



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

P&A NO. 458 OF 2017

FORMERLY MACHAKOS P&A No. 58 of 2001

IN THE MATTER OF THE ESTATE OF KAMUI MAVUTI (DECEASED)

SUSAN MUKONYO KAMUI PETITIONER/RESPONDENT

-VERSUS-

JENNIFER WAIRIMU NJOGU OBJECTOR/APPLICANT

RULING

INTRODUCTION

1. The Application for determination is dated 30/05/2018 and was filed by the Objector in person under certificate of urgency. It seeks the following orders;

a) **That** this Honorable Court be pleased to order that the house rents collected from all the premises of the deceased estate be shared equally between the Objector and Petitioner pending the confirmation of grant of administration.

b) **That** this Court be pleased to order that the petitioner and objector are joint administrators of the estate of the deceased.

2. The Application is premised on the grounds on the face thereof and a Supporting Affidavit by the Applicant.

3. The gist of the Application is that the Petitioner has been collecting all the rental income and applying it to her benefit yet the ruling of Justice P. Nyamweya delivered on 16/10/2017 ordered that both the Petitioner and Objector be joint administrators.

4. The Application is opposed through the replying affidavit of the Petitioner sworn on 20/06/2018. She avers *inter alia* that the premises from which the objector seeks to collect rent are not matrimonial property and she never contributed to their acquisition.

5. Directions were issued that the application be canvassed by way of Written Submissions. I have not seen any submissions on record. There was also an order for the Deputy Registrar (DR) and Executive Officer to visit the properties of the deceased and prepare a report. The report dated 23/07/2018 is duly on record.

6. This Court will proceed to examine whether the Applicant's prayers are merited.

ANALYSIS

7. To start with, the issue of joint administration was allowed by Justice P. Nyamweya in the aforesaid ruling. That prayer is therefore neither here nor there.

8. There is also the issue of whether the rental income should be shared equally between the Petitioner and Respondent pending the confirmation of grant.

9. Firstly, I have noted with concern that the Petitioner has never complied with Justice Nyamweya's order requiring her to file an account of all the dealings with the properties of the deceased from the date of his death to the date of the said ruling i.e. 16/10/2017.

10. Section 83 of the Law of Succession Act imposes a statutory duty on administrators to render accounts. Infact, it is stated so expressly and should not even be a subject of any litigation. To emphasize the importance of this duty, section 76 (d) (iii) provides that a grant can be

revoked for failure to account.

11. Secondly, it is evident that despite the order for joint administration, the Petitioner has continued to deal with the rental income to the exclusion of the Objector.

12. Joint administrator ship means that the responsibility of administering the estate should not be done by one Administrator without consulting the other.

13. At this juncture, it is important to reproduce order No. 6 of Justice Nyamweya’s ruling. It states that;

“the status quo that shall obtain as regards the properties and assets belonging to the estate of Kamui Mavuti (deceased) pending the confirmation of grant of administration shall be that the petitioner and objector shall continue to be in possession and occupation of the properties and assets they currently occupy; and the petitioner and objector shall not sell, transfer, lease, undertake any further developments on, or in any manner dispose of or waste the said properties and assets.”

14. As much as the order does not state what should happen to rental income from the properties, Administrators are expected to know their duties and ignorance of the law is not a defence. Where there are income generating assets, the proceeds must be held in bank accounts opened in the joint names of both administrators. Further, any withdrawal or expenditure of money held in such accounts must be with full participation of both administrators.

15. From the DR’s report, it is evident that the petitioner was uncooperative and refused to divulge information with regard to one of the rental properties (*Coast hotel*). The total rental income from the said report is Kshs 24,400/=.

16. As for *Coast hotel*, the amount indicated by the objector in the annexure marked ‘JWN 3’ is Kshs 70,000/= and it is my considered view that the amount will suffice as an estimate. The total rental income is therefore Kshs 94,400/=.

CONCLUSION

17. In my ruling , I make the following orders,;

- a) A bank account in the name of both administrators shall be opened within 30 days period alternatively deposit of same cash to be going to court every month if parties fail to open an account within 30 days from date herein.
- b) Kshs 94,400/= should be deposited in the account every month or court as the case may be with effect from September 2018.
- c) Any withdrawal and or expenditure should be done with the consent of both administrators. In event of disagreement with court leave.
- d) The petitioner should file accounts from the date of her first appointment to date, within 30 days period, failure to which her administrator ship shall stand revoked.

SIGNED, DATED AND DELIVERED THIS 20TH DAY OF SEPTEMBER 2018, IN OPEN COURT.

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C. KARIUKI

JUDGE