



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 2970 OF 2002
IN THE MATTER OF THE ESTATE OF P K M (DECEASED)

M W M.....1ST PETITIONER

O M.....2ND PETITIONER

VERSUS

L W T.....RESPONDENT/ADMINISTRATOR

AND

E W.....1ST INTERESTED PARTY

GN M.....2ND INTERESTED PARTY

E W K.....3RD INTERESTED PARTY

RULING

1. The deceased P K M died intestate on 29th May 2002. The 1st petitioner M WM (deceased) was the deceased's mother while the 2nd petitioner O M (deceased) was the deceased's father. The respondent is a former wife of the deceased with whom they had one son called M M K . Their marriage was dissolved by a Decree of Divorce on 23rd October 1997 **vide Kerugoya SRM Divorce Cause No. 8 of 1996**. The 1st and 2nd interested parties are the deceased's sister and brother, respectively. The 3rd interested party claimed to be the only widow of the deceased having gotten married sometimes on 12th June 1995 under Kikuyu customary law. Their union was blessed with one daughter, W W.

2. On 3rd April 2003 this court issued a joint grant of letters of administration intestate to the 1st and 2nd petitioners. In the course of the proceedings, it emerged that on 25th February 2003 the respondent had also been issued with a grant of letters of administration intestate in respect of this same estate **vide Thika Senior Resident Magistrate Succession Cause No.367 of 2002**. On 26th September 2003 this court revoked the grant issued to the respondent on 25th February 2003 in **Thika Senior Resident Magistrate Succession Cause No.367 of 2002** and amended the grant issued by this court to the petitioners on 3rd April 2003 to include the respondent as a co-administrator. The 1st petitioner died on 3rd February 2008 while the 2nd petitioner died on 28th September 2011. The respondent is therefore the only surviving administrator of the estate of the deceased.

3. The respondent brought the present summons dated 13th February 2018 seeking orders that:

a) the interested parties and or their servants or agents be restrained from interfering and or intermeddling with the estate of the deceased;

b) the interested parties be punished under **Section 45 of the Law of Succession Act** for intermeddling with property of the deceased or be referred to Kiambu County Police Commissioner for investigations;

c) the interested parties be ordered to refund monies illegally and irregularly taken from the estate and deposit the same in court;

d) the interested parties do issue a full account of the monies collected from the estate of the deceased; and

e) an order do issue directing the tenants occupying the rented premises of the deceased to deposit the monies in court in the pendency of this cause or as agreed by the consent of the parties.

4. The application was supported by the respondent's affidavit dated 13th February 2018. She stated that as the surviving administrator of the estate of the deceased, she was the only one legally entitled to handle the estate. She accused the 1st and 2nd interested parties of intermeddling with the estate of the deceased by collecting rent from the estate of the deceased to her detriment and the detriment of her son.

5. The application was opposed by the 1st interested party through her replying affidavit dated 7th May 2018. She stated that at the time of filing the petition, the petitioners listed the following to include the assets forming part of the estate of the deceased: death gratuity from the Ministry of Public Works; pension from the Ministry of Public Works; savings accounts from Barclays Bank; and shares in Ufundi Cooperative Savings & Credit Society. She denied knowledge of rent generating asset of the deceased and denied having collected any rent from the estate.

6. It is true that the listed assets at paragraph 14 of the 1st interested party's replying affidavit dated 7th May 2018 are the assets of the estate of the deceased. I, however, note that in the respondent's affidavit of protest dated 19th February 2004 she stated that the estate had more property which had been left out by the petition filed by the deceased administrators. She further alleged that one of the properties had rental houses.

7. In the application and the affidavit in support of the application, the respondent does not say which of the property in the estate is rented and to whom and for how much rent. Because intermeddling is a criminal offence under **section 45 of the Law of Succession Act cap 160**, it was imperative that the allegations by the respondent be materially particularized. In the absence of such particulars, I do not find that her claims have been proved. Her application is therefore dismissed.

8. This is an old matter in which the petitioners testified and closed their case on 20th July 2011. The petitioners died before the respondent's case could be heard.

9. Under **section 81 of the Law of Succession Act**, now that there were 3 administrators, and the petitioners have since died, the remaining one should proceed to have the grant confirmed.

10. I direct the respondent to within 30 days file and serve on the interested parties and beneficiaries an application for confirmation of grant, following which the interested parties and beneficiaries shall have 30 days to respond. The matter shall be mentioned before this court on 31st January 2019 for directions.

11. Because this is a family matter, I make no orders as to costs.

DATED and DELIVERED at NAIROBI this 19th day of November 2018

A.O. MUCHELULE

JUDGE