



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1426 OF 1991

IN THE MATTER OF THE ESTATE OF MARGARET WAMBUI alias KABUI w/o WACHIRA
(DECEASED)

RULING

1. The deceased herein died on 4th September 1986. Representation to her estate was sought in a petition lodged herein on 31st December 1991 by Washington Gichuki Wachira and George Irungu Wachira. He was expressed to have been survived by six individuals, being Washington Gichuki Wachira, George Irungu Wachira, Antony Mwangi Wachira, Samuel Maingi Wachira, Naomi Wangechi Wachira and Phashiti Wanjiru Wachira. He allegedly died possessed of Plot No. 5 Kiriani Market, Plot No. 12 Kiriani Market, shares in Murang'a Properties Ltd, three (3) plots in Githurai of Nairobi and money in Barclays Bank. A grant of letters of administration intestate was issued to them. The grant was confirmed on 9th June 1998, and a certificate of confirmation of grant of even date was issued.

2. The application for determination is dated 24th February 2011. It is brought at the instance of Anthony Mwangi Wachira. It seeks several orders touching on LR No. 209/2743 IR 5786/19: for injunctions, accounts and deposit of sale proceeds in court. The property is not among the assets which form part of the estate distributed on 9th June 1998, but was owned by Murang'a Properties Ltd. It is alleged that the administrator subsequently formed a company known as Metumi Ventures Ltd, its shareholders being Murang'a Properties Ltd, the administrator and two others. Thereafter it was purported that LR No. 209/2743 IR 5786/19 was transferred to Metumi Ventures Ltd and later to another person.

3. The administrator swore an affidavit on 12th March 2011 in reply to the application. He claimed that the estate herein was intertwined with that of their late father. As a consequence the family sat and agreed on distribution with that in mind. That would suggest that the parties agreed on a redistribution of the estate. It would appear that there was a proposed redistribution of the shares in Murang'a Properties Ltd whose effect was to take away the shares that had been given to the applicant and to allot him other assets. It is then alleged that the applicant was all along aware of all the transactions, including the sale of LR No. 209/2743 IR 5786/19.

The position taken by the administrator is supported by two of the administrators, Samuel Maingi Wachira and Phasity Wanjiru Wachira. The two swore affidavits on 12th March 2011, alleging that the applicant was privy to the transactions that he was complaining about in his application.

5. The applicant swore an affidavit on 12th April 2011 to respond to the issues raised in reply. He admits attending meetings and signing documents, but denies ever giving up his interests in Murang'a Properties Ltd given to him under the confirmation orders of 9th June 1998. He points out that the said orders are yet to be reviewed or altered. He contends that the transactions referred to by the administrator were designs to disinherit him of his interests in Murang'a Properties Ltd.

6. The administrator swore a further affidavit on 31st May 2012, essentially to respond to the allegations made by the applicant in his affidavit of 12th April 2011. He asserts that the applicant did sign the relevant documents to facilitate the transactions the subject of the application. He acknowledges that LR No. 209/2743 IR 5786/19 was sold and the proceeds of sale distributed amongst the persons as earmarked as having shares in it, which excluded the applicant, although he was paid a token. He conceded that he did not seek review of the confirmation orders or rectification of the certificate issued upon the confirmation. He avers that the family agreement to redistribute the estate was enough, and had overridden the confirmation orders.

7. Directions were given on 17th December 2012 for disposal of the matter by way of *viva voce* evidence. An oral hearing was conducted and parties testified and called witnesses. In the end there were directions that written submissions be filed. There was compliance. I have read through the written submissions and noted the arguments made therein by the parties.

8. The issue before me is fairly straight forward. The applicant's case, as I understand it, is that at the confirmation of grant on 9th June 1998, the shares owned by the deceased in Murang'a Properties Ltd were to be shared out equally between the applicant, the administrator and their brother Samuel Maingi Wachira. The applicant and Samuel Maingi Wachira were each allotted 9628 shares, while the administrator was given 9629 shares. He says that that distribution, encapsulated in the certificate of confirmation of grant dated 9th June 1998, remains intact to date as the orders on confirmation have not been varied, nor the certificate of confirmation of grant amended.

9. He complains that despite the court orders of 9th June 1998, the administrator has gone about dealing with the assets of Murang'a Properties Ltd in a manner that is inconsistent with his interest in the company. He complains that property belonging to Murang'a Properties Ltd, that is to say LR No. 209/2743 IR 5786/19, was transferred to another company in which he had no shares without his consent and subsequently to a third party. His case is that that property is now out of his reach, hence the orders that he seeks in his application.

10. The administrator concedes the confirmation of the grant in 1998, and that he went about altering the distribution ordered by the court without first obtaining a court order. He states that he acted on an agreement that was not sanctioned by the court, and went ahead to dispose of the shares in Murang'a Properties Ltd without recourse to the orders of 9th June 1998 and indeed disposed of a property belonging to Murang'a Properties Ltd.

11. I have perused the court record. It is clear that the court confirmed the grant on 9th June 1998 and ordered distribution of the estate in terms of the certificate of confirmation of grant dated 9th June 1998. I have carefully read through the record after 9th June 1998 and before 25th February 2011. I have not come across anything that would suggest that the administrator came back to court to have the confirmation and distribution orders made on 9th June 1998 reviewed, altered or set aside. The said distribution is still intact and in force.

12. According to the certificate of confirmation of grant in force, the shares of the deceased in Murang'a Properties Ltd were given to the applicant and his brothers. According to the court record that ought to be the position to date. By now the said shares ought to have been transferred to the beneficiaries named in the certificate. The sale of any property owned by Murang'a Properties Ltd ought to be a matter of interest to the applicant, and he should get a third of the sale proceeds due on the shares originally due to the deceased. He is entitled to call the administrator to account with respect to his interests in Murang'a Properties Ltd.

13. It is plainly clear that the transactions that were undertaken after 9th June 1998 with regard to Murang'a Properties Ltd and its assets were inconsistent with the orders made by the court on 9th June 1998. A family agreement cannot override a court order, unless the said agreement is lodged in court and approved by the court and adopted as an order thereof. The administrator no doubt acted with impunity.

14. I find merit in the application dated 24th February 2011. Prayers 1, 2 and 4 of the application are spent, so I shall allow the application in terms of prayer 3. The account shall be rendered within thirty (30) days of the date of this order. The matter shall be mentioned thereafter for compliance.

DATED and SIGNED at NAIROBI this 3RD DAY OF MAY, 2017.

W. MUSYOKA

JUDGE

DELIVERED and SIGNED this 5TH DAY OF MAY, 2017.

M. MUIGAI

JUDGE