



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO.1972 OF 2002
IN THE MATTER OF THE ESTATE OF REGINA WANJIRU WERU (DECEASED)

VIOLET WAMAITHA WERURESPONDENT

VERSUS

SAMUEL KARIUKI WERU

CATHERINE WAITHERA APPLICANTS

RULING

1. The succession proceedings relates to the estate of the late Regina Wanjiru Weru. Regina was married to the late Francis Kariuki alias Francis Charles Weru. Upon Francis' demise, Regina applied for grant of letters of administration relating to the late Francis' estate. She was issued with the said grant on 8th March 2000. However, before conclusion of the said proceedings Regina died on 2nd February 2001. She was survived by 4 children, **Peris Waitherero, Jane Njeri, Catherine Waithera, Samuel Kariuki** and **Violet Wamaitha**.

2. Violet Elizabeth Wamaitha via a citation filed on 2nd August 2002 cited her siblings to take up the succession cause. Catherine Weru Waithera through her advocate filed an appearance on 2/9/2002. Samuel filed an objection to making the said grant on 24/1/2003. Subsequently **Violet, Samuel** and **Catherine** were made co-administrators of their mother's estate on 25/10/2004 and proceeded to file for confirmation of grant on 13th September 2005s, which this court confirmed on 2nd May 2006. Via an application dated 18th February 2009 Violet Wamaitha sought release of title deed to **Ruiru/Kiu Block 13/220** and sought the court to direct the Deputy Registrar to execute the transfers to the said parcel of land in her favor. In her affidavit to the said application Violet Wamaitha expressed frustrations by the other 2 administrators who she alleges had refused to meet with her delaying the completion of the administration of the deceased's estate. Violet further filed the application dated 3rd March 2009 under Rule 49 and 73 of the Probate and Administration Rules seeking a temporary injunction as against the administrators and Balcon Housing Company Limited, which was tasked with collecting rent proceeds from **Ruiru/Kiu Block 13/220** requesting for full and accurate account of all the rent income collected from the said premises.

3. The respondent Catherine Waithera Weru filed the current summons for revocation on the 16th February 2010 seeking revocation of Violet Wamaitha Weru as an administrator to the deceased's estate with the remaining administrator being allowed to complete the administration of the estate of the deceased. The applicant also urges the court to order Violet Wamaitha to surrender all things in her possession relating to the administration of the estate of the late Regina Kariuki Weru.

4. The application is based on grounds that all parties are the administrators of the deceased's estate having obtained a certificate of confirmation on 2nd May 2006 but since then the respondent has neglected to discharge her duties as an administrator and refused to co-operate with the other administrators. Hence failing to diligently administer the estate of the late Regina Wanjiru Weru all efforts made to resolve the matter has proved unsuccessful.

5. In her affidavit in support of the said summons Catherine avers that she complied with the orders of 30th June 2009 by Justice Rawal by supplying copies of title documents relating to the properties of the deceased for purposes of preparing transfer forms. When the respondent's advocate forwarded the said transfer to her and Samuel they executed. But she later wrote to Violet's advocate raising some queries and it was then that she learnt that Violet had not executed the transfer forms or even avail her copy of ID and Pin certificate. There was an understanding that the said transfer would not be lodged before Violet registered her parcel of land. The documents forwarded to Violet were to be returned to the applicant's advocate upon her signing which she refused to do to-date. It is on this basis that she raised the current application as she is of the view that Violet has failed to proceed diligently with the administration of the deceased's estate.

6. Violet Wamaitha Weru in her replying affidavit dated 2nd March 2010 takes issue with the applicant's failure to comply with Justice Rawal's order of 30th June 2009, stating that the applicant's advocate was to strictly give an undertaking that the applicant's would not register the parcel of land in their names before she registered the title in her favor. The said advocate gave an undertaking with terms and conditions that were unacceptable to her. With the applicant's advocate seeking transfer of monies held in the deceased's account together with NSSF contributions all the while the applicant had not rendered account of rental proceeds they had collected and monies which she states she is also entitled to. She added that the applicant had also failed to avail a copy of ID and Pin certificate to facilitate her register parcel. She avers that the current application is intent on delaying the distribution of the estate further.

7. The 3rd administratrix applicant filed written submissions which I have read and considered. The applicant in their submissions raises 3 issues for determination.

i. Whether the 1st administrator has failed to proceed diligently with the administration of the estate of Regina Wanjiru Weru?

ii. Whether the respondent has refused and or failed to comply with the directions stipulated in the certificate of confirmation of grant?

iii. Whether the 2nd and 3rd Administrators should complete the administration of the deceased's estate.

The applicants argue that Violet has refused to execute transfer to properties allocated to respective beneficiaries, bank documents, Kenya Airways in relation to release of shares held by the deceased and NSSF in regards to deposits by the deceased from 2006 when the grant was confirmed. These acts are contrary to section 83 (g) and the same has hindered smooth implementation of the grant. They relied on the case of *Simon Kaburu v Jane Nkuene [2016] eKLR*.

8. Whether the respondent has refused and or failed to comply with the directions stipulated in the certificate of confirmation of grant?

The applicants submit that it's been 7 years since they began the distribution process but the applicant failed /refused to sign facilitation letters addressed to Barclays bank and transfers which the applicants attribute to ill intention and contempt and as such they argue that the respondent does not have the best interest of the beneficiaries and statute at heart.

9. On whether the 2nd and 3rd administrators respectively should complete the administration of the estate?

The applicant submits that the law imposes a huge responsibility upon the administrators to ensure the beneficiaries of the deceased's estate inherit the property. They submit that they are up to the task and the court should allow them conclude administration of the deceased's estate. They relied on the case of ***Re Estate of Gatuthu Njuguna (Deceased) [1998] eKLR.***

Determination

9. Section 76 of the law of succession Act provides that, “A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either- (i)...; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular;”

The applicant claims that the respondent has failed to diligently proceed with the administration of the deceased's estate for failing to execute the necessary transfer documents and also failing to avail the original title documents to facilitate the said transfers. Section 79 of the Law of Succession provides that, “The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.” It is vital then that any transaction or transfer relating to the said property belonging to the deceased has to be approved by the administrators and in this case, to facilitate transfer of the said item the administrators have to sign the necessary documents. Upon confirmation of the grant, the administrators are tasked with distribution of the assets of the deceased after payment of expenses. Section 83 provides that, “(f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;”

10. Further, as provided under Section 83, it is the duty of the administrators, “(i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”

It is important to note that the distribution to the deceased's estate is not in dispute and parties consented and agreed on the said mode of distribution, which was confirmed by this court on 2nd May 2006. The issue remaining is the release of original title documents and signing of title documents to facilitate each party to register their apportioned part from the deceased's estate. Which they do by distribution of the share given to each beneficiary.

From the fore going, the respondent is also facing similar challenges as the applicants. Due to the applicant's failure to give copies of ID and Pin Certificate she was also unable to registered the parcel of land that was allocated to her. In my view I find that both parties the applicant and respondent have a part to play in finalizing the administration of the deceased's estate and currently both parties have failed to proceed diligently with the administration of the deceased's estate. What then? I find that removing Violet Wamaitha as a co-administrator will not solve the dead lock they are in but will further delay conclusion of this matter. I exercise the discretion vested upon this court and make the following orders. The application for revocation by the applicant is not allowed . This court orders the parties to prepare the necessary transfer documents relating to all properties surviving the deceased to be signed by all administrators. The administrators will also avail copies of their Identification Cards and Pin Certificates to accompany the said signed transfer forms. The administrator who has custody of the original title

documents will deposit all the original title documents they hold with their advocates for onward transmission to the relevant beneficiaries. I task the advocate to ensure that the same is done within 30 days from the date of this ruling. This matter to be mentioned to confirm compliance in 45 days from the date of this ruling or for further orders . This being a family matter cost will be in the cause. It is so ordered.

Dated, signed and delivered this **3rd** day of **November** 2016.

R. E. OUGO

JUDGE

In the presence of;

.....**For the 3rd Administrator /Applicant**

.....**For the Respondent**

MS. Charity

Court Clerk