part in regard to this application.

27. I hereby allow this application against the respondents in terms of prayers 1 and 2.

28. The respondents are hereby ordered to file and serve the relevant accounts within twenty-one (21) days.

29. It is hereby so ordered

**DELIVERED, DATED AND SIGNED AT EMBU THIS 17<sup>TH</sup> DAY OF JANUARY, 2019.**

**F. MUCHEMI**

**J U D G E**

**In the presence of: -**

**Ms. Muthoni for Administrator**

**Ms. Maina for A.P. Kariithi for 2<sup>nd</sup> Respondent**

**Mr. Ngige for Ndorongo for Applicant**