

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO.2359 OF 2005

IN THE MATTER OF THE ESTATE OF KIMARI NG'ANG'A (DECEASED)

JOHN MBUGUA KIMARI.....1ST APPLICANT

NJUGUNA KIMARI.....2ND APPLICANT

VERSUS

JAMES NJOROGE KIMARI.....RESPONDENT

RULING

1. The applicants were appointed administrators of the estate of Kimari Ng'anga by ruling dated 6th November 2014 in which a grant previously issued jointly to the respondent and one Esther Wambui Kimari (who has since died) was revoked. The applicants have filed summons dated 12th November 2015 under certificate of urgency seeking restraining orders against the respondent or his agents against collecting rent for the estate of the deceased or in any way interfering or intermeddling with the estate in any manner. They further sought orders compelling the respondent to give an account and refund the estate sums in excess of Kshs.3,500,000/= unlawfully collected from the Estate. Lastly, they asked that the court cite the respondent for contempt and commit him to civil jail for violating this court's judgment as well as direct the OCS Kabete Police Station to ensure compliance by the respondent.
2. The application was premised on grounds that the respondent has since his appointment as administrator on 21st October 2005 been unlawfully collecting the proceeds of the estate amounting to Kshs.3.5 million for his sole benefit and use to the detriment of other beneficiaries; the respondent has refused to give accounts of the estate and/or refund the monies of the estate and has refused to allow the administrators to administer the estate; the respondent unlawfully and without consent of the administrators and other beneficiaries demolished and/or modified rental houses situate in property No. Dagoretti/Kangemi/480 with the intention to convert them to his sole use. The respondents swore an affidavit in support of their summons.
3. The respondent did not file a response to the summons despite being duly served. The applicants in their written submissions contended that the respondent should be punished for contempt for failing to adhere to the court's judgment of 6th November 2014 and for continued interference with the estate property despite the court issuing interim orders to cease his contemptuous actions. It was further stated that the respondent's non-compliance with the court order was deliberate and intentional as he had not explained his reasons for disobedience of court orders, or indicated any difficulty in compliance thereof.
4. This court revoked the grant that gave the respondent authority to deal with the estate of the deceased as an administrator. He had no authority to continue dealing with the same. As such, any purported actions undertaken by the respondent after the revocation on 6th November 2014 amounted to intermeddling with the estate under **section 45** of the **Law of Succession Act**, as he was no longer the administrator the court having appointed the applicants as the new joint

administrators. The Act provides for penalty for intermeddling under sub-section (2) which provides that:-

“(2) Any person who contravenes the provisions of this section shall-

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

5. The applicants contend that the respondent has continued to collect rent from the estate of the deceased amounting to Kshs.3,500,000/= since the revocation of the earlier grant issued to him. Further, that he has continued to do this despite interim orders issued by Muigai (J) to desist from collecting rent pending the hearing and determination of the current application. The respondent did not deny these allegations. His actions amount to intermeddling as well as being in contempt of court orders.
6. The application is allowed. The respondent, either personally or through his agents, is hereby restrained from collecting rent over the estate of the deceased. No tenant should pay any rent to the respondent or his agent. This order shall be personally served on the respondents and all the tenants of the estate property. Further, the respondent shall within 30 days from today render an accurate and true account of all his dealings with the estate, including accounting for all monies received. Lastly, the respondent is directed to immediately hand over the possession of all properties of the estate to the applicants, and the OCS Kabete Police Station is directed to oversee the handover. The respondent shall pay the costs of this application. This matter shall be mentioned on **16th May 2016** to monitor compliance and for further orders.

DATED, SIGNED and DELIVERED at NAIROBI this 4TH day of April 2016.

A.O. MUCHELULE

JUDGE