



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 2051 OF 2007**

**IN THE MATTER OF THE ESTATE OF LAWRENCE REGERU WAMBAA (DECEASED)**

**RULING**

1. The application for determination is a Summons dated 11<sup>th</sup> February 2015 and brought under Sections 47 and 82 of the Law of Succession Act (Cap 160, Laws of Kenya) and Rule 73 of the Probate and Administration Rules. The applicants seek that the administrator known as Edwin Wambaa Regeru be directed to execute the relevant transfer documents vesting the assets of the estate to the respective beneficiaries, that the titles held by Messrs. Kamau Kuria & Kiraitu & Co., Advocates, for the properties which were vested in all the beneficiaries save for Edwin Wambaa Regeru be released to the respective beneficiaries, and that the costs of the application be provided for.

2. The application is premised on the grounds that the estate of the deceased has been distributed, that the beneficiaries are desirous to have this matter finalized in line with the distribution by the court, that a request for the release of the titles to facilitate the preparation of the transfer has not been heeded to, and that some of the beneficiaries have had their titles released to them by the firm of M/S Kamau Kuria & Co. Advocates.

3. The applicant, Emma Muthoni Wambaa, one of the administrators, swore an affidavit on 11<sup>th</sup> February 2015 in support of the application. In that affidavit, the deponent avers among others, that, the respondent, Edwin Wambaa Regeru, has declined to execute the relevant transfer forms despite numerous requests made to him to do so; that the transfers cannot be effected without the original titles and the said titles were released to the law firm of M/S Kamau Kuria & Kiraitu Advocates. It is further averred that the respondent is not interested in having the matter finalized.

4. Dr. Gibson Kamau Kuria, Senior Counsel, who has acted for the estate, opposed the application. He has made several averments in his affidavit sworn on 20<sup>th</sup> February 2015, and filed in Court on 23<sup>rd</sup> February 2015. Salient among them being that the said documents of the estate which his firm is holding came to his firm when it was acting for the two administrators; that the two administrators have sharp differences and have not transacted any estate business since July, 2013; and that the consequence of the sharp differences between the two administrators is that neither of them can give instructions to his firm as to how to deal with the documents its holding.

5. It is Dr. Kuria's averment that the applicant is aware of the fact his firm has handled litigation for the estate and that it has not been paid for the services rendered, and therefore his firm has a lien over the documents claimed and the files of the estate. He has further averred that the reason he has not released the titles referred to in paragraph 3 of the said affidavit is that he does not know the administrator who has the authority to act on behalf of the estate, and that the said distribution referred to was conditional on the estate settling its liabilities under the various suits which are pending.

6. The application came up for hearing on 23<sup>rd</sup> February 2015, where counsel for the parties made their oral arguments.

7. The application herein was brought by Emma Muthoni Wambaa, who is one of the Administrators. I note that the other administrator is Edwin Wambaa Regeru. It is therefore in the two administrators that the said estate vests by virtue of Section 79 of the Law of Succession Act. This court has been told that there are sharp differences between the two Administrators and as a result they do not see eye to eye.

8. It is on account of the differences that the applicant has moved this court for an order directing Edwin Wambaa Regeru to execute transfer documents vesting the assets of the estate to the respective beneficiaries. However, learned counsel Dr. Kuria has opposed the application citing unpaid fees to his law firm which acted on behalf of the said administrators. He indeed has alluded to the differences between the administrators. It is his case that the Applicant is aware of the fact his firm has handled litigation for the estate and that it has not been paid for the services rendered, and therefore his firm has a lien over the documents claimed and the files of the estate.

9. With respect, I find no justification whatsoever for Dr. Kuria to claim a right to exercise lien over the title documents to the said estate property, for he should first present his bill of costs in court for taxation against the administrators or whoever had instructed his firm, should the said persons refuse or neglect to pay his law firm for the services rendered to them or to the estate, whichever is the case. It is my view that the issue of fees to be paid is a matter for the taxing officer.

10. The beneficiaries are entitled to what is due to them without unnecessary delay. Such delay would not serve the interests of justice. Further, Section 83 (f) of the Law of Succession Act enjoins the administrators to distribute to the beneficiaries their respective beneficial interests. It is disturbing that the administrators have elected to frustrate or delay the finalization of the distribution yet the grant was confirmed in 2009.

11. I hold that the circumstances of this case are such that the interests of justice would be served if the orders sought are granted. Therefore, I accordingly allow the application dated 11<sup>th</sup> February 2015 in the terms proposed. Costs in the cause.

**DATED, SIGNED and DELIVERED at NAIROBI this 5<sup>TH</sup> DAY OF FEBRUARY, 2016.**

**W. MUSYOKA**

**JUDGE**