



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 1251 OF 2014**  
**IN THE MATTER OF THE ESTATE OF MUSA NJOROGE NGUGI (DECEASED)**

**EBONY KADII MASHA ..... APPLICANT**

**VERSUS**

**NELLIE WANJIRU NGUGI ..... 1<sup>ST</sup> RESPONDENT**

**JOHN THUO NGUGI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The deceased Musa Njoroge Ngugi died intestate on 5<sup>th</sup> October 2013. He was survived by the following:

- a) Nellie Wanjiru Ngugi – Widow (1<sup>st</sup> respondent);
- b) Ivy Wanjiku Ngugi – Daughter;
- c) June Wambui Ngugi – Daughter;
- d) Christopher Michael Ngugi Njoroge – Son;
- e) Ebony Kadii Masha – Daughter (applicant); and
- f) TMN - Son

A grant of letters of administration intestate was issued to the respondents on 12<sup>th</sup> November 2014.

2. The respondents filed summons for confirmation of grant on 8<sup>th</sup> December 2016. In the affidavit in support of the summons (Form 9), the assets which form part of the estate of the deceased were listed therein together with a proposed mode of distribution. There was also a consent signed by all the beneficiaries agreeing to the listed assets and the proposed mode of distribution. Despite initially consenting to the mode of distribution, the applicant filed an affidavit protesting the mode of distribution through her affidavit of protest dated 6<sup>th</sup> February 2017 and filed in court on 7<sup>th</sup> February 2017. The application for confirmation and the protest are pending.

3. On 14<sup>th</sup> November 2017 the applicant filed a notice of motion dated 6<sup>th</sup> November 2017 seeking orders:

- a) compelling the respondents to furnish her with copies of title documents, search certificate, valuation of immovable and movable properties including shares listed in Form 9;
- b) compelling the financial institutions where bank accounts are held to furnish her with bank accounts balances for purposes of equitable distribution;
- c) compelling the respondents to furnish up to date value of shares held in various accounts as provided in Form 9; and

d) compelling the respondent to actively engage her in the redistribution of the estate of the deceased.

4. The application was based on the grounds that despite repeated requests, the respondents have failed/refused to furnish her with copies of title, search certificates and valuation of immovable and movable properties forming the estate of the deceased; that the negotiations for amicable resolution is practically impossible in the absence of the information sought; and that the applicant has been willing and more than ready to resolve the unresolved issues but the respondent have dragged their feet.

5. The application was supported by the applicant's affidavit dated 16<sup>th</sup> October 2017 in which she stated that upon perusing Form 9 thoroughly and on being guided by her advocates, she felt that the manner of distribution was done to her disadvantage and to the disadvantage of her minor brother TMN; that despite signing Form 37 and 37B, Form 9 which contains all the properties was not provided to her for perusal and confirmation; that she did not have full knowledge of the properties of the deceased; that she did not know the location, size, value and current status of the properties allocated to her and her minor brother under Form 9; that she has requested this information from the administrator to no avail; and that her interests are in fair and equitable distribution and she can only be sure of this if the information requested for is provided.

6. The application was opposed by the respondents through their joint affidavit dated 24<sup>th</sup> November 2017. It was their case that the petition for grant of letters of administration contained all the required documents including recent searches and proof of ownership which documents can be acquired from the court registry; that they do not have a problem providing copies of all the filed documents to the applicant provided they pay to the firm photocopying charges of Kshs.5/= per page; that there was no valuation done and what was indicated was the market value of the properties under paragraph 6 of the affidavit in support of the petition for letters of administration filed on 12<sup>th</sup> May 2014; that they do not have money to carry out valuation of the properties as the estate is not generating any income; that the process of valuation at this juncture would delay the process of confirmation and distribution of the estate; that the amounts in the deceased's bank are as disclosed by the bank upon request and as filed in the affidavit in support of the petition for letters of administration filed on 12<sup>th</sup> May 2014; that the value of shares held by the deceased is public information in the local dailies and keeps on fluctuating and they only gave the value as at the date of filing the petition for letters of administration and application for rectification of grant; and that they have tried to convince the applicant and her lawyer to consider having a meeting where the issues they continue raising can be addressed but they have persistently shunned any meeting.

7. Both parties filed written submissions which I have considered.

8. **Section 83 of the law of Succession** which deals with duties of personal representatives, grants beneficiaries the right to an account from the personal representative who is obligated to account to the beneficiaries in his administration of the estate. The section provides as follows:-

**“83(e) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.**

**(h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.”**

9. Under **section 83(e)** the respondents are supposed to produce to court a full and accurate inventory of the assets and liabilities of the deceased, and a full and accurate account of all dealings therewith up to the date of the account. They contended that they had provided the information in the affidavit in support of the petition for grant and that the rest of the documents can be obtained from the court registry.

10. I further note the finding in **RE ESTATE OF WAINAINA WAITITU (DECEASED) [2015] EKLK** that –

**“Section 79 of the Law of Succession Act vests the property of the deceased in the administrators. That constitutes them legal owners of the property, yet they hold such property not for themselves, but as trustees for all those others interested in it, be they heirs or creditors. They therefore stand in a fiduciary position with regard to the property and in relation to the beneficiaries. As trustees they are accountable to the persons who are ultimately entitled to the assets upon distribution. The applicants, as heirs, are within their rights to call for an account from the administrators.”**

11. I have considered the application and the papers and documents filed by the respondents, both at the time of filing of the petition and in the application for the confirmation of the grant. The applicant is not saying that the properties named did not belong to the deceased. The parcels of land had the requisite searches. A valuation at this stage would be an unnecessary cost to the estate, unless the applicant wants to foot it. The accounts indicated have shown the balances therein. The shares are of companies quoted on the stock exchange, and their values can be easily obtained by the applicant. There is no indication that the respondents have either intermeddled with, or wasted, the estate in any way. There is sufficient information to enable the distribution of the estate of the deceased.

12. I have taken into consideration that on 8<sup>th</sup> December 2016 the applicant consented to the distribution of the estate that had been proposed by the respondents, and the proposal was attached to the affidavit in support of the application for the confirmation of the grant that was filed on the same date.

13. In short, I do not find any merit in the application and dismiss it with costs.

**DATED and SIGNED at NAIROBI this 17<sup>TH</sup> day of JULY 2018**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 18<sup>TH</sup> day of JULY 2018**

**J.N. ONYIEGO**

**JUDGE**