



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2205 OF 2011

IN THE MATTER OF THE ESTATE OF

ZAHURA SALIM DOSSA - (DECEASED)

SAUMU ACHOLA MUSA.....APPLICANT

VERSUS

TWALIB MUSA1ST RESPONDENT

ALIMA KHAMIS..... 2ND RESPONDENT

RULING

1. The deceased ZUHURA SALIM DOSSA died intestate at Nairobi on 7th December 2009. She left three daughters AMINA JUMA KARANJA, ALIMA KHAMIS and SAUMU ACHOLA MUSA and two sons YUSUF JUMA KARANJA (DECEASED) and TWALIB MUSA. These are her beneficiaries. The estate comprised LR No. 209/10530/79 in Siwaka Estate, Plot No. 9 KINGONGO site and Services Scheme Phase 1 and Block 163 Shauri Moyo. Grant of letters of administration was issued on 22nd May 2012 to SAUMU ACHOLA MUSA (applicant) and ALIMA KHAMIS (2nd respondent). TWALIB MUSA (the 1st respondent) filed summons seeking the revocation of the grant. The application was heard and allowed as a result of which a fresh joint grant was issued to the four beneficiaries.
2. On 19th May 2014 the applicant filed the present summons seeking to restrain the respondents from intermeddling with the assets of the deceased's estate and for an order that an agent be appointed for the purpose of collecting, managing and/or distributing the rents emanating from the assets of the estate. The affidavit in support was sworn by the applicant. The 1st respondent swore a replying affidavit to oppose the application. The applicant's case was that immediately the deceased died, and before administrators had been appointed, the 1st respondent through his advocates began collecting rent from the Siwaka Estate property which he did not account for and did not share with the other beneficiaries. Because of this, the applicant in August 2012 appointed Charton properties to manage the property but, even then the respondents began interfering. She claimed that the respondents have also been interfering with the collection of rent for the Kingongo property. This property, she said, was being managed by Rawa Enterprises Estate Management even before the deceased died. She stated that in 2010 after the death of the deceased the respondents forcefully took rents from the Management even before they had letters

of administration. They stopped the management from giving any accounts. The 1st respondent denied the allegations that he has intermeddled or interfered with the estate or rents from the properties. He stated that the appointment of Charton was unilaterally done by the applicant and that was why on 6th December 2013 they wrote to the firm to stop dealing with the property. The letter is “TM1”. In respect of the Siwaka estate property, he stated that on monthly basis he shares the rent from there to all the beneficiaries. He produced MPesa transactions (‘TM2’) as evidence of this. In his view, what should be done is for the parties to seek the confirmation of the grant to have the estate sold and distributed as it is incapable of distribution. The applicant filed a supplementary affidavit to say that the proceeds of the rents sent to the beneficiaries by the 1st respondent are neither prompt nor regular. She opposed the suggestion that the estate be sold and proceeds shared saying that that would go against the wishes of the deceased.

3. The application was made under **section 45** of the **Law of Succession Act (Cap 160)**. **Section 45(1)** of the **Act** provides that

“Except so far as expressly authorised by this Act or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of the deceased person.”

Under **section 45(2)** of the **Act** a person who contravenes the provisions of **section 45(1)** is guilty of an offence and is answerable to the rightful executor or administrator of the estate. Intermeddling is the unauthorised handling of the property making up the estate of the deceased without authority (**In the Matter of the Estate of REBECA NYANGANYI ODOTI HC Succession No. 210 of 1994 at Kisii**).

4. The respondents are two of the four administrators of the estate of the deceased. If they are collecting rents from the properties of the deceased that is within their mandate. In the final analysis they will account for the rent. It is apparent that the applicant is sharing in the rent, although not to her satisfaction.
5. What is clear is that the parties are not agreed on the best mode to collect the rents and how to apply the same. Both sides, before and after grant, have each sought to get a manager to collect rents. In each case, the decision has been unilateral. This is not to say, given the facts as disclosed, that any party is wasting away the estate. In my view, the lasting solution is to have the grant confirmed during which time the estate shall be distributed.
6. These are the reasons why I dismiss this application. Instead, in the wider interests of justice, direct that within 60 days the administrators, or any of them, should apply to have the grant confirmed. Costs shall be in the Cause.

DATED and DELIVERED at NAIROBI this 11th February 2015

A.O. MUCHELULE

JUDGE