



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
SUCCESSION CAUSE NO.460 OF 2012
IN THE MATTER OF THE ESTATE OF ROSEMARY
MUKWANJERU KIRIA (DECEASED)
GEORGE WASHINGTON KARIUKI MWANGI.....APPLICANT
VERSUS
PUBLIC TRUSTEE NYERI.....RESPONDENT

R U L I N G

The application before me is the Summons General dated 29/3/18 supported by the affidavit of the applicant George Washington Kariuki Mwangi. It is brought against the Public Trustee Nyeri as the respondent.

He seeks orders: -

a. That this Honourable court do order the Public Trustee Nyeri to release the balance of Ksh. 120,000/- which remained in their custody, and which is his entitlement from the estate of his late wife Rosemary Mukwanjeru Kiria (deceased) as per the judgment delivered on 25/5/2016, that he should receive Ksh. 484,200/-.

In his affidavit he deposes that Justice Mativo found that the estate of the deceased comprised of a total of Ksh. 1,096,627/- being Benefits/Gratuity from Ministry of Health –Ksh. 612,427/- shares from Afya Sacco Ksh. 484,200/-. That the judgment said he was to receive the latter, while the other beneficiary, the former. That on 7/11/2012 Justice Wakiaga had made an order that the sum of Kshs.120,000/- be paid in advance to the daughter the deceased Rhoda Kathambi Kariuki. That the Public Trustee paid him only Kshs. 364,200/- which was less the Kshs. 120,000/- which he had not received to date.

On his part, Public Trustee Nyeri, Mr. L. Okinda filed a replying affidavit sworn on 23/4/18. He pointed out that the Public Trustee was not a party to the Succession Cause or any orders issued by this court hence it was not clear why that office was being sued.

In his replying affidavit he demonstrated that the matter of the deceased had been referred to his office by the Director of Pensions vide the letter dated 1st July 2013. The letter forwarded the cheque of Ksh 612,427. That the applicant and his step daughter filed this cause and obtained orders in the certificate of grant dated 28th May 2016.

Following the court orders the dues from Afya Sacco were transferred to the Public Trustee at his request and what was forwarded was a cheque for Ksh. 353,130, with an explanation that Ksh. 120,000 had been paid to Kenya Polytechnic vide an order on 7th November 2012. The public trustee was not a party to that order. That the applicant had demanded that the Public trustee to deduct Ksh 120,000 from the share of his co beneficiary and pay to him, which demand the public trustee had declined.

That his office had paid out the money it had received.

Further that the orders sought in this application were the same orders that were sought by the applicant in the Summons for Rectification of grant dated 7/12/16 in which this court pronounced itself vide the ruling of 9/1/18 following which the Public Trustee had paid the sum of Kshs. 120,000/- it had held to the co-beneficiary.

I heard the oral submissions of both the applicant and the Public Trustee. I have also perused the affidavits and annexures. The issue is whether the public trustee owes the applicant any money being the sum of Ksh 120,000 as alleged.

I have carefully considered the same. The issue herein in my view is that same issue that the applicant raised in the application of 7/12/16 in which I delivered my ruling on 9/1/18. The only difference now is that the applicant has sued the Public Trustee.

Well, in my considered view, the change of the respondent does not change the fact that the issue is exactly the same.

When I perused the record I noted that Justice Mativo asked for an updated statement of what was due to the deceased as at 14/3/2016. On 1/4/2016 submissions were made to the Judge with regard to the updated statement of Account, and the same was given to court, the order of Justice Wakiaga of 7/11/12 had already issued, and had been effected, and Ksh. 120,000/- had already been paid out as College fees from Afya Sacco. The court was informed by counsel that what was available from Afya Sacco was Ksh 484,200, yet Afya Sacco only had Ksh 353,130, which is what they forwarded to the Public Trustee. The applicant cannot therefore be heard to say that what was paid to the university as at 7/11/2012 was deductible by the Public Trustee from his co-beneficiary's share as no such order was directed to the Public Trustee.

If Afya Sacco said it had Ksh. 484,200/- as at 1/4/16 when the report was made, to court, then the applicant's claim lays with Afya Sacco and not with the Public Trustee who only received the sum of Ksh 353,130 only and not Ksh, 484, 200.

For now, my considered view is that the application is bad in law, an abuse of the court process, and unmerited. The Public Trustee is not holding any balance from the deceased's estate as everything was paid out. The application is dismissed with costs to the Public Trustee.

Dated, delivered and signed at Nyeri this 4th June 2018

Mumbua T. Matheka

Judge

In the presence of:

Court Assistant: Atelu

Applicant: George Washington Kariuki Mwangi -present.

Respondent: Public Trustee- absent