



**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION NO. 1158 OF 2013**

**IN THE MATTER OF THE ESTATE OF RICHARD YEOVA KAVIVYA (DECEASED)**

**ROBERT KAVIVYA YEOVA.....PETITIONER**

**VERSUS**

**JOYCE MWEDE YEOVA.....RESPONDENT**

**RULING**

The application filed by the applicant is the summons of the 31<sup>st</sup> March, 2014 and based on the following grounds or prayers;

- a. The application be certified urgent deserving priority hearing.
- b. The Respondent be restrained from intermeddling with the estate of the deceased person.
- c. That the Respondent accounts for all the proceeds from the deceased's estate from March, 2012 to date.

The application is brought by Robert Kavivya Yeova against Joyce Mwende Yeova.

- d. That the parties do open a joint account to deposit proceeds from the estate
- e. The Respondent delivers all the title documents and logbooks to be deposited in court, and in any event within the 14 days of service of the order.
- f. The Court appoints registered estate agents who are mutually agreeable to the parties to handle the management of the deceased's rental property.

The gist of the applicant's application is that both the application and Respondent petitioned for letters of administration in Succession Cause 1158 of 2013. The grant of letters of administration was issued on 29<sup>th</sup> July, 2013 to both Applicant and Respondent and since then the Respondent has been intermeddling with the deceased person's estate.

The affidavit of Robert Kavivya Yeova of 31<sup>st</sup> March, 2014 indicates the applicant investigated the late father's cause of death, thereafter she the Respondent, the late Father's second wife and his stepmother obtained letters of administration. The Respondent cut off links and consultations over the administration of the estate.

The Replying affidavit of Joyce Mwende Yeova of 30<sup>th</sup> April, 2014, the Respondent stated that the children of the deceased are in school as indicated in paragraph two (2) showing the institutions they

attend. That she and the co-administrator, the applicant engaged the law firm of Mutua, Mboya & Nzissi Advocates to obtain jointly the letters of administration of the deceased's estate.

However, the applicant filed a separate Succession Cause number 2204 of 2013 with his uncle and only included the children of the 1<sup>st</sup> wife and family only and left out the children of the Respondent. The petition was filed after this Cause had been gazetted on 21<sup>st</sup> June, 2013.

The Respondent averred that, the applicant did not attend to the investigations and inquest of his late father in relation to the cause of his death. She averred that she helped educate the applicant and he had not assisted to educate the siblings. Both parties on 15<sup>th</sup> May, 2014 and 26<sup>th</sup> May, 2014 filed further applications to expound on the issues raised.

During oral submissions canvassed before the Court, the applicant through Counsel Ms Ashubwe stated that the stepmother and stepson are administrators of the estate of the deceased and have not been able to amicably discuss the matters regarding administration of the estate. The applicant claims lack of accountability on the part of the Respondent. Secondly, as co-administrator he is entitled to information about the estate. Thirdly, he wants to safeguard the estate so as to ensure his siblings are catered for and attend school. Counsel sought prayers 3, 4 and 6 of the application.

The Respondent through Mr. Mutua indicated to the Court that the applicant did not table any document in Court to show that he sought an account under section 83 of the Succession Act. Secondly, that the applicant did not substantiate how the Respondent was intermeddling with the estate. The Application was said to be brought so that the Applicant would include his divorced mother and his siblings. Also, with regard to the claim by the applicant that he was pursuing the matter to protect his siblings so that they can go to school, all the children of the Respondent were in school. She has taken the children to school; she has not sold the assets or the motor vehicles.

The Counsel for the Applicant reiterated that efforts to reconcile the Applicant and Respondent and resolve the matter amicably have not been fruitful and the estate ought to be preserved to enable the children to go to school. The Court (by Kimaru Judge) consolidated the two (2) Succession Cause this one in Court and 2204 of 2013.

The Court has considered the pleadings filed and oral submissions by both parties. The Court notes that the Applicant and Respondent were issued with letters of administration intestate as administrators of the estate of the deceased. The Court finds that administrators have duties of the administrators which are clearly enumerated in the Succession Act Cap 160.

Section 79 states that the property of the deceased shall vest in the administrator(s). Section 82 that the personal representative (administrators) have powers to, enforce by suit or otherwise all causes of action either by law may arise to the estate, to sell or otherwise to account where necessary under the situations, assent the after confirmation and as the affirmative herewith to the beneficiaries of the estate. Section 83 outlines the duties of the personal representatives, to provide and pay out of the estate of the deceased, to get in all free property of the deceased, to pay out of the estate of the deceased all expenses obtaining to the grant, to ascertain and pay out of the estate of the deceased all his debts, within six (6) months for the date of the grant to produce to Court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings in with up to the date of the account, subject to Section 55 to distribute or to retain on trust all assets remaining after payment of expenses and debts and within six (6) months from the date of confirmation of the grant or such longer period as the Court may allow, to complete the administration of the estate in respect of all matters other than the continuing trust.

All the above mentioned requirements are carried out by administrator(s). Therefore the Respondent should administer the estate in a transparent and accountable manner with the Applicant. The appointment as administrators is as equals and not one to administrator to the exclusion of the other administrator and then report to the administrator. Both administrators should carry out the duties and exercise the powers in concert so as to present to Court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith of the estate of the deceased up to the

account.

The Respondent and Applicant as administrators should find an amicable way to resolve differences and together administer the estate of the deceased for the benefit of all beneficiaries.

The Court notes that the matter at hand is aggravated by the fact of two (2) families of the same man (deceased). This dispute cannot be resolved at this stage. Suffice is to say the administrators implement Section 83 of the Succession Act together or in consultation and speed up the process in order to present to Court the process of confirmation of grant. Therein that forum; it shall determine the beneficiaries of and the distribution of the estate of the deceased.

In sum the therefore, the Court orders that;

1. Both administrators' applicant and respondent carry out the duties together and account for all proceeds from the deceased's estate to the Court.
2. Both administrators carry out duties of administrators fully as outlined in Section 83 of the Succession Act.
3. The issues of determination of beneficiaries shall be canvassed during the hearing of both Succession cause 2204/2013 and 1158/2013 as ordered earlier.
4. Costs in the Cause.

Read and Signed in the presence of M/s. Ashubwe for the Applicant and in absence of M/s Mutua for the Respondent.

**M. MUIGAI,**

**JUDGE**

**6/10/14**