



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO 368 OF 2008

IN THE MATTER OF THE ESTATE OF MARIKO NYAMU M'IBIRI (DECEASED)

JULIA GACHOKA NYAMU.....PETITIONER

And

DOREEN KAJUJU NYAMU.....APPLICANT

PARTIAL RULING

Termination of Trust and or revocation of grant

[1] The Summons dated 5th August, 2015 by Doreen Kajuju Nyamu seeks for:

(a) Revocation of grant confirmed on 06/5/2009 or

(b) In the alternative, termination of trust held by the administratrix for the benefit of the Applicant, excision and conveyance of the Applicant's share from L.R. Nos. KIBIRICHIA/NTUMURI/789, KIIRUA/NAARI/1674, Nyaki/Kithoka/1375 and Plot Nos. MAKUTANO T/769 and MAKUTANO NTIMAIGOKI/4458 to her.

[2] But, after careful consideration of all the arguments presented, the echoes of justice dictates that I should render a partial ruling for reasons I shall record. Whereas the major issues are whether I should terminate the Trust created herein or revoke the grant, three pertinent issues of preliminary significance have arisen. These issues are:

(a) Number of administrators to be appointed where there is a continuing trust;

**(b) Status of administrators who are appointed in an estate where there is a continuing trust;
and**

(c) Rendering of accounts of the estate.

The above issues will need to be resolved first in order to enable the court to determine the other major issues in controversy completely and effectually. I wish to determine them as such and pend the ones on termination or variation of the trust, or revocation of the grant. I will so proceed.

Number of administrators in a continuing trust

[3] This point does not require copious arguments before a court could settle it. Section 58 of the Law

of Succession Act is clear that where there is a continuing Trust, no grant of letters of administration in respect of the estate shall be made to one person alone except where the administrator is the Public Trustee or a Trust corporation. The administratrix herein is not the Public or a Trust Corporation. But, such situation is remediable by removing the festering waters; wherein, subject to S. 66 of the Law of Succession Act, the court appoints one or more persons to be joint administrators. But of course, the number of administrators so appointed shall abide by S. 56 (1) (b) of the Law of Succession Act. There are minors involved and these proceedings cannot proceed with one person as the administratrix. In addition, the Applicant is a beneficiary of the estate and the trust herein but it seems she is a step-daughter of the administratrix; her mother, according to the Certificate of Birth marked DKN1 is Consolata Gatwiri Muuru. This fact will be useful in the appointment of the other administrator especially taking into account the proviso to section 84 of the Law of Succession Act that where there is a continuing trust in an estate with more than one house, it is desirable that the court appoints a separate trustee of the property passing to each or any of the houses in accordance with section 40 of the Law of Succession Act. Accordingly, I will exercise my final discretion under section 66 of the Law of Succession Act to appoint another administrator as the joint administrator herein for purposes of the continuing trust herein. I will, however, give a final determination on termination of the Trust or otherwise especially in relation to the Applicant after the administratrix has provided accounts as shall be borne out later.

Administrators in continuing trust are Trustees

[4] Needless to state that, according to section 84 of the Law of Succession Act, administrators who are appointed in an estate of a deceased involving a continuing trust whether by way of life interest or for minor beneficiaries are in law trustees for all purposes and intents. Accordingly, the administratrix herein is a trustee for the beneficiaries of the trust which include the Applicant. This paves way for the determination of last preliminary issue on accounts.

Rendering of accounts of the estate

[5] Accordingly, as a Trustee, the administratrix are under altruistic fiduciary obligations imposed by law and under the equitable jurisdiction, the trustee must produce accounts of his or her stewardship of the Trust to the beneficiaries. See eminent literary work by **Hayton D.J. *The Law on Trusts at page 4***. Other than the complaints by the Applicant who is a beneficiary of the trust herein, there is nothing in the file which shows that the administratrix ever produced or gave accounts of the trust to the Applicant or to any of the adult beneficiaries or to the court. This is despite the fact that the administratrix admitted that the estate generates income- which she referred to as small income- which she said has been used and is being used for the education of the minors herein. Accordingly, I order the Petitioner who has been the sole administratrix of the estate of the deceased, within 30 days to file a full and accurate account on all the assets of the estate including the continuing Trust from the date of her appointment as administratrix to the date of the account. On receipt of the accounts, this court shall determine the application dated 5th August, 2015 by Doreen Kajuju Nyamu completely on a date to be assigned by the court. It is so ordered.

Dated, signed and delivered in open court at Meru this 20th day of March

2017

F. GIKONYO

JUDGE