

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 488 OF 2001

IN THE MATTER OF THE ESTATE OF BURTON KAMAU THURI (DECEASED)

RULING

1. The application dated 16th December 2015 is brought at the instance of Hellen Njuguini Kamau. It is brought against several individuals against whom accounts are sought. It is argued that according to the Certificate of Confirmation of grant dated 8th June 2005, paragraph 24(a)(b), two individuals were entitled to 67% and 33% of rents collected from the deceased's properties. It is argued that the rents collected from assets are known, but unknown for some other assets. The rents collected from Thika Municipality LR No. 4953/V/30 Front Wing and LR No. 4953/V/67 (Block 9/1075) Thika Town Stalls, No. 12062/485 and Loc 1/Kigoro Market Plot 8. The persons who are collecting rents from these properties have not been cooperative, hence the call for accounts.

2. Only one of the respondents has filed a response to the application. Jackson Waiganjo Kamau swore an affidavit on 16th May 2016. He avers that each beneficiary had taken possession of their respective plots and was collecting rent therefrom. He claims that some beneficiaries failed to develop their plots and are therefore not collecting any rents and it is such persons who are calling for accounts.

3. The applicant has responded to the reply vide her affidavit sworn on 7th June 2016. She accuses a section of the survivors of appropriating for themselves the most lucrative portions of the estate to the detriment of the others. She laments that the estate was distributed to the houses of the deceased rather than to individual survivors hence the argument by the deponent of the affidavit in reply did not hold. She submits that the ultimate answer to the matter lies with revisiting the distribution so as to allocate the property to the individuals, but in the meantime the certificate of confirmation of grant ought to be implemented as it .

4. Directions were given on 12th July 2016 for disposal of the application on the basis of written submissions. The parties have complied with the directions by filing their respective written submissions. I have had occasion to go through the said submissions and to note the arguments made therein.

5. The grant herein was confirmed on 8th June 2005. A certificate of confirmation of grant of even date was duly issued. The estate was to devolve upon the two widows of the deceased to hold in trust for their respective children. For the assets generating income – such as money in the bank, shares in firms and companies and rental properties – the larger house in number of members was allotted 67% thereof, while the smaller house in numbers was allotted 33% thereof. The applicants concern is with the entitlement stated in paragraph 24(a)(b) of the certificate of confirmation of grant. They complain that the rent collected from the assets the subject of that paragraph is unknown for some of the assets and they thereof wanted orders for accounts and so forth so as to ascertain the amount of rent being collected,

6. I have looked at the impugned paragraph. The same talks about the rental collected from rental houses. It is not clearly spelled out where these houses are, in terms of the plots or land where they stand. The houses are not clearly identified in the certificate. I note that the applicants have identified Thika Municipality LR No. 4953/V/30 Front Wing and LR No. 4953/V/67 (Block 9/1075) Thika Town Stalls, No. 12062/485 and Loc 1/Kigoro Market Plot 8 as the property in question. I do not know where they got this information from. The certificate is vague on this. I would be reluctant to make orders in such a situation as the present where the instrument the applicants are relying on is vague, and does not appear to provide a coherent basis for grant of the orders sought.

7. I would agree that the parties perhaps need to revisit the distribution of the estate, by having the confirmation orders reviewed to lend clarity to some of these areas. As it is, I am unable to grant the orders sought. I shall accordingly dismiss the application dated 16th December 2015. There shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 12TH DAY OF MAY, 2017.

W. MUSYOKA

JUDGE