



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 200 OF 2010

In the matter of the Estate of JOSPHAT NJOKA MBIRIAI (Deceased)

ROBERT NJOKA MUTHARA.....PETITIONER

VERSUS

JOYCE WANJUKI NJOKA.....1ST RESPONDENT

MARGARET KAIRU NJOKA.....2ND RESPONDENT

GRACE KARAU NJOKA.....3RD RESPONDENT

TERESIA GATURI NJOKA.....4TH RESPONDENT

RULING

1. This is a ruling on an issue raised by counsel Mr. Okwaro for the objector that the petitioner should provide a statement of the outstanding loan for which where some of the deceased's assets were given as security. Mr. Macharia for Kagio for the petitioner submitted that the issue was addressed by Ong'udi J. in a ruling delivered on 19/4/2014 when she held that properties in question were to await determination of the Succession cause.
2. Mr. Okwaro submitted that the ruling was in relation to Succession Cause No. 315 of 2010 and did not in any way determine the issue of the loan statement. One of the properties charged was to be shared by ten beneficiaries of the estate who might not be able to access their shares even after a consent is recorded. He said that the objectors are interested parties in the properties which are the securities for the loan and need to know the status.
3. He further argued that the petitioner's counsel Mr. Kagio wrote a letter indicating that there is a suit HCCC No. 738 of 2001 between the petitioner and Industrial and Commercial Development Corporation (ICDC). In that suit Mr. Kagio is representing the petitioner and is in a position to obtain the loan statement.
4. Ms. Muthoni for the interested party stated that his client is not a party to the loan dispute but she believes and that the issues raised were sorted out in the ruling held by Ong'udi J. The case should proceed from where it reached and the petitioner can then be cross examined on the loan balance.
5. The assets charged by ICDC in favour of the petitioner are L.R. Kagaari/Weru/2248, Gaturi/Weru/1582 and Gaturi/ Nembure/104. The three parcels are registered in the name of the deceased and form part of the estate. In the application dated 25/7/2012 in file number 315 of 2010 heard and determined by Ong'udi J., one of the prayers was that the respondent do furnish to the administratrixes with an up to date statement of accounts and/or information of the loans procured by the petitioner from ICDC on the security of land parcels Nos. Kagaari/Weru/ 2248, Kagaari/Weru/1582 and Gaturi/Nembure/104 on the outstanding balance and other issues.
6. In the ruling delivered on 19/4/2014 the court held that this particular prayer and others could not be granted as the validity of the will had not been established. The court further held that such determination could only be done in Succession Cause No. 200 of 2010 and proceeded to consolidate the two files with file number 200 of 2010 as the lead file. The ruling is clear that the court did not deal with the merit of the application on the prayers sought. There was no order exempting the petitioner from providing the objector with the loan statement in relation to the parcels offered as security.
7. Some of the properties for distribution have been charged as a security for the loan. This loan was not cleared during the lifetime of the deceased. It is not in dispute that the loan has not been cleared to date. The assets are therefore encumbered and are capable of being smoothly distributed. The current status of the loan is likely to seriously affect the distribution when the grant is finally confirmed. For this reason, the objector and other beneficiaries have a reason to get concerned.

8. It is inappropriate for the petitioner to fathom that he can deny the other parties crucial documents to the hearing of the case. Now that the petitioner is a party to the Nairobi HCCC 738 of 2001 whose subject matter is the outstanding loan, he has the capacity to obtain the loan statement. It is a constitutional right for the objector or any other party in this case to be provided with the loan statement.

9. I therefore direct that the petitioner should obtain, file and serve the objector with the loan statement within 30 days.

10. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 4TH DAY OF OCTOBER, 2016.

F. MUCHEMI

J U D G E

In the presence of:-

Mr. Macharia for Maina Kagio for petitioner

Ms. Njiru for Okwaro for petitioner

Mr. Ndande for Muthoni for interested parties