



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 222 OF 2013**

**IN THE MATTER OF THE ESTATE OF PERIS WAMBUI MATIRU (DECEASED)**

VIVIENE NJERI MATIRU.....1<sup>ST</sup> APPLICANT

C T M.....2<sup>ND</sup> APPLICANT

MATILDA RHODA NYAMBURA MATIRU.....3<sup>RD</sup> APPLICANT

VERSUS

VIOLET WANDAHO MATIRU.....1<sup>ST</sup> RESPONDENT

MARGARET WANJIKU MATIRU.....2<sup>ND</sup> RESPONDENT

**RULING**

1. The deceased Peris Wambui Matiru died intestate on 28<sup>th</sup> March 2001 at the Nairobi Hospital. She left her husband Amon Matiru Ngwaci and children:

- a) Viviene Njeri Matiru (1<sup>st</sup> applicant);
- b) C T M (2<sup>nd</sup> applicant);
- c) Grace Njeri Matiru;
- d) Violet Wandaho Matiru (1<sup>st</sup> respondent);
- e) Matilda Rhoda Nyambura Matiru (3<sup>rd</sup> applicant); and
- f) Margaret Wanjiku Matiru (2<sup>nd</sup> respondent).

A grant of letters of administration intestate was issued to Amon Matiru Ngwaci on 26<sup>th</sup> April 2013. The grant was consequently rectified to include the respondents as co-administrators of the estate. On 17<sup>th</sup> August 2016 Amon Matiru Ngwaci died. That left the respondents as the only administrators.

2. The estate left by the deceased comprised:-

- (a) LR No. 209/397/5, Nairobi, which is a double storey building with flats and rooms majority of which are leased; and
- (b) LR No. 8491/1 (IR No. 138588) measuring about 50 acres.

3. In the application dated 26<sup>th</sup> June 2017 the 1<sup>st</sup> and 2<sup>nd</sup> applicants sought to be appointed as administrators of the estate, to co-administer

the estate with the respondents. In the affidavit sworn by Vivienne Njeri Matiru to support the application she stated that the present administrators (the respondents) had disputes among them that made it impossible to have proper management of the estate, hence their request to be joined. It was alleged that the 2<sup>nd</sup> respondent was responsible for the wasting of the estate. It was pleaded that the law allowed for upto four administrators. The application was opposed by the 1<sup>st</sup> respondent who alleged that the 2<sup>nd</sup> respondent has mental illness history and therefore lacks the capacity to administer the estate. She stated that the 2<sup>nd</sup> applicant had been prevented from completing his university education and earning a living throughout his entire life owing to that mental illness. The 2<sup>nd</sup> applicant stated, in response, that he has recovered from the mental illness. The application to have the 1<sup>st</sup> applicant to be joined as co-administrator was not opposed.

4. I do not find that the allegations that the present administrators have either mismanaged or wasted away the estate of the deceased have been materially substantiated.

5. The earlier application dated 19<sup>th</sup> April 2017 was brought by the 2<sup>nd</sup> applicant. The 2<sup>nd</sup> applicant occupies the servant quarters of LR No. 209/397/5 which he is being asked to vacate from. It does appear from the 1<sup>st</sup> respondent's replying affidavit that the beneficiaries sat and agreed on who should get which rent from which flats and rooms, and what rent would go towards the maintenance of the premises. The 2<sup>nd</sup> applicant continued occupation of the quarters goes against the family agreement in that regard. The 2<sup>nd</sup> applicant has lived in the servant quarters since 1990.

6. In my considered view, the parties are avoiding to deal with the substance of the dispute, which is the sharing of the estate among them. This is the elephant in the room, and the only way to end the dispute in a substantive way. There has been a grant in place since 26<sup>th</sup> April 2013. The law required that after six (6) months following the grant the administrators file an application for the confirmation of the grant. Now that the beneficiaries are known, their respective shares have to be determined to bring the matter to a close.

7. I will not allow any of the two applications. Instead, I ask that, within 30 days from today, each side files and serves an application for the confirmation of the grant. With the application, each side will swear and file an affidavit indicating how they want the estate to be shared. Upon service, each side shall have 14 days to file and serve any further affidavit(s). The matter shall then be mentioned for directions on the hearing of the same. Each side shall bear own costs on the two applications.

**DATED and SIGNED at NAIROBI this 12<sup>TH</sup> day of JULY 2018**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 16<sup>TH</sup> day of JULY 2018**

**J. N. ONYIEGO**

**JUDGE**