



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1027 OF 1989

IN THE MATTER OF THE ESTATE OF JAMES MUHU KANG'ARI (DECEASED)

RULING

1. The deceased herein died testate on 26th March 1989 having made a will on 22nd July 1986. Representation was sought in a petition dated 15th September 1989 lodged herein on 19th September 1989 by the executrix named in the will, Serah Mweru Muhu. A grant of probate was made to her on 31st October 1989. The said grant was confirmed on 8th June 1990 and there is a certificate of confirmation of grant bearing that date.

2. I am required to simultaneously determine four applications dated 21st October 2014, 12th February 2015, 13th March 2015 and 24th June 2016.

3. The application dated 21st October 2014 is brought by Sarah Wangari Kangari, an administratrix of the estate of Joseph Kangari Muhu, a son of the deceased. She seeks several orders against Muhu Holdings Limited, which include payment of school fees, maintenance of the family of the deceased, Joseph Kangari Muhu, management of the estate of the deceased as per the wishes of the deceased as expressed in his will, equal treatment of all family members, Registrar of Companies to be ordered to register the applicant as a director of Muhu Holdings Limited and the trustees and directors of Muhu Holdings Limited be ordered to file accounts.

4. The executrix of the will of the deceased has filed three separate responses to the application. There is a preliminary objection dated 1st December 2014, grounds of objection of even date and a replying affidavit, sworn on even date. The three essentially state two critical positions, that Muhu Holdings Limited is not the personal representative of the deceased and the orders sought in the application are not available and that the applicant is not a beneficiary of the estate, and therefore she lacks the standing to make the application. The affidavit goes into details of what is happening in Muhu Holdings Limited, particularly after the demise of the applicant's husband.

5. The second application is dated 12th February 2015. It is brought at the instance of the executrix and Muhu Holdings. The application seeks that the respondent, Sarah Wangari Kang'ari, be restrained from interfering with the executrix's occupation and enjoyment of Dagoretti/Ruthimitu/177, that she be ordered to move her matrimonial home to Dagoretti/Ruthimitu/302 and that the police be directed to give effect to the said orders. The applicant avers that Dagoretti/Ruthimitu/302 is what was gifted to the estate of the respondent's husband in the will of the deceased. She complains that the respondent is abusive to her, and the two of them cannot live together in Dagoretti/Ruthimitu/177.

6. The respondent swore an affidavit on 11th May 2015, filed herein on 11th May 2015. She states that her home was on Dagoretti/Ruthimitu/177, where her husband left her when the latter died, asserting that

she has never lived on Dagoretti/Ruthimitu/302. She avers that Dagoretti/Ruthimitu/302 has never been occupied for the last thirty-five (35) years. She alleges that her late husband had constructed an extension in Dagoretti/Ruthimitu/177. She has attached photographs to her affidavit to support her contention.

7. The application dated 13th March 2015 is not in respect of the estate herein of James Muhu Kang'ari, but in the estate of Joseph Kang'ari Muhu, in Nairobi High Court cause number 226 of 2013. It seeks revocation of the grant made in that cause. There is a reply to it in an affidavit sworn on 8th May 2015 by the respondent, Sarah Wangari Kangari and a further affidavit by the applicant sworn on 28th September 2016.

8. The application dated 24th June 2016 seeks orders that Muhu Holdings Limited be suspended from operating and the company be closed until further orders of the court. It would like to have the rent collected by Muhu Holdings Limited to be deposited in court and that the directors of the Muhu Holdings Limited be ordered to disclose some properties not contained in the trust deed. The principal complaint is that the estate of Joseph Kangari Muhu has never benefited from Muhu Holdings Limited.

9. Muhu Holdings Limited filed grounds of opposition on 19th July 2016, dated 18th July 2016. It urges that the court has no jurisdiction under succession law to suspend or stay operations of a limited liability company. It is further argued that the applicant is not a director nor shareholder of Muhu Holdings Limited and therefore she has no standing to seek the orders that she has sought in the application. It is further argued that the orders sought run counter to the wishes of the deceased as expressed in the will. Similar objections are raised by the 2nd respondent executrix in her ground of opposition dated 18th July 2016 and filed on 19th July 2016. The grounds of opposition of Muhu Holdings Limited are expounded on by one of its directors, Lucy Waithira Muhu, through an affidavit sworn on 21st October 2016 and filed herein on 24th October 2016. The 2nd respondent has expounded her grounds of objection through facts deposed to in her affidavit sworn on 27th September 2016.

10. The parties have also filed lists of the authorities that they are relying upon. The lists are complete with copies of the said authorities. I have read through them and noted the points addressed therein.

11. The applications were urged before me on 24th October 2016 and 5th December 2016. Counsel breathed life to the averments made in the applications and the affidavits on record. I have noted the arguments made by counsel, inclusive of the statutory provisions that they have cited as well the cases cited.

12. I shall determine the applications dated 21st October 2014 and 24th June 2016 simultaneously as they principally seek orders against a limited liability company. The said company is not a party to the succession cause. It is in a sense an asset for distribution, to the extent that the deceased's shares in it are distributed in the will the subject of these proceedings. The company is a separate legal entity from the persons who hold shares in it. The law which governs limited liability companies is the Companies Act, Cap 486, Laws of Kenya, in terms of the formation, operations and liability of Companies. Any orders against a limited liability company by persons who claim entitlement to shares in and directorship of the company can only be properly brought within the framework of the Companies Act, in proceedings properly brought before a commercial court as opposed to a probate court. I need not say more.

13. The application dated 12th February 2015 ideally seeks enforcement of some of the provisions of the will of the deceased. The respondent is a widow of Kangari Muhu and the administratrix of his estate. According to the will the subject of these proceedings, clause 2(b) makes a gift of Dagoretti/Ruthimitu/302 to Kangari Muhu. For avoidance of doubt the provisions states as follows:-

'2. I give the following specific legacies: ... (b) I give to my son KANGARI MUHU Plot No. DAGORETTI/RUTHIMITU/302.'

14. The provision is in very simple language. The property given to the deceased husband of the

respondent is Dagoretti/Ruthimitu/302, not Dagoretti/Ruthimitu/177. It does not matter that when she got married she was settled on Dagoretti/Ruthimitu/177 by her husband, as her husband did not own that property. He was a mere licensee, and the licensor has by his will given the licensee another place to settle. It also does not matter that that is where her husband left her when he died. It does also not matter that her husband made developments on the piece of land; he did them on property that did not belong to him. The principles of adverse possession and prescription are of no application whatsoever in the circumstances. The respondent appears to speak from both sides of her mouth, when she seeks in the application dated 21st October 2014 for the estate to be distributed and administered as per the will of the deceased, while in the instant application she is unwilling to take up the gift that was made to her husband in the same will, and to move to what is now her husband's property.

15. The grant herein was confirmed in 1990, some twenty seven years ago. The executrix has not attempted to demonstrate that the gifts made to the various beneficiaries have been vested in them. There is a whole array of gifts in clause 2 of the will to several persons. The executrix should have by now caused all these gifts to be vested. This should not just be limited to clause 2 of the will, but all the provisions. Twenty-seven years after confirmation, the executrix should have wound up execution of the will and completed administration. Her office as executrix should not be forever. There must be an end to everything. Part of the reason that beneficiaries such as Sarah Wangari Kang'ari come to court with the applications that are now before me is to express their frustration with administration of estates that does not appear to come to an end, where personal representatives appear unwilling or unable to complete the task of administration. Faced with such applications the personal representative ought to come forward and account to the court in terms of indicating how far they have gone with administration of the estate, by showing how they have executed the terms of the will, vested the gifts made, settled debts, set up trusts, and generally done all what is required of them under the will.

16. The application dated 13th March 2015 was not filed in this cause, but in Nairobi High Court cause number 226 of 2013. That cause relates to the estate of another person. That cause has not been consolidated with the instant cause. Counsel for the administratrix in Nairobi High Court cause number 226 of 2013 asked for the file to be put together with the instant file without praying for consolidation. When the two files were put together counsel did not make any application with regard to both, nor even make any reference to it all in connection with the applications dated 21st October 2014, 12th February 2015 and 13th March 2015. In any event as the two relate to different estates they cannot possibly be consolidated. The directions made on 29th August 2016, that it be argued together with the other three applications the subject of this ruling, was no doubt made in error. I shall accordingly not determine it within this cause.

17. In the end the orders that I shall make in the circumstances are as follows: -

a. That the applications dated 21st October 2014 and 24th June 2016 are hereby dismissed with costs to the respondents;

b. That the application dated 12th February 2015 is allowed in the terms proposed, the respondent, Sarah Wangari Kang'ari, is given three (3) months from the date of this ruling to move out of Dagoretti/Ruthimitu/177 to Dagoretti/Ruthimitu/302, in default of which the executrix shall be at liberty to forcibly remove her;

c. That the application dated 13th March 2015 shall be delivered after delivery of this ruling following the separation of the files herein on a date to be given at the delivery of the ruling or on a mention date in the presence of all the parties;

d. That the executrix shall within thirty (30) days of date herein file a comprehensive account of her execution of the will dated 22nd July 1986;

e. That the matter shall be mentioned after thirty (30) days for compliance; and

f. That each party shall bear their own costs.

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

W. MUSYOKA

JUDGE