



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**MISCELLANEOUS CAUSE NO 4 OF 2014**

PAUL THUO GIKONYO.....1<sup>ST</sup> APPLICANT  
GRACE WANJIKU GIKONYO.....2<sup>ND</sup> APPLICANT  
MARGARET WAMBUI NJUGUNA.....3<sup>RD</sup> APPLICANT

VERSUS

CAROL MWIHAKI GIKONYO.....1<sup>ST</sup> RESPONDENT  
DAVID MBUGUA GIKONYO.....2<sup>ND</sup> RESPONDENT

**RULING**

Pursuant to the Court Orders of this Court of 7th July 2015, by an application brought under certificate of urgency by Counsel on behalf of Margaret Wambui Njuguna, Mr. Kirimi stated that there are issues raised with regard to non compliance of the said Court orders as follows;

- 1) **The Court appointed the 1st Petitioner and both Respondents as joint managers of the properties of the subject, which includes opening joint account collecting rents, providing for the subject's needs and his wife, payment of utilities, [payment of school fees and reasonable stipend subject to availability of funds to all siblings.**
- 2) **The joint managers have failed in management of the estate of the subject, have incurred liabilities and arrears of taxes and have failed to have all rents and income paid into the joint account.**
- 3) **The joint managers have frustrated the process of valuation of all properties as ordered by the court**
- 4) **The joint managers have refused to file accounts as ordered by the Court**
- 5) **The joint managers have refused to pay school fees for some of the beneficiaries of the estate.**

It is in the interest of justice that this application is granted and appropriate estate managers are appointed to manage the subject's estate and to take over provision of the subject's medical expenses and necessities.

Margaret Wambui Njuguna stated in her further affidavit of 20th February 2017 that apart from taking care of the subject, the rent receivables from Kipande Road building are not deposited in the joint account by the 2nd Respondent. The Valuation exercise is hampered by tenants who do not recognize the Petitioners and the Estate Valuers Lloyd Masika. The deponent's claim is that school fees arrears for grandchildren of the subject have not been paid or reimbursed as per the Court orders of 8th July 2015.

The 1st Respondent Carol Mwihaki Gikonyo filed Replying affidavit and stated that she left management of the subject's estate to the 1st Petitioner and 2nd Respondent as they could not get along and work together. She has not impeded the valuation process, collection of rent and or facilitating payments.

The 2nd Respondent David Mbugua Gikonyo stated through Counsel in Court and relied on the Replying affidavit filed and bundle of payments made out annexed to his affidavit; that he fulfilled obligations to ensure the subject and his wife's health needs are well taken care of. He also made sure the assets of the subject's estate are preserved. He engaged an Auditor to deal with the tax issues and he filed cheque usage detailed report and monthly statement accounting for monies received and spent. The 2nd Respondent indicated that the matter was not for distribution of the subject's estate but management of the subject's estate for his care and benefit and for his dependants.

The Applicant's counsel informed the Court that Lloyd Masika estate agents have carried out valuation of 12 properties as ordered by the Court. However, they are hampered by non disclosure or whereabouts of the following properties;

- a) **Naivasha/Maraigushu (not known)**
- b) **Longonot/Kijabe/Block 1/316 (which has since been found)**
- c) **Mutara/Thome Block2/560 (not known)**

There are Tenancy schedules not provided /disclosed for;

**LR 209/1418/50- Kipande Road**

**LR 209/139/4- Cross Roads**

**LR 209/2858- Dunga Road**

A copy of title LR 1160/887- which was disclosed as jointly owned between deceased and another owner. The relevant information shall be provided by the 1st Petitioner to the Estate Valuers.

Architectural Plans for LR 209/2490/46 Ngara- has been resolved.

### **DETERMINATION**

The Court made reference to Court orders of 8th July 2015 where each member of the family was assigned duties and responsibilities. From pleadings and submissions made in court, priority is the wellbeing and care of the subject where there has been significant progress.

A joint account was opened by the joint managers but it is apparent they are not working in tandem, there is a rift and seemingly each party retains the property at their disposal to the exclusion of all others.

The valuation process is delayed and the Estate Valuers are being hampered especially with regard to tenants in all properties and nondisclosure of rent receivables being banked in the joint account.

The managers confirmed that each of the siblings children of the subject was paid Ksh 150,000/-in December 2016.

There are pending tax, rent, rates and other liabilities issues pending to be resolved.

There are selective payments for grandchildren school fees and expenses; the following have not had their school fees and expenses paid for them, yet the joint managers 'children school fees is catered for from the subject's estate. The ones whose fees payment is pending are;

- a) **Geoffrey Muhoro**
- b) **Simon Gakiri children of departed sibling have been left destitute.**
- c) **2nd Petitioner's children school fees have not been paid**

Repair and maintenance of the properties and subject's home are neglected.

### **DISPOSITION**

Having considered the pleadings and submissions of Counsel for respective parties; the Court orders of 8th July 2015 shall remain in force subject to the following amendments;

1. **The 1st Petitioner Paul Thuo Gikonyo and 2nd Respondent David Mbugua shall remain and continue as joint managers of the subject's properties.**
2. **The 3rd Petitioner Margaret Wambui Njuguna shall replace Carol Mwihaki Gikonyo as Joint manager and signatory to the joint account forthwith.**
3. **The joint Managers shall continue to prioritize the subject's health needs and wellbeing**
4. **They shall collect rent from all properties of the subject and bank in the joint account.**
5. **They shall pay in order of priority and subject to availability of sufficient funds;**
  - a) **Subject and wife medical expenses and adequate provision of necessities**
  - b) **Utilities, legal, valuation, audit fees**
  - c) **Liabilities, taxes, land rents, rates etc**
  - d) **Repair maintenance and development expenses of the subject's home and on subject's properties**
  - e) **Identified and confirmed school fees for grandchildren of the subject paid directly to the learning institution upon production of genuine and official documents and taking into account availability of funds, fairness across all grandchildren in need and where parents lack financial capacity;**
  - f) **Reasonable, agreed on and subject to availability of funds, monthly stipend to subject's wife and all siblings.**
  - g) **Monthly statements and periodic status and progress medical report of the subject shall be filed shall be filed in court by joint managers.**
- 6) **The Joint Managers to assist and facilitate Lloyd Masika Estate Agents to complete the valuation of the properties of the subject and to provide tenants schedules and /or access to the relevant premises. In default of entry and access, the nearest Police Station to provide security and peaceful access and facilitate interview of tenants and interim, status or final valuation report shall be filed in 60 days from today.**

**7) The matter shall be mentioned within 60 days from today and progress and status medical reports shall be filed in court.**

**DELIVERED SIGNED& DATED IN OPEN COURT ON 6TH MARCH 2017.**

**M.W.MUIGAI**

**JUDGE**

**IN THE PRESENCE OF;**

**Mr. Kiriimi for the Applicant**