



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 331 OF 2004

MARTHA WAMBUI.....1ST APPLICANT

LUDY NDUTA.....2ND APPLICANT

ANNE KOKO WANJIRU.....3RD APPLICANT

VERSUS

PATRICK MBURU MUKUO.....1ST RESPONDENT

PATRICK MBURU MUKUO.....2ND RESPONDENT

RULING

1. The applicants through a Notice of Motion dated 19/07/11 prays for revocation of grant of letters of administration granted to Patrick Mburu Mukuo and John Mwangi Kasusya and confirmed on 31st May 2005. They seek the following orders;

- i. A temporary injunction restraining Patrick Mburu Mbuko and John Mwangi Kasusya by themselves, their agents and or their employees from further holding themselves out as administrators of the estate of the deceased (Margaret Mumbi Kasusya) from further dealing with, entering upon, disposing of, charging, occupying, managing and collecting rent or other revenues from the properties known as Plot 223 Nguyumu Housing (L.R. 31 Ruaraka), (L.R.336/8) plot No 226 Ruaraka Sabuni Development Co. Ltd, Ruiru East/Juja East Block 11/552 and Umoja one House No. H33.
- ii. That an order do issue compelling Patrick Mburu Mukuo and John Mwangi Kasusya to account for and/or reimburse all rental income and revenues collected from the deceased's properties Plot 223 Nguyumu Housing (L.R. 31 Ruaraka), (L.R.336/8) plot No 226 Ruaraka Sabuni Development Co. Ltd, Ruiru East/Juja East Block 11/552 and Umoja one House No. H33 in their capacity as administrators of the deceased's (Margaret Mumbi Kasusya).
- iii. That an order do issue compelling Patrick Mburu Mukuo and John Mwangi Kasusya to account furnish an account of and/or refund all that money they have withdrawn from the deceased's back account known as Margaret Mumbi Kasusya Barclays Bank, Ruaraka Branch, account No. **[particulars withheld]** and **[particulars withheld]** respectively in their purported capacity as administrators of the deceased's estate.
- iv. That this Honorable Court do order all tenants residing in properties known as plot no. 223 Nguyumu Housing (L.R.31 Ruaraka) and Plot No.226 Ruaraka Sabuni development Co. Ltd (L.R. 336/8) to deposit their rent and any arrears thereof to a joint account to be opened in the

names of the Applicant's Advocate's and the Respondents herein pending the hearing and determination of this application or further orders of the Court.

v. That the costs of the application be provided for.

2. The application is premised on the grounds on the face of the application and the sworn affidavit of Martha Wambui dated 19th July 2011. She depones as follows; the respondents fraudulently applied for and obtained letters of administration of the deceased estate; the respondents herein intend to dispose-off part of the deceased's estate assets without lawful authority; the respondents are proceeding with speed to dispose-off the said assets despite several warnings; that the grant was fraudulently obtained by making false statement and by concealment of material facts to the court; the grant was obtained without consents duly signed by the applicants herein and the grant was obtained contrary to the provisions of the law.

3. The application was supported by the affidavit sworn by Mary Wambui on 19th July 2011. She deponed that she had the authority of Lucy Nduta and Anne Koko Wanjiru to swear the affidavit on their behalf. She reiterated the averments on the face of the application. She deponed that the deceased had eight children and listed them. She further listed the deceased's property at the time of her death. She deponed that Ruaraka Sabuni Development L.R. 336/8 had been rented out and fetched Kshs. 45,000/- per month. That Plot 223 Nyangumu Housing (L.R. 31 Ruaraka) also rented out and fetched Kshs.5,500/- . That since the deceased's demise on 12th October the brothers have been collecting rent ever since and not accounting for the same. That the deceased also had two accounts i.e. Margaret Mumbi Kasusya, Ruaraka Branch Account No. *[particulars withheld]* and *[particulars withheld]* respectively. That on 11th February 2005 she learnt that the respondents' had fraudulently applied for and obtained letters of administration of the estate of the deceased without her knowledge and that she and her sisters Lucy Nduta and Anne Koko were never consulted by the respondents concerning the application of letters of administration and only learnt of it in April 2011 a stranger Kitheka visited their home in Umoja alleging he had been hired by the respondents to sell the Umoja one house and later on was informed that the brothers had been issued with letters of administration and certificate of confirmation of grant of the deceased sometime in 2006. She subsequently instructed her advocates who wrote letters to the Director Housing Development Dandora and Director Housing Department of City Council requesting them to cease all transactions relating to property called Umoja one House No.H33. That no one purported to have signed consents to support the petition for grant of administration and the said petition was not accompanied by consent which was illegal and improper. That the respondents have refused to discuss the equitable division of the deceased property. That her late sister Joyce Njeri left behind 2 children who were under her care and that two of her sisters Rose Kamene and Joyce Njeri died after the respondents took out the grant of administration. She urged the Court to annul the said grant. That the equitable remedy of injunction cannot be sought in a forum like this one and the same is not available to the applicant.

4. The application is opposed. The respondent filed a replying affidavit dated 28th November 2011 by Patrick Mburu Mukuo. He deponed that the applicant though purporting to have authority from Lucy Nduta and Rose Kamene she has failed to annex evidence any such authority and as such her application is defective and that the proceedings are malicious and the purported co-applicant one Anne Kioko Wanjiru has since abandoned these proceedings. That the deceased had eleven children as opposed to applicant's averment that the deceased had 8 children and listed 3 names that had been left out in the said list. That the applicant has exaggerated rental income from the said houses and that plot no. 223 Nyangumu Housing (L.R. 31 Ruaraka) is situated at Ngomongo slums and was invaded by illegal tenants during 2007/2008 post-election violence they are hostile and do not pay rent; that money withdrawn from the deceased Barclays accounts was used to pay water bills, land rates and medical expenses for their late sister Rose Kamene. He denied that the grant was obtained fraudulently adding that the applicant and other family members were consulted and the 1st applicant herself signed the consent claiming that she had no interest in the deceased's estate. He denied knowing the said Mr. Kitheka adding that the said house used to be occupied by her late sister Joyce Njeri deceased and upon her demise the applicant insisted that the same is transferred into her names and that the 1st applicant is a police woman and has

been using her authority to harass and intimidate them and on 21st February 2011 the applicant had masterminded his arrest and detention at Buru Buru Police station with aim of teaching him a lesson. That the grant was obtained way back in 2005 and the applicant's application was an afterthought. He denied that the 1st applicant has custody of her late sister's Joyce's children adding that one of them Margaret Mumbi Mong'are was rescinding in America and that the proceedings herein are unnecessary and a waste of Court's time as all the beneficiary are provided for.

5. The applicant in a further affidavit sought to clarify that the deceased had eleven children not eight as she had earlier stated. She reiterated that plot No.223 Nyangumu Housing (L.R. No. 31 Ruaraka) has always been in the care of the respondents and was sold to Mwangi Kibuthu for KShs.600,000/- which she argued was way below the market value. She deponed that she was the only one who took care of their late sister but she and her late sister Joyce Njeri who settled the medical bills at Kiambu District Hospital and that she was the one who had custody of Joyce's children Eugene Ombaye Mong'are and Margaret Mumbi Mong'are and that it was her belief that house no. 33 in Umoja should be transferred to them as they are already over 18 years and claimed to be a stranger to paragraphs 17, 18 and 20.

6. The application came for hearing on 12th November 2014 and the parties sought to rely on their affidavits.

7. From the court's record the respondents petitioned for letters of administration on 7th December 2005. The said petition only listed 7 beneficiaries instead of 11. The objectors Lucy Nduta Martha Wambui and Anne Koko Wanjiru state they had no knowledge that the applicants had obtained Grant of letters of administrations as they were not consulted adding that they never signed the said consent dated 3rd November 2005.

8. The grant was consequently confirmed on 20th February 2006. I have also noted that at the time the grant was confirmed the purported consent was signed by the three objectors together with Rose Kamene and Joyce Njeri. It is apparent from their current affidavits the beneficiaries are more than seven. As per paragraph 6 of the respondent's replying affidavit it's deponed that the deceased had eleven children the other three are mentioned as Peter Douglas Mukuo, Anastacia Nyambura and Cecilia Mwikali none have been mentioned in the affidavit filed in support of the confirmation of Grant filed in Court on the 7th of December 2005. The administrators failed to comply with the provisions of section 51. (1) of the law of succession Act (Cap 160) which provides that,

“An application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.

(g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;

9. There appears to be no dispute as to who the heirs of the deceased are or on the assets. The petition does not reflect the names of all beneficiaries in the deceased's estate. Failure to include all beneficiaries in the petition is fatal and is sufficient cause to revoke the grant issued on 26th February 2006 I need not consider the issue raised on whether the applicant Martha Wambui had the proper authority of Lucy Nduta and Anne Koko Wanjiru to swear the affidavit.

10. I hereby proceed to revoke the grant issued to the two administrators Patrick Mburu Mukuo and John Mwangi Kasusya issued on 31st May 2005 and later on confirmed on 20th February 2006. The family of the deceased shall meet and appoint their preferred administrators to decide on the mode of distribution within 30 days.

11. The applicant has also raised an issue on the accountability of the revenue generated from the deceased's estate and alleged that one of the property has since been sold by the administrators. Section 76 (d) (iii) Cap 160 provides that the person to whom the grant was made has failed, after due notice and

without reasonable cause either- 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; In this regard I make the following orders;

- a. **That all beneficiaries meet and procure the services of a Professional Accountant to prepare a full inventory of both the assets and liabilities of the deceased noting down any income and expenditure from the deceased's account within 60 days. During the said meeting the parties shall appoint their preferred parties to act as administrators to administer the deceased's estate.**
- b. **The Administrators are to make available all documents including title, leases, bank statements etc. relating to the deceased's estate to the professional accountants who will be appointed, on the date of his appointment or soon thereafter to enable this exercise to be carried out.**

12. On the applicants' prayer for temporary injunction, consideration to be taken in granting the same are laid out in the case of ***Giella –Versus- Cassman Brown & Co. Ltd [1973]*** which raises three ingredients. Whether the applicant has a prima facie case with probability of success, Whether the applicant stands to suffer irreparable injury that an award in damages cannot be adequate to compensate, If the court is in doubt it will decide the same on a balance of probability. I find that the applicant has made a prima facie case. The administrators are hereby restrained by themselves, their servants and agents or employees from further dealing with entering upon, disposing of , charging, occupying, managing, collecting rent or other revenues from properties known as ***plot 223 Ngunyumu Housing (L.R. 336/8), Plot No.226 Ruaraka Sabuni Development Co. Ltd, Ruiru East/Juja East Block 11/552 and Umoja One House No. H33*** pending the appointment of the new administrators or as agreed by the beneficiaries. Each party to bear their own costs. It is so ordered.

Dated, signed and delivered this **6th** day of **February** 2015.

R.E. OUGO

JUDGE

In the presence of:-

.....**For the Applicants**

.....**For the Respondents**

.....**Court Clerk**