REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1045 OF 2013

IN THE MATTER OF THE ESTATE OF WILLIAM KIMUTAI MARTIN (DECEASED)

RULING

1. The deceased herein died testate on 29th February 2012 having made a will on 20th July 2011. Representation was granted on 19th July 2013 to the three executors named in the said will. The grant of probate was confirmed on 25th June 2104 in the terms that the estate was to be distributed as per the will of the deceased. One of the executors, Ian Kipkoech Martin, died on 17th June 2015. The grant of probate was thereafter rectified on 20th June 2016 to remove his name leaving two executors as personal representatives of the deceased.

2. The widow of the executor who passed on, Ian Kipkoech Martin, has now came to court by an application dated 19th April 2016 seeking to be made a personal representative of the deceased jointly with the two surviving executors and for an account to be rendered by the executors. She complains that the executors have not been administering the estate in the manner envisaged by the law.

3. One of the executors has sworn an affidavit in response, where he has sought to explain the delays in distribution, adding that the deceased had died testate and for now the estate ought to be committed to the persons he appointed as executors. He says that the departed executor need not be replaced by his widow.

4. It is not disputed that the deceased herein died testate. He made a valid will in which he appointed executors. There is nothing to show that the said executors have so totally failed in their duties that they ought to be replaced or another person appointed to assist them. The deceased trusted them enough appoint them as such. The configuration of the administrators of the estate should only be interfered with as a last resort. I agree that an executor who has passed on need not be replaced by his widow. Needless to say that there are other survivors of the deceased and beneficiaries named in the will, in fact children of the deceased, who are not executors and who are not seeking to be appointed administrators. I am not convinced that cause has been shown for appointing the applicant as an additional personal representative of the deceased.

5. I note from the affidavit of the applicant that she has concerns about the way the estate is being administered. Such concerns need not be an excuse to cause replacement of the administrators. There are remedies. The applicant can make appropriate applications in the cause for the court's intervention. Calling for accounts is one of them. Indeed, it is the most potent remedy in the hands of a beneficiary.

6. On whether the executors ought to render accounts, I should state here and now that the office of an executor is that of trust. The property of the deceased vests in the executor not so as to make him the owner absolutely thereof, but to hold the assets on behalf of the estate, of the beneficiaries and of creditors. He is to hold the property pending payment of debts, settlement of liabilities and distribution of the gifts and the residue. That then puts him in a fiduciary position with respect to the property, the estate, the beneficiaries and creditors. He incurs a duty to account to all those persons for his handling of the estate. Rendering of accounts is therefore a matter of course. It should be done whether or not demanded by beneficiaries, creditors or the court.

7. In view of everything that I have said so far, I shall grant the application dated 19th April 2016 in terms of prayer 3 thereof. Costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 14TH DAY OF JULY, 2017.

W. MUSYOKA

JUDGE