



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2221 OF 2013

IN THE MATTER OF THE ESTATE OF TERESIA WANJIRU THUO (DECEASED)

RULING

1. The application that I am tasked with determining is dated 4th November 2015. It seeks three principal orders, namely:-
 - a. that the 1st administrator of the estate of the deceased be called upon to render accounts of his administration of the estate within a period of fourteen days;
 - b. that the income of the estate be deposited in a joint account in the joint names of the 1st and 3rd administrators; and
 - c. that the estate of the deceased be valued by a qualified valuer, to be agreed upon by the parties or, in default of agreement, by each of the administrators.
2. The grounds upon which the application is founded are set out on the face of the application, and the facts deposed in the affidavit sworn in support by the applicant, the 3rd administrator, on the 4th November 2016. The principal grounds are that the applicant is apprehensive that the estate is exposed to wastage as no accounts have been rendered to date of its administration, and that the pending application for confirmation is defective to the extent that there is no proposal in the application of the mode of distribution of the estate.
3. The applicant states that he and the 2nd administrator are based abroad, leaving the 1st administrator, who is based in the country, as the sole and exclusive manager of the estate. That being the case, the said administrator is called upon to render an account of his administration of the estate. It is averred that the application before court for the distribution of the estate is defective for it does not provide for the shares of the respective beneficiaries. He states that the estate ought to be valued before distribution.
4. I have scrupulously gone through the file of papers before me. I have not encountered any affidavit in response to the application dated 4th November 2015. Although at the court appearance on 27th January 2016 it had been indicated, by Mr. Njeru for the applicant, that there was opposition the application through an affidavit in reply, I have not come across any such affidavit. I have noted too that on 22nd February 2016 Ms. Kinara for the 2nd respondent had intimated to court that they were not interested in the said application. In view of the foregoing, it is my finding that the said application, dated 4th November 2015, is unopposed.
5. The rendering of accounts by administrators is a statutory duty, see section 83(e) and (g) of the Law of Succession Act, Cap 160, Laws of Kenya. It is such a serious duty on the part of the administrator that a grant can be revoked, by virtue of section 76(d)(iii) of the Act, for failure to

account. The filing of accounts is a matter that should not even be subjected to any litigation, for the office of an administrator is one of trust. A trustee is bound to account for his activities with regard to the property they hold in trust, to both the court and the beneficiaries of the trust.

6. I have noted from the record that the administration of the estate of the deceased was committed on 30th June 2014 to three individuals – James Wachiuri Thuo, Elias Rwigu Thuo and Simon Gikiri Thuo. This required the administration of the estate to be a joint effort of all three. None of them should shoulder the responsibility of administering the estate alone, without consulting or working together with the other administrators. Where there are income-generating assets, the income must be held in bank accounts opened in the joint names of the three administrators, and any withdrawals from the account or expenditure of the money held in such accounts must be at the concurrence of all three. Ultimately all three must account jointly for the income.
7. On valuation of estate assets, it is not a requirement of the law that an estate be valued before distribution. Indeed, there is no provision on that in the Law of Succession Act. However, the same becomes necessary in intestacy with respect to provisions where equal distribution is provided for, such as in sections 35(5), 38, 39(c)(d) and (e) of the Act. To facilitate equal distribution where the estate comprises of numerous assets it may be necessary to have the assets valued.
8. On the matter of the application for confirmation being defective for not providing a scheme of distribution of the assets amongst the survivors, I do note that directions were given on 22nd February 2016 for the disposal of the confirmation application. The issues touching on that matter ought to be dealt with at the hearing of the confirmation application. The application dated 4th November 2015 is not about distribution of the estate and therefore it is not the proper forum for pursuing that issue. Needless to say that the prayers sought in the application do not address the confirmation application.
9. In view of what I have stated above I am moved to make the following orders: -
 - a. **That all three administrators are hereby directed to file their separate accounts of their administration of the estate of the deceased from their appointment on 30th June 2014 up to the date of the account;**
 - b. **That the accounts the subject of (a) above shall be rendered within thirty (30) days;**
 - c. **That the three administrators shall open and operate a joint bank account or joint bank accounts where all the income from the estate shall be held pending the distribution of the estate;**
 - d. **That the said account or accounts shall be opened within the next fourteen (14) days of the date of this ruling;**
 - e. **That the funds held in the account or accounts the subject of (c) and (d) above shall be withdrawn and or expended only with the concurrence of all three administrators, or upon an order of this court, and no estate funds shall be paid into or held in any other account with effect from the date of this ruling;**
 - f. **That to facilitate distribution of the estate of the estate after the disposal of the pending confirmation application or applications, in accordance with the directions given on 22nd February 2016, there shall be valuation of the estate assets in the terms proposed in prayer 4 of the application dated 4th November 2015;**
 - g. **That the matter shall be mentioned after fourteen days for compliance with orders (c) and (d); and**

h. That there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 8TH DAY OF JULY, 2016.

W. MUSYOKA

JUDGE