



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 3120 OF 2013

IN THE MATTER OF THE ESTATE OF JANE NJERI KINUTHIA (DECEASED)

RULING

1. The deceased herein Jane Njeri Kinuthia whose estate these proceedings relate died intestate on 21st November 2012 leaving behind the following survivors:

- (a) John Njenga Kinuthia – Son**
- (b) Teresia Wairimu Kinyanjui – Daughter**
- (c) Samuel Chaga Kinuthia – Son**
- (d) Margaret Nyokabi Remne – Daughter**
- (e) Julius Mukuria (Deceased)**
- (f) Lucy Wanjiku – Daughter**

2. Vide a notice of motion dated 10th February 2014 and filed on 4th May 2014 through the firm of Bowyer Mahihu and Co. Advocates, the petitioners sought court's leave to serve a citation through substituted service upon one of the beneficiaries one John Njenga then residing in Stockholm Sweden to accept or refuse taking letters of administration intestate. On 9th July 2014, leave to effect service of the citation dated 3rd February 2014 was granted directing service through courier services.

3. Despite service of the said citation through DHL Courier Services, the citee did not file any response as required under Rule 21 (5) of the Probate and Administration rules. However, before directions could be given on the the status of the citation, the citors filed a petition on 10th February 2016 seeking a full grant of letters of administration intestate.

4. On 13th September 2016, the firm of Bowyer Mahihu wrote to the Deputy Registrar requesting for gazettelement of the estate. On 11th October 2016, the firm of Mudeshi Muhanda filed a notice of change of advocate thus replacing the firm of Bowyer Mahihu on behalf of some beneficiaries referred as belonging to the house of Jane Njeri.

5. On 27th October 2016, the firm of Bowyer Mahihu filed a notice of motion dated 26th October 2016 seeking leave to cease acting for the petitioners on grounds that, they had no further instructions to continue appearing and that some beneficiaries/petitioners had instructed the firm of Muhanda to represent them.

6. Before the application by Bowyer could be heard to cease acting, some petitioners/beneficiaries filed a chamber summons dated 6th November 2018 seeking orders as follows:

- (1) That the honourable court do issue an order directing the firm of Bowyer Mahihu and Co. Advocates who were the former advocates of the beneficiaries of the estate of Jane Njeri Kinuthia to render accounts relating to all monies received by them in relation to the estate between the period 2013 to date.**
- (2) That the honourable court do issue an order directing the firm of Bowyer Mahihu and Co. Advocates to refund and or surrender any money being held by them on behalf of the beneficiaries of the estate of Jane Njeri Kinuthia.**
- (3) That this honourable court be pleased to grant any further orders that it may deem fit.**

7. In response, the firm of Bowyer filed what is titled as a further affidavit sworn by Agnes Kemunto an advocate in the said firm thus denying any misappropriation or wastage of part of the estate. M/s Kemunto averred that the firm had previously represented the petitioners and the deceased herein in succession cause No. 2636/2006 where the petitioner's father was the deceased and the deceased in this succession cause (cause no.3120/13) as the widow/beneficiary.
8. Further, she stated that the firm of Bowyer was given instructions by the petitioners to receive money on behalf of the estate of their late father after instituting succession case No. 2636/06 which mandate continued up to 2012 when the deceased herein died and thereafter till Muhanda Advocates took over in the year 2016.
9. They admitted having received instructions to receive and accept dividends/ proceeds from a company known as Thathini Investment Ltd on behalf of the deceased herein from her late husband's estate before and after her death. That the said proceeds were sent to the family for the upkeep of the widow (the deceased herein). They attached a statement of accounts reflecting the amount received, how much was spent and therefore exhausted the fund thus reflecting nil account.
10. Before hearing the application to cease acting filed by the firm of Bowyer, the petitioners invited the court to address the application dated 6th November 2018 in which Bowyer was requested to account for the money received while acting for the petitioners (estate). When the matter came up for hearing on 5th March 2019, the firm of Bowyer was not represented hence the matter proceeded ex parte.
11. What is before me for determination in respect to the application dated 6th November 2019 is; whether the firm of Bowyer should account for the money received from Thathini Co. Ltd for the period 2013 to date. The firm of Bowyer does not deny receiving various amounts of money over a period of time. Unfortunately, despite the petitioner's response to the statement of accounts attached to a further affidavit by Bowyer advocates, they did not tell the court how much was received by the firm of Bowyer, how much was disbursed to them and how much is due from the law firm. Ideally, the amount received for and on behalf of the estate ought to have been preserved pending directions from the court.
12. The claim herein is a clear case of intermeddling with the estate by both the petitioners and the firm of Bowyer. The mandate of the firm of Bowyer to receive dividends from Thathini Co. Ltd on behalf of the estate was not sanctioned by the court. It was a local arrangement between the petitioners and the said law firm.
13. Unfortunately, the petitioners' response to the statement of accounts tendered by the law firm was not countered with any specific figures due and owing. In the circumstances, there is need for the parties to reconcile the figures through an independent auditor who will then table a properly audited accounts report. After receiving the report reflecting the actual amount received by the firm of Bowyer, the petitioner will then file advocates – client Bill of Costs which shall determine the legal fees payable for the services rendered by Bowyer. Then, the balance if any shall be remitted by Bowyer and Company Advocates to the estate for distribution amongst the beneficiaries.
14. For the above reasons stated, the application of Bowyer advocates dated 26th October 2016 seeking to cease acting for the petitioners shall remain in abeyance till the accountability exercise is complete.
15. Regarding the status of the citation and the citee having been served but failed to file response in accordance with rule 21 (5) of the Probate and Administration rules, and; further considering the fact that the citors have petitioned for a full grant which is not opposed, and; in exercise of court's inherent powers conferred upon this court, under rule 73 of the Probate and Administration rules, I do direct that the petition herein filed by the petitioners be gazetted in the Kenya Gazette forthwith in order to fast track issuance of a grant of letters of administration intestate which has stalled since 2014.
16. Accordingly, the application dated 6th November 2018 be and is hereby allowed with orders that:
- (a) Within 30 days from the date of delivery of this ruling, the petitioners and the firm of Bowyer and Mahihu Advocates to appoint a jointly agreed accountant (auditor) who will reconcile the amount of money received from whatever source by the firm of Bowyer and Mahihu Advocates for and on behalf of the estate herein for the period 2013 till the time he ceased receiving any monies on behalf of the estate.**
 - (b) That the appointed auditor shall then compile his/her report and file the same in court within 30 days from the date of appointment.**
 - (c) That the amount so arrived at shall be remitted to court by the firm of Bowyer and Mahihu Advocate less their legal fees for their legal services after subjecting it to taxation by the taxing master.**
 - (d) That the Deputy Registrar shall facilitate gazettelement of the estate herein based on the petition/application filed lodged by the petitioners for grant of letters of administration intestate.**
 - (e) That upon gazettelement, letters of administration shall issue to the petitioners jointly.**
 - (f) Each party to bear own costs.**

DATED, DELIVERED AND SIGNED, AT NAIROBI ON THIS 3RD DAY OF APRIL, 2019.

J.N. ONYIEGO

(JUDGE)