



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 828 OF 1994

IN THE MATTER OF THE ESTATE WILFRED THUO NGUGI (DECEASED)

RULING

1. The application dated 25th June 2015 seeks several orders: -
 - a. that the plots at Uthiru be shared equally among the named beneficiaries be shared out equally and the remainder to be sold and the proceeds therefrom be shared equally amongst the beneficiaries;
 - b. that the four acres of Dagoretti/Uthiru/443 be surveyed by a government surveyor and the same be distributed equally amongst all the five beneficiaries; and
 - c. that the rental income accruing from the shop at the Ndumbu-ini trading centre be deposited in court pending distribution.
2. The grounds upon which the orders are sought are set out on the face of the application and in the affidavit in support sworn by the applicant. The court had given directions that the administrators do distribute the estate within ninety (90) days. The applicant avers that the administrators have failed to comply with the said orders despite proposals having been made to them.
3. There is a reply on record by the administrators, through an affidavit sworn on 10th August 2015 by Nelson Ngugi Thuo. It is averred that the application is incompetent, that the confirmed grant had not been revoked by the court, that distribution had been completed before the ruling, that the administrators had filed an appeal and it would fair to wait first for the outcome of the appeal and that although the court had proposed a fairer administration the applicant had not made any proposals.
4. There is a further reply by another administrator, Daniel Gatenjwa Thuo, through an affidavit sworn on 25th August 2015. He deposes that he was dissatisfied with the ruling whose orders the applicant seeks to enforce, and he intends to appeal, and in that regard he had filed a notice of appeal and requested for proceedings. He insists that the distribution in their application for confirmation of grant was the most equitable, and he then proceeds to explain the distribution.
5. The order made by Achode J. on 20th January 2015 commanded the administrators to redistribute the estate in a more equitable manner, by distributing it equally among the five beneficiaries in equal shares unless one of them waives their right. The redistribution was supposed to take into account the interest of the estate of Josephine Wangari Mungai. The time frame given for the redistribution was ninety (90) days.
6. I have carefully gone through the record and in particular the affidavits sworn by the administrators. It

is clear to me that the administrators have no intent to comply with the court order of 20th January 2015, and they have all manner of excuses. They cite an intended appeal, yet they have not obtained any orders to stay the order of 20th January 2015 pending appeal. They insist that the distribution in the certificate of confirmation of the grant was the fairest, yet the court has already ordered a redistribution. That would mean that that earlier the distribution no longer holds. They also argue that the court has not set aside the earlier orders on the distribution of the estate, yet the court has by those orders directed redistribution.

7. Clearly, the administrators have no intention at all of complying with the order of 20th January 2015. The time given for compliance has expired yet the administrators have not taken any steps in compliance, despite a proposal being placed before them by the applicant. In their affidavits in response the administrators have not placed any proposals before the court.

8. I am persuaded that there is merit in the application dated 25th June 2015 and I shall allow the same as prayed for the proposals therein are in consonance with the ruling of 20th January 2015. For avoidance of doubt it is ordered as follows:-

a. That plots numbers Uthiru/Dagoretti/665, 694,695, 697, 698, 699 and 700 shall be shared equally with each of the five children of the deceased taking a plot each, with the two extra plots being sold and the proceeds of sale shared equally between the five children named in the ruling of 20th January 2015;

b. That Dagoretti/Uthiru/443 shall be surveyed by a government surveyor with a view to subdividing the same equally amongst the five children of the deceased;

c. That the tenants of the shop at Ndumbu-ini trading centre to pay the rent due from them into an account to be jointly opened by advocates for the administrators and the applicants, proceeds of which are to be distributed equally amongst the children of the deceased, but only on orders of this court;

d. That the certificate of confirmation of grant dated 4th October 2011 to be amended to conform with these orders above; and

e. That the administrators shall bear the costs of this application.

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

W. MUSYOKA

JUDGE