



REPUBLIC OF KENYA

High Court at Nakuru

Succession Cause 377 of 2009

IN THE MATTER OF THE ESTATE OF NJUGUNA NGENGI – (DECEASED)

JACKLINE WANGUI.....1ST APPLICANT

VERONICA MUTHONI.....2ND APPLICANT

VERSUS

REBECCA WANJIKU.....RESPONDENT

RULING

This Ruling relates to two applications, that is -

(1) the Chamber Summons dated 5.02.2013 and filed on 6.02.2013, and seeks, apart from the Certificate of Urgency Orders -

(a) that the court do order the Manager Equity Bank, Molo Branch to release the Applicant's share of the Ksh 1,000,000/= held by Equity Bank Account No. 020198977424,

(b) that the court do authorize the Deputy Registrar to sign transfer forms for Standard Bank shares in place of Rebecca Wanjiku who has refused to co-operate and to sign the same to enable transfers of the same to the applicant and to Veronica Muthoni,

(c) that the costs of the application be provided for.

This application is supported by the Affidavit of Jackline Wangui and the grounds on the face thereof.

The second Application is brought under unknown provisions of the Law Succession, and purports to invoke under Section 1A and 1B of the Civil Procedure Act” and the inherent jurisdiction of the court. The Application is dated and was filed on 20th February 2013. It seek review, rectification and amendment of the court's judgment. It is supported by the Affidavit of the Applicant, Rebecca Wanjiku and the grounds on the face thereof.

I will begin with the second application, the Law of Succession Act (*Cap. 160, Laws of Kenya*) is a comprehensive and self-inclusive piece of legislation. In so far as this application purports to import the provisions of Section 1A of the Civil Procedure Act, and Order XIB of the revoked Civil Procedure Rules, (*by Legal Notice No. 151 of 2010*), the Application is incompetent and ought to be struck out *in limine*.

Notwithstanding its incompetence, I will still deal with in order to do substantial justice to the Applicant. Rule 73 of the Probate and Administration Rules restates the court's inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

Rule 63 of the said Rules incorporates the application of specific orders of the Civil Procedure Rules to applications under the Law of Succession Act and the Probate and Administration Rules. Order XLIV (*now Order 45 of the Civil Procedure Rules 2010*) is one of the orders applied to applications under the Law of Succession Act, and the Probate and Administration Rules.

Order XLIV (45), applies to applications for review by a person who is aggrieved by a decree or order from which an appeal is allowed but an appeal has not preferred, or by a decree or order from which an appeal is not allowed. The conditions for review are -

- (a) *discovery of new and important matter or evidence which could not have been previously obtained even the exercise of due diligence, or***
- (b) *an error or mistake apparent on the face of the record, or***
- (c) *some other sufficient cause,***
- (d) *the application should be made without unreasonable delay.***

Judgment herein was delivered on 12th October 2011. The application herein was made on 20.02.2013, that after over 14 months, and 24 days. That is a very long period of time. It cannot be said to be reasonable. The application fails the test of time. Is there new matter or evidence which could not have been availed with the exercise of due diligence? I have searched through the application and find none. The application fails this test as well.

Lastly, is there an error or mistake on the face of the record, “yes, there are references at p.p. 3, to Francis Muiruri Njuguna (*deceased before the commencement of the Succession Cause*), and p. 4 that all the children are over 18 years of age, when one, Louis Ngengi Njuguna was 10 years. There is no error at p. 8. The allocation of 6 acres to the 3rd house was explained and if the Applicant was or is dissatisfied it is a matter of an appeal. This aspect of the application therefore fails.

On the formula for distribution, the third house comprised of the 3rd widow and two children, the 3rd child Francis Muiruri Njuguna, having died before the commencement of this Cause. The formula ought therefore be applied on the basis of thirteen total number of units, and not fourteen.

As the other properties have been divided on the basis of the fourteen (14) total units, I think that division should remain so, as the application for review was made late. However with regard to the distribution of the proceeds of rent for the Petrol Station, and the shares (*which have not been distributed*), the aggregate units of thirteen (13) be applied forthwith. The Applicant succeeds to this extent.

I allow the application dated 5th February 2013 if the Respondent Rebecca Wanjiku does not sign the transfer forms for the shares within twenty-one (21) days of the date hereof.

This being a family dispute, I direct each party to bear its own costs.

It is so ordered.

Dated, signed and delivered at Nakuru this 3rd day of May, 2013

M. J. ANYARA EMUKULE

JUDGE