

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 585 OF 2007

IN THE MATTER OF THE ESTATE OF JAMES KIGERA THIONGO (DECEASED)

RULING

1. The Motion dated 3rd August 2015 is brought at the instance of Edith Wambui Nganga, one of the administrators of the deceased. She seeks accounts from Jane Wambui Ngugi for rent collected by the latter from a property known as LR 6821 subplot No. 94 (Nairobi Block 135/144, 145 and 146) situate within Njiru trading centre from 12th November 2006 to date. She would also like to have the rental proceeds deposited in a joint account in the names of the advocates for the parties. She mentions that the respondent had filed a revocation application and obtained an order which allowed her to continue occupying the property and collecting rent from it. The orders were made in 2009, yet the respondent is said to have been slothful in having her application disposed of.

2. In her reply, comprised in an affidavit sworn on 16th August 2016, the respondent asserts to be a wife of the deceased, who occupied the premises as such and therefore the property was matrimonial property. She states that she does not collect any rent from the premises and therefore she has nothing to account for. She denies failing to prosecute her revocation application. The reply provoked a rejoinder from the applicant, through an affidavit sworn on 6th October 2016. She asserts that on the premises stands rental houses from which the respondent collects rent. She points to an affidavit filed by the respondent in support of her revocation application where she confirms that she is collecting rent. She states that as administrator she has been unable to access the property.

3. The application was argued orally by Mr. Charagu on 23rd November 2016.

4. The deceased died in 2006. Representation was obtained on 11th June 2007 by the applicant herein and Stephen Thiongo Kigera. The grant was confirmed on 9th April 2008 and the estate devolved upon the applicant, some property devolved upon her absolutely and the other was to be held in trust. A certificate to that effect is on record. Execution of the orders made in the matter was stayed by an order made on 15th October 2009, in particular restraining the administrators from doing certain accts or in any other manner whatsoever and howsoever interfering with to LR 6821 subplot No. 94 (Nairobi Block 135/144, 145 and 146) and another property. They were restrained from interfering with tenants and collecting rents from the premises. Those orders were made on an application dated 14th October 2009. It is the application that the applicant alleges the respondent is unwilling to prosecute.

5. As framed the orders made on 15th October 2009 completely make the administrators impotent as administrators with respect to LR 6821 subplot No. 94 (Nairobi Block 135/144, 145 and 146). They can practically do nothing concerning this asset. It was placed under the full control of the respondent. In the circumstances there cannot be any basis for grant of the orders that the applicant seeks. The orders in fact tell her to keep off the property, even to the extent of calling for accounts.

6. I have held elsewhere that I am uncomfortable with grant of injunctive orders against administrators. Such orders prevent them from discharging their statutory duties, which are imposed upon them as administrators by the law under which they are appointed. Section 79 of the Law of Succession Act, Cap 160, Laws of Kenya, vests the property of the deceased in the administrators; it is my humble view that the person holding title to the property should not be restrained from exercising authority over it. The title holder should not be stopped from discharging his statutory duties and exercising his statutory rights over estate property. Such orders do not at all aid the administration process. Be that as it may, the orders are

in place, valid and enforceable. In view of the orders, I cannot ask the respondent to account, although under the statute she is bound to. My hands are tied by that order.

7. Looking at the record, it is quite obvious that the respondent has not been keen on prosecuting her revocation application. I can see why, she enjoys favourable orders that are open-ended, not limited in any way in terms of time. They should last forever until the court disposes of the revocation application upon which they were made or is moved to review them. No doubt the orders put the administrators in a straitjacket, and they do not augur well for the estate.

8. To do justice in the circumstances, I shall direct that a date shall be given at the delivery of this ruling for the hearing and disposal of the revocation application dated 14th October 2009. That application ought to be disposed of as a matter of urgency. The application dated 3rd August 2015 shall in the meantime be dismissed, for the reasons given above, with no orders as to costs.

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

W. MUSYOKA

JUDGE