



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2114 OF 2013

IN THE MATTER OF THE ESTATE OF DAVID MWANGI MWARANGU (DECEASED)

RULING

1. When this matter came up for mention on 25th January 2016, counsel sought directions on the grounds that there were applications pending and they wanted to be directed on how to proceed with them. The issue of agents to collect rent was also raised, and it was proposed that each side proposes some names as the parties were unable to agree on one.
2. To appreciate the background, it is appropriate to recite the events in the matter.
3. The deceased died on 10th August 2013. Representation to his estate was then sought by his widow, Dorcas Mwangi. It is indicated that the deceased was survived by the widow and four daughters, Serah Martha Wanjiku, Gladys Wanjiru, Nancy Wanjiru and Loise Wangari. The cause was gazetted on 25th October 2013. On 20th November 2013, a notice of objection was lodged at the registry by Martha Wanjiku Kimata, Josephine Wambui Hito Grishon and Mary Wamaitha Mwangi. There is a petition by way of cross application for grant by Jacinta Hito Gerishon filed herein on 5th December 2014
4. The record before me is not complete, but it would appear that Kimaru J. on 3rd October 2013 directed that the rental proceeds in respect of the estate of the deceased be deposited in the named bank account, and the said account be deemed to be the estate's account. The individual against who certain orders were sought, Josephine Wambui, was allowed to continue to collect and deposit monies into the account and to account for the same pending the determination of the cause herein. This latter order confirmed an earlier order made on 5th September 2013.
5. An application was lodged in the cause on 28th October 2013, of even date, at the instance of the petitioner, seeking that protection orders be issued against a certain individual, for accounts and for an order to access money lying in a named account. That application was resolved by consent on 17th February 2014, when it was ordered that the money held in the account as at the end of January 2014 be disbursed to settle school fees for various individuals named in the order, with the balance to be dealt with as may be directed later by the court.
6. There is also an application dated 25th March 2014 for confirmation of grant, brought at the instance of the petitioner. To that application is an affidavit of protest by Josephine Wambui sworn on 4th April 2014, raising various issues. There is another application dated 19th November 2014, by the petitioner herein, founded on section 27 of the Law of Succession Act, Cap 160, Laws of Kenya, seeking release of a certain amount of money or, in the alternative, an order for reasonable provision. There is another application dated 3rd December 2014, filed herein on 5th December 2014, brought at the instance of Jacinta Hito Grishon and Mary Wamaitha Mwangi, premised on section 45 of the Act, seeking to access

monies held in various accounts of the deceased to meet various expenses of the family. The applicant claims to be a widow of the deceased, with two adult children, Gerishon Njoroge and Mary Wamaitha Mwangi.

7. Certain orders were made on 8th December 2014 by consent to allow the application dated 19th November 2014 and that dated 3rd December 2014. Josephine Wambui was directed to render accounts. Another application was lodged herein on 25th February 2015 seeking orders that Josephine Wambui alias Jocelyne Wambui be prohibited from collecting rent and intermeddling in any manner with the estate and that a named company be appointed as estate agent to collect the rental income from the rental properties of the deceased. The application is at the instance of Dorcas Wanjiru Mwangi. The other application on record is dated 11th February 2016, and was lodged herein by Joycefine Wambui, who describes herself as a sister of the deceased. She seeks reasonable provision from the estate of the deceased under section 26 of the Law of Succession Act.

8. I note from the record that no representation has yet been made in the matter. There is a petition, an objection and cross-petition on record, meaning that there is a dispute as to appointment of administrators. In my view that ought to be the primary concern of the parties hereto. The heavy litigation in the matter even before a grant is made does not augur well for the welfare of all concerned going forward. The parties should prepare to have the objection proceedings disposed of.

9. I have perused the applications filed by the various parties herein. Most of them seek orders that should only be sought by administrators, for the estate of a deceased person only vests in the personal representatives by virtue of section 79 of the Law of Succession Act. It is only the administrators who can move the court under section 45 to stop intermeddling with the estate and to restrain interference with the property that has been vested in them.

10. I note that the directions regarding appointment of an agent to collect the rental income came from me. However, after perusing the court file, I have realized that Kimaru J. had already made orders appointing an agent to collect the income, one Josephine Wambui. She was ordered to file accounts, and I have noted from the record that she did file a statement of accounts. None of the parties appear to have raised any issues about those accounts. In view of that I do not see any reason for appointing some one else to do what she has been doing.

11. The estate has been without administrator since the deceased died on 10th August 2013. It is going to four (4) years now. A lot of the issues being raised could be dealt with tentatively through interim administrators since the law does allow for appointment of administrators *pendete lite*. The parties should be able to agree on interim administrators or the court will be forced to impose them.

12. The directions that should be made are as follows-

(a) that the objection proceedings shall be conducted at Nairobi for three (3) days before a single Judge;

(b) that the said proceedings shall be founded on the petition, the objection and the cross-petition;

(c) that I have noted that the pleadings by the objectors are scanty, so I shall direct that the objectors shall file an answer to the petition, and affidavits to support the allegations made in their objection, answer to the petition and the cross-application;

(d) that the petitioner shall have leave to file further affidavits in response to the affidavits to be filed by the objectors;

(e) that the time lines are that the objectors are to comply within thirty (30) days of the date herein, while the petitioner shall have fourteen (14) days upon being served with those

affidavits to respond;

(f) that Josephine Wambui alias Joycefine Wambui shall continue to collect the rental income of the estate as earlier ordered by Kimaru J., but she shall file accounts monthly in respect thereof;

(g) that the order in (f) above shall subsist until interim such time as interim administrators are appointed;

(h) that no further applications shall be filed in this matter without the leave of court; and

(i) that the matter shall be mentioned after forty-five (45) days for compliance with (e) above, and within fourteen (14) days for the purpose of appointing interim administrators.

13. It is so directed.

DATED, SIGNED and DELIVERED at NAIROBI this 20TH DAY OF JANUARY, 2017.

W. MUSYOKA

JUDGE