



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 4 OF 1986

IN THE MATTER OF THE ESTATE OF JOSPHAT DAUTI KIBANGA (DECEASED)

JOSEPH MUTEGI KIBANGA.....PETITIONER

-VERSUS-

EUNICE KIBANGA IGOKI.....OBJECTOR

IMELDA ARENDI KIBANGA.....ADMINISTRATIX

- AND -

JOSEPHINE IGOKI KIBANGA.....1ST RESPONDENT

LEONARD MUTHEE KIBANGA.....2ND RESPONDENT

JANE KAIMURI MWANGI.....1ST APPLICANT

JOYCE TIRINDI KIBANGA.....2ND APPLICANT

REBECCA GACHOGA MUTEGL.....3RD APPLICANT

R U L I N G

1. This matter relates to the estate of **Josphat Dauti Kibanga (“deceased”)**. On 6th May 2010, Grant of Letters of Administration of the estate were issued to **Imelda Karendi Kibanga (“the Administratrix”)**. Before me now are three applications; 2 filed by the applicants against the Adiministratrix and one filed by the Administratrix against the applicants.
2. The 1st application is a **Summons** dated 17th November, 2017 for **Revocation/Annulment of Grant** made on 20th May, 2010 to the administratrix and to appoint **Rebecca Gachoga and Jane Kaimuri Mwangi** as joint administrators.
3. The gist of the application is that since the confirmation, the Adiministratrix has ignored, neglected and/or refused to proceed diligently to complete the distribution of the estate. That the administratrix has been bullying and/or harassing the beneficiaries by dealing with the estate of the deceased in a manner adverse to their interests.
4. The application was opposed vide a Replying Affidavit filed by the Adiministratrix on 27th February, 2018, in which she denied the allegations made by the applicants. She deposed that after her Co-Administrator died in 2011, his widow refused to give her a copy of the death certificate to enable her make an application to be allowed to administer the estate solely until 2015.
5. That, the refusal to give her the Certificate of Death was part of the applicants’ scheme to delay the finalization of the matter. However, according to her, she had made progress in the distribution of the estate, including; applying for the confirmation of grant; selling off plot no. 10 Mikinduri market and sharing the proceeds thereof; subdivision of all the parcels of land in accordance with the grant and visiting Kenya Breweries to follow up on the issue of shares.
6. It was submitted for the applicants that since the Grant was confirmed, the adiministratrix had not completed the administration of the estate 7 years later which had led to the wastage of the estate. That she had failed in her duties when she instructed the tenants to deposit rent directly into her personal account.

7. On the other hand, it was submitted for the Adiminstratrix that all the applicants had ganged up against her. That the Adiminstratrix had substantially distributed the estate and had opened an estate bank account despite spirited opposition by the applicants.

8. I have carefully considered the affidavits on record and the rival submissions by the parties. Circumstances under which a confirmed grant may be revoked/annulled are provided for under **section 76 of the Law of Succession Act CAP 160 of the Laws of Kenya**. It is not in dispute that this matter has been in court for the last 32 years having been filed in 1986. It is also not in dispute that the initial grant had been issued to the Petitioner, now deceased, and the Adiminstratrix in 2010. The Petitioner passed on in 2015, when the Adiminstratrix was made the sole Adminisratrix of the estate.

From the foregoing, it has been 7 years since the grant was confirmed.

9. No doubt 7 years is a long period for the estate to remain still under administration. I am unable to accept the explanation given by the administratrix for the delay. There is no evidence on record to show that the administratrix had approached the court for assistance when the applicants allegedly became recalcitrant or when she faced resistance or difficulties in effecting the confirmed grant. An administrator of an estate is duty bound to move with speed after confirmation of grant to effect the grant. Indeed, the administration of the estate is expected to be completed within six months of the confirmation of grant. In this regard, 7 years is not only inordinate but unacceptable.

10. All that the Administratrix was able to state was that she had actually caused a substantial estate of the deceased to be distributed. That out of the 7 properties available for distribution, she had managed to distribute 4 of them, to wit, **Mikinduri Plot No. 10, L.R NO Kiirua/Naari/1584, L.R NO. Nthimbiri/Kiutha/104 and L.R NO.Nthimbiri/Kiutha/192**. This allegation was not denied or challenged.

11. Taking into totality all the circumstances of this case, I am not satisfied that the applicants have made a sufficient case for revocation of grant pursuant to **Section 76 of the Law of Succession Act CAP 160 of the Laws of Kenya**. It is not lost on this court that this matter has been in court for the last 32 years and the estate has been substantially distributed. If the court was to revoke the grant at this point in time, it could lead to a further delay rather than hastening the conclusion of this matter.

12. Accordingly, I find the application dated 17th November, 2017 to be without merit and dismiss the same.

13. The **2nd application is dated 9th January, 2018** in which the Adiminstratrix seeks an order that the confirmed grant of letters of administration be rectified in respect of the sharing of **L.R NO. Meru Municipality Block/II/30** and provide that the property be sold and the proceeds be shared equally among the beneficiaries. The grounds for the application are that the Physical Planner who visited the property had recommended that the property could not be divided in the manner proposed in the grant and that the four other beneficiaries namely; **Jane Kaimuri, Joyce Tirindi, Rebecca Mutegi and Leonard Muthee** had all ganged up to frustrate the completion of the distribution of the property.

14. The application was opposed by the replying affidavits sworn by the 2nd Respondent and the 1st applicant on 19th February, 2018 and 27th February, 2018, respectively. It was contended, inter alia, that the **Sectional Properties Act No. 21 of 1987** provides how such properties can be subdivided. That to sell the property which is vastly developed and a source of income for the beneficiaries would not only be detrimental to the livelihoods of the beneficiaries and their dependants but would cause untold psychological trauma to them as they look up to the same for even their future sustenance.

15. With regard to the issue that the property could not be divided as provided for in the grant, the applicants maintained that the same was capable of being divided and should not be altered in any way to accommodate the wishful and selfish machinations of the Adiminstratrix.

16. For the administratrix, it was submitted that since the beneficiaries could not agree on common ownership, it was imperative to go the way suggested by the physical planner appointed by her. That there can be no separate title for each beneficiary. That as a result, the only option was for the property to be sold and the proceeds be shared.

17. On the other hand, it was submitted for the applicants that the instant application was intended to deny the other beneficiaries the property they depended on for a living. That if the Adiminstratrix desired to sell her half portion in the property, she should do so and leave the others uninterfered with.

18. I have perused the certificate of Confirmation of Grant. The subject property was supposed to be distributed as follows:-

“ i. The half plot facing Ghana Street to be shared equally between Leonard Muthee Kibanga and Rebecca Gachoga equally

ii. The other half facing Moi Avenue be shared equally among Imelda Karendi, Jane Kaimuri, and Joyce Tirindi Josphine Igoki with the due share to Josephine Igoki reverting Imelda Karendi, Jane Kaimuri and Joyce Tirindi of their legal representatives upon her death in equal shares”.

19. I have seen a report from Meru County Planning Officer dated 17th February, 2017. In that report, the officer states that subdividing the property would not be tenable due to, inter alia, the zoning regulations which have fixed the minimum recommended portions under the Meru Integrated Strategic Urban Development Plan and the Physical Planning Handbooks.

20. Whereas the Adiminstratrix has proposed that the property be sold and the proceeds be shared equally among the beneficiaries, the applicants have opposed the same saying this would deny them the only source of income. It is clear from the record that there is no dispute with regard to the share facing Ghana Street that is to be shared equally between Leonard Muthee Kibanga and Rebecca Gachoga. The only dispute is on the share between the Adiminstratrix and Jane Kaimuri and Joyce Tirindi.

21. Looking at the report I have referred to, with the greatest respect to the maker thereof, the report is shallow and pedestrian to say the least. In law, properties can be subdivided to the bare minimum possible without touching the property itself or the ground. Under the **Sectional Properties Act** alluded to by the applicants, all that is required is for the subdivision to undertake plans which are then registered with the relevant authorities and Leases therefor issued. The so called bare minimums will be met if the administratrix had bothered to consult a fully qualified and experienced planner. For her to have stuck to such a deplorable and substandard report, it casts doubt on her competence as an administratrix or her bona fides.

22. This court is alive to the averments by the applicants that this is the only source of income that they have. I think a court of law will not be in a hurry to have the estate property disposed off to the detriment of the beneficiaries if there are ways to save the property.

23. In the present case, the administratrix has not tried the application of the **Sectional properties Act** or any other means such as having the property to be under a Trust and be administered for the benefit of all the beneficiaries in accordance with the shares set out in the Certificate of Confirmation of grant.

24. The record shows that the applicants are not averse to having a joint account being opened in their names with the Administratrix whereto the rent collected can be deposited.

25. Accordingly, I do not see any merit in the application. I dismiss the same and direct the parties to procure the services of a competent planner to advise on the applicability of the **Sectional Properties Act** within 30 days. If it is not possible, a joint account in the names of the applicants and the administratrix be opened to be operated jointly by the parties.

26. The third and final application is dated **15th February 2018**. The same has been filed by the applicants against the Administratrix in which the applicants have sought an order of accounts of the estate from the date the Administratrix was appointed to the current date of the account standings and an inventory of all the deceased's property. The application is based on the grounds that the applicants are apprehensive that the estate has been exposed to intermeddling, wastage and misappropriation as no accounts have been rendered since 6th May, 2010. That the Administratrix has directed tenants inhabiting the property to deposit their rent into her personal account without due regard to the other beneficiaries and that further she has undercharged tenants for her own benefit.

27. The application was opposed by the replying affidavit sworn by the Administratrix on 27th February, 2018. She contended that since she was appointed the Administratrix, she had strived to diligently administer the estate but had been met with lots of road blocks from the applicants. That in 2016, the applicants had demanded that rent payable for the front face (one shared among herself, Jane Kaimuri and Joyce Tirindi) be paid to individual accounts and refused her to open a bank account for the estate. That because of that, she decided to open a bank account for the estate and directed all tenants to deposit their rent therein and leased on open air space of the property for outdoor advertising at Kshs 180,000/= which was paid to the bank account as part of the rent.

28. I have carefully considered the rival contentions by the parties. Save for the applicants making general allegations and apprehensions that the estate had been exposed to intermeddling, wastage and misappropriation as no accounts have been rendered since 6th May 2010, there was no evidence of such intermeddling. The allegations remained unsupported.

29. However, since no accounts have ever been filed for the 7 years the estate has been under the administratrix's administration and for the reason that accounting is but a legal requirement, I see no prejudice to require an account and inventory being filed for the period in question. Accordingly, I allow the application and direct that the administratrix do file and serve the accounts and inventory. The Account should be filed and served within 30 days from the date of this order.

30. This being a succession matter involving close family members and in light of the acrimonious relationship that the parties have had in the past, there will be no order as to costs.

DATED and DELIVERED at Meru this 7th day of June, 2018.

A. MABEYA

JUDGE