



**In re Estate of James Aram Kibue (Deceased) (Succession Cause 2358 of 1996)
[2024] KEHC 1995 (KLR) (Family) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1995 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2358 OF 1996
HK CHEMITEI, J
FEBRUARY 29, 2024
IN THE MATTER OF THE ESTATE OF JAMES ARAM KIBUE (DECEASED)**

BETWEEN

DR. SUSAN NJERI KIBUE (APPLYING AS ADMINISTRATOR AND BENEFICIARY OF THE ESTATE OF THE LATE JAMES ARAM KIBUE) 1ST APPLICANT
NICHOLAS NJAU KIBUE 2ND APPLICANT
ELIZABETH N. KIBUE 3RD APPLICANT
GRACE W. KIBUE 4TH APPLICANT
GREGORY K. M. KIBUE 5TH APPLICANT
MARY CHRISTINE WANJA KARANJA 6TH APPLICANT

AND

PAUL KIMARI NJAO 1ST RESPONDENT
PHILIP GITAU KIBUE 2ND RESPONDENT

RULING

1. This ruling relates to the summons dated April 24, 2023 filed by the Applicants, Dr. Susan Njeri Kibue, Nicholas Njau Kibue, Elizabeth N. Kibue, Gregory K. M. Kibue and Mary Christine Wanja Karanja who are beneficiaries of the deceased’s estate; seeking for Orders That:
 - (a) Pending the hearing and determination of this application, all rent payments by tenants in LR No 5989/ 14 be paid to Annunciata Waithera Kibue’s Absa bank Account Number 0553500184.



- (b) An order of temporary injunction be issued to restrain the 1st and 2nd respondents, their employees, servants, representatives, their advocates and agents or whomsoever acting on their behalf from alienating, letting, harassing tenants, causing nuisance, conducting and continuing with any dealings whatsoever in LR No 5989/ 14, Ridgeways area, Nairobi County without the consent of the applicants pending the hearing and determination of this application.
 - (c) The Officer Commanding Runda Police Station be directed to ensure compliance with the order above.
 - (d) Paul Kimari Njao be directed to provide accounts for all rent proceeds collected by him from Annunciata Waithera Kibue's tenants in LR No 5989/14.
 - (e) All rent payments by Annunciata Waithera Kibue's tenants in LR No 5989/14 be paid to Annunciata Waithera Kibue's Absa Bank Account No 0553500184.
 - (f) The 18. 72 acres in LR No 5989/14 held by Annunciata Waithera Kibue in trust for the beneficiaries be distributed to all beneficiaries of the estate in equal shares.
 - (g) The applicants' application dated 9th November, 2018 be allowed and a court order be issued to the effect that the Deputy Registrar of this honorable court be directed to sign all transfers and documents necessary to effect the distribution to the beneficiaries of LR No 5989/17, LR No 5989/14, Dagoretti/Waithaka/ 510, Dagoretti/Waithaka/Trading Centre TO1. 3 and Dagoretti/ Rumuruti/ T.3.
 - (h) Costs of this application be provided for.
2. The application is opposed by Paul Kimari Njao's replying affidavit sworn on 29th May, 2023 and Philip Gitau Kibue's replying affidavit sworn on 26th May, 2023.
 3. The applicants filed written submissions dated 20th September, 2023 but the respondents did not.

Background

4. This matter relates to the estate of James Aram Kibue (deceased) who died intestate. His widow, Annunciata Waithera Kibue, the 1st Applicant, Dr. Susan Njeri Kibue and the 1st Respondent Paul Kimari Njao were appointed as administrators of the deceased's estate in the confirmed grant of 16th November, 2005.
5. Dr. Susan Njeri Kibue's supporting affidavit sworn on 24th April, 2023 in a nut shell, avers that there is 18. 72 acres of LR No 5989/14 that is held in trust for all beneficiaries by the 1st Administrator, Annunciata Waithera Kibue. Annunciata Waithera Kibue has grown very old and has been diagnosed with dementia due to her old age and she is in constant treatment and palliative care for various ailments including diabetes and high blood pressure. She said that she has been the primary care giver of Annunciata Waithera Kibue with the assistance of the other applicants.
6. She went ahead to accuse the respondents of fighting over the tenants in the suit property who have been paying rent to their mother's bank account.
7. She went on to aver that they have learnt that the 1st respondent has been siphoning rent proceeds from LR No 5989/14 where he has been asking tenants to pay rent directly to him especially Mpesa. The applicants have also learnt that the 2nd respondent (through his lawyers) has been asking all tenants in



- LR No 5989/14 to sign leases with him as the landlord at the exclusion of the applicants who are all equal beneficiaries of the estate.
8. She also stated that the suit property on LR No 5989/14 has been managed through Muruga Investments Limited a family company owned by the applicants and the 1st respondent, however, all rents are usually paid into Mrs. Annunciata Waithera Kibue's bank accounts. The illegal actions and greed of the respondents has consequently led the estate into losses and the respondents have caused great confusion to the estate's tenants.
 9. She accused the 1st respondent who is an administrator of failing to sign transfer documents in favor of the beneficiaries hence the need to have the above prayers granted.
 10. Paul Kimari Njao in response has accused the applicants of failing to enjoin their mother in the application despite being one of the administrators. He denies that Annunciata Waithera Kibue has grown very elderly and has now been diagnosed with dementia due to her old age and she is now in constant treatment and palliative care for various ailments including diabetes and high blood pressure.
 11. He does not deny that the property LR No 5989/14 be distributed with finality to the applicants and the respondents and prays that the application dated 24th April, 2023 be dismissed with costs.
 12. On his part Philip Gitau Kibue states that as per the rectified confirmed grant dated 4th November, 2016 his mother Annunciata Waithera Kibue was to hold in trust the suit property LR No 5989/14 for all the 8 children. He is not a director/ shareholder of Muruga Investments Limited as shown in the company's CR12. He said that he was deliberately left out in the formation of Muruga Investment Limited and the directors are acting as if these are the only beneficiaries entitled to gain from the proceeds of LR No 5989/14.
 13. He accused Muruga Investments Limited of taking over the management of LR No 5989/14 without his consent while he is a beneficiary of the same. The said company he went on was created as a PSV to construct Ciata Mall and has no other authority to interfere with the estate of the deceased herein.
 14. There is no evidence he averred produced to show that he received any rent from the tenants of LR No 5989/14 and the annexed lease agreement is not signed or executed. There is no letter or email annexed showing him asking the tenants of LR No 5989/ 14 to sign leases with him as the landlord. He prays that the application dated 24th April, 2023 be dismissed with costs.
 15. The application dated 9th November, 2018 on the other hand seeks for orders that:
 - (a) The registrar do execute all the relevant document to facilitate the distribution of the above Estate on LR No 5989/17, LR No 5989/14, LR No Dagoretti/Waithaka/Trading Centre Tol. 3 and Dagoretti/ Ruthimitu/T. 3.
 - b. The costs of this application and consequential distribution be shared equally amongst the beneficiaries of the deceased.
 16. In response to this application, Annunciata Waithera Kibue filed replying affidavit sworn on 5th December, 2018 and supplementary affidavit sworn on 12th February, 2019. She states that the applicants are her children with the deceased, the applicants have physically assaulted her and the incident reported via OB05/21/10/2017, they have tried divert funds from the deceased's estate through NIC bank and the issue has been reported vide OB 07/08/08/2018 after which the bank account was frozen, Dagoretti/ Ruthimitu/T. 3 does not form part of the deceased's estate and the certificate of confirmed grant does not include such a property in its schedule of distribution.
 17. The application was referred to court annexed mediation which failed.



Analysis And Determination

18. I have carefully considered the application, the responses as well as the written submissions filed herein.
19. The issues for determination, as crafted by the applicants, are as follows:
 - a. Whether the 1st Respondent has failed to proceed diligently with the administration of the estate of James Aram Njau Kibue?
 - b. Whether the confirmed grant should be rectified to remove the 1st Respondent as an Administrator of LR No 5989/ 14?
 - c. Whether the Respondents' illegal actions on the suit property amount to intermeddling?
20. The issues although crafted in a flowery language in my view are clear and straight forward. The parties have lost trust in each other over the cause of time. The matter is made worse by their old and ailing mother who is not in a position to give proper guidance to the children.
21. The saving grace is that the grant confirmed is still solid and sound. If the beneficiaries are unable to work together then the best way is to part ways by executing the grant. Whatever centre that held them together appears shaky and may topple anytime.
22. This court will not be called upon to micromanage the estate. All the beneficiaries are adults and capable of making their decisions and that independence must be permitted lawfully.
23. It appears as well that there are other pending applications between the parties elsewhere and all are gravitating around their father's estate. Whether for instance their mother is suffering from dementia is not for this court to determine, sitting as it is.
24. Consequently, the administrators must do their work and so as to save much judicial time it is hereby directed as hereunder:
 - (a) The administrators are hereby directed to jointly execute the grant dated 16th November 2015 within the next 90 days from the date herein so as to ensure that each beneficiary gets their rightful and lawful portion.
 - (b) The costs of executing the above order shall be met by the estate.
 - (c) Should any of the administrators failed to execute the same the Deputy Registrar of this court be at liberty to execute.
 - (d) From the date herein and pending the above orders all rent payable from LR No 5989/14 be paid to the account of Annunciata Waithera Kibues ABSA bank account number 0553500184.
 - (e) The amount deposited in the said (d) account above shall be utilised for and for the benefit of the estate by the administrators and books of accounts shall be duly kept.
 - (f) None of the beneficiaries shall collect any rent from any tenant(s) in whatever manner or enter into any lease agreement without the consent of all the administrators.
 - (g) The Officer Commanding Runda police station shall ensure compliance with the above orders.
 - (h) Costs shall be in the cause.



**DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 29TH DAY OF
FEBRUARY 2024.**

H K CHEMITEI

JUDGE

