



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
SUCCESSION CAUSE NO: 218 OF 2007
IN THE ESTATE OF HABIBA WANJELA KALAMDIN –(DECEASED)

RULING

1. There are two applications for determination – one dated 1st April 2011 and the other is dated 23rd August 2011.
2. The application dated 1st April 2011 is a summons founded on **Section 71** of the Law of Succession Act and Rules 49 and 73 of the Probate and Administration Rules. In it the applicant administrator seeks that Razia Mohammed Kalamdin be cited for contempt of court for disobeying orders made by Rawal J. on 2nd February 2009. There is also a prayer that, the only asset making up the estate be sold and the proceeds thereof shared between the beneficiaries as per the scheme set out in the certificate of confirmation of grant.
3. The case by the applicant is that the grant on record has been confirmed and all the assets, including the one in dispute – Plot No. D. 13 Huruma, were to be shared out between the six (6) survivors of the deceased as set out in the certificate of Confirmation of Grant dated 1st February 2011. Despite that, the respondent has continued to collect rents from the said property without sharing the said rents with the other survivors. He is also arguing that there is an order on record made on 1st July 2008 by Rawal J. prohibiting the respondent from collecting rents from Plot D13 Huruma Estate Nairobi and ordering her to account for all rents collected. The said was order allegedly served on the respondent on 18th April 2009 to-date there has been no compliance.
4. The application was served on the respondent who has responded to it by her replying affidavit sworn on 3rd February 2012. She confirms that she is not an administrator of the estate, and explains that she lives in the property known as D13 Huruma together with her children. She admits that she collects rent from the said premises, which she utilizes to maintain her children and to pay for utilities. She complains that the estate was not shared equally, and asserts that distribution would not be fair unless she is allowed to retain the property known as D13 Huruma.
5. The applicant in the application dated 1st April 2011 has replied to the averments by the respondent, through her affidavit sworn on 8th March 2012. She states that the grant has been confirmed and the shares of the beneficiaries set out. She is effectively saying that the issue of distribution has been disposed of. She asserts that the respondent does not and has never resided in D13 Huruma. The respondent is said not to have accounted for the rents that she has been collecting from the said premises.
6. The application dated 23rd August 2011 is by Mohamed Kalamdin Mohamed, a beneficiary of the estate. He would like the administrators to be restrained from wasting or alienating the estate, to

be ordered to give an account and to distribute the estate in accord with a document dated 24th November 2010, which attached to his affidavit. He concedes that the grant has been confirmed but the administrators have failed to distribute the estate. He insists that the estate be distributed in accordance with the certificate of confirmation of grant.

7. In her reply dated 18th September 2011, the respondent administrator accuses the applicant of failing to cooperate with the administrator to facilitate the subdivision of the property and its distribution in accordance with the terms of the certificate of confirmation of grant.
8. Regarding the application dated 1st April 2011, I must state that the correct procedure for obtaining contempt of court orders was not followed. The applicant ought to have obtained leave of court to bring contempt proceedings, and once leave was granted to file the substantive application by way of Notice of Motion. This was not done, and the order sought is not available.
9. On the sale of D13 Huruma, there is merit. According to the certificate of grant dated 1st February 2011 D13/5 Huruma is shared out between all the survivors of the deceased in the ratios set out in the certificate. The asset is developed, and it cannot be subdivided. The only available option is its sale and the disposal of the proceeds of sale in the ratios in the Certificate of Confirmation of Grant.
10. Regarding the application dated 23rd August 2011, the restraining orders sought are not available. According to **Section 79** of the Law of Succession Act, the assets of the estate vest in the administrators. That being the case the administrators can sue or be sued with respect to the property. They are the proper persons to enter into contracts over the property and to generally deal with the property as if it belonged to them. An administrator cannot be restrained from handling estate property. It is incumbent on administrators to sell, subdivide and alienate estate property. These acts are concomitant with their duties as such. The applicant has not placed any evidence before me to prove that the administrators are acting in the manner alleged. There is therefore no basis for grant of injunctive orders. Since the property of the estate vests in the administrators, they are entitled to have possession of all the documents of title. There is no good reason why they should produce the original documents.
11. There is however basis for rendering accounts, it is a duty imposed on administrators the by law. Administrators hold property for the benefit of others, they are therefore under duty to account to the beneficiaries of their handling of the assets of the estate. Finally, the grant has been confirmed and the estate should be distributed in accordance with the certificate of confirmation of grant dated 1st February 2011.
12. The final orders that I make in this matter with respect to the applications dated 1st April 2011 and 23rd August 2011 are as follows:-
 1. That the property known as Plot No.D13 Huruma shall be sold and the proceeds of sale shall be distributed in the ratios set out in the certificate of confirmation of grant dated 1st February 2011.
 2. That the administrators of the estate shall prepare and place before the court within 45 days a full and accurate account of their administration from the date of the making of the grant to date.
 3. That the administrators shall complete distribution of the estate in accordance with the certificate of confirmation of grant dated 1st February 2011 within 60 days.
 4. That the matter shall be mentioned after 60 days for compliance.

DATED, SIGNED and DELIVERED at NAIROBI this 14th DAY OF March, 2014.

W. M. MUSYOKA

JUDGE