



REPUBLIC OF KENYA



In re Estate of Monica Wamaitha Kihara (Deceased) (Succession Cause 805 of 1994) [2024] KEHC 6063 (KLR) (Family) (27 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6063 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 805 OF 1994

MA ODERO, J

MAY 27, 2024

ESTATE OF MONICA WAMAITHA KIHARA (DECEASED)

RULING

1. Before this court for determination is the Chamber Summons dated 31st October, 2022 by which the Applicant Caroline Wambui Kihara seeks the following orders:-
 - “ 1. Spent
 2. Spent
 3. That pending interpartes hearing and determination of this petition, this Honourable Court be pleased to order that all rental income and proceeds of the estate be deposited in Equity Bank Limited Account No. 0020xxxxxxx and such proceeds be released to the Hospital to meet the medical needs for the 1st applicant (Irene Wambui Kimani).
 4. That this Honourable Court be pleased to make such further orders as may be necessary to meet the ends of justice.
 5. That the costs of this application be in the cause.”
2. The application which was premised upon Section 47 of the *Law of Succession Act* 2018 and Rule 73 of the *Probate and Administration Rules* 2018 was supported by the Affidavit of even date sworn by the 2nd Administrator.
3. The 2nd Respondent Teresia Wanjiku Njoroge opposed the application through her Replying Affidavit dated 15th February, 2023. The matter was canvassed by way of written submissions. The Administrators/Applicants filed the written submissions dated 7th April, 2023 whilst the Respondent relied upon their written submissions dated 21st July, 2023.



Background

4. This succession cause relates to the estate of the late Monica Wamaitha Kihara (hereinafter ‘the Deceased’) who died on 30th September, 1993.
5. Following the demise of the Deceased there has been much litigation in this matter. Some of the persons who were appointed as Administrators of her estate passed away and were replaced, by other Administrators.
6. On 1st August 1994 Grant of letters of Administration were issued to John Njoroge Kihara and Ngugi Kihara both sons of the Deceased. Ngugi Kihara then passed away and was replaced as Administrator by his widow Rachael Kihara. Thereafter John Njoroge Kihara also passed away and was replaced by his widow Teresia Njoroge.
7. Vide a Ruling delivered on 24th October, 2019, Hon. Lady Justice Ali - Aroni (as she then was) annulled and revoked the Grant and directed that Caroline Wambui Kihara and Irene Wambui Kimani be appointed as joint administrators of the estate.
8. The Administrators then filed this present application seeking orders that all estate rental income be deposited in a bank account held at Equity Bank.
9. The Respondents who are the other beneficiaries of the estate oppose the application.

Analysis and Determination

10. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
11. The Administrators aver that the 2nd Administrator Irene Wambui Kimani is seriously ill having suffered a stroke. That as a result the Administrator is in need of funds to cover her medical treatment which as at October, 2022 stood at Kshs. 1,800,000. That on 12th October, 2022, the 2nd Administrator suffered heart failure and was recommended to undergo complicated heart surgery. That the funds required for this medical treatment/operations can only be sourced from the estate of the Deceased.
12. The Applicants further state that notwithstanding the existence of orders requiring that all rental income derived from the estate be deposited in one account the 2nd Respondent has been collecting the rental income alone. That pending determination of the Amended summons for confirmation of Grant funds be released to cater for the medical treatment of the 2nd Administrator.
13. As stated earlier the application was opposed. The Respondents aver that the Administrator has no authority to utilize estate funds for her personal medical treatment.
14. The Respondents also accuse the Applicants of failing and/or refusing to comply with the court orders issued on 24th October, 2019. That the aim of this application is to deny the 2nd Respondent access to estate funds thus leaving them helpless.
15. As noted earlier this Grant was issued to the Administrators way back in October, 2019. To date the Grant is yet to be confirmed.

There is a Summons for confirmation of Grant dated 4th July, 2022 awaiting hearing and determination.



16. In an application of this nature where an Administrator/beneficiary seeks to access estate funds before the Grant has been confirmed then they would have to secure the consent of all the beneficiaries. Clearly in this matter given the opposition to the application such consent is not likely to be forth coming.
17. I have perused the Ruling delivered by Hon. Lady Justice Ali- Aroni (as she then was) on 24th October 2019. In the said Ruling the Hon. Judge made the following orders;-
 - “(i) As such, I appoint Caroline Wambui Kihara to administer the estate alongside Irene Wambui Kimani.
 - (ii) I also direct the administrators as appointed to forthwith open a joint account where all income due to the estate from properties as herein listed will be deposited pending further orders.
 - (iii) The administrators shall proceed to file an application for confirmation of the grant of the estate within the next 90 days. Any party aggrieved may file a protest.
 - (iv) This being a family matter each party to meet their own costs.”
18. The orders made on 24th October, 2019 were clear and unambiguous. The Administrators ought to comply with those orders and move to prosecute the summons for confirmation of Grant instead of continuing to file yet more applications in the matter.
19. The Applicant has also sought to be awarded reasonable provision from the estate. However no information was provided to enable the court allow this prayer. No indication was given of what resources the Applicant currently has at her disposal. Was she dependent on the Deceased during her lifetime? Had the Deceased made any advancement or gift to the Applicant. Further no information was availed regarding the situation and circumstances of the other beneficiaries to the estate. I find that the court lacks sufficient information to consider this prayer.
20. This is an extremely old case which has been active in courts since 1994 – a period of twenty (20) years. The matter needs to be finalized and the estate distributed to the beneficiaries. That way each person will receive their share of the estate and can do with it what they wish.
21. I find no merit in the Summons dated 31st October, 2022. The same is dismissed. I direct that the Administrators fully comply with the court’s Ruling of 24th October, 2019.
22. Finally I direct that the Summons for confirmation of Grant dated 4th July, 2022 be set down for hearing within thirty (30) days. Any party who wishes to challenge that Summons is at liberty to file a protest. This being a family matter I make no orders on costs.

DATED IN NYERI THIS 27TH DAY OF MAY, 2024.

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MAUREEN A. ODERO
JUDGE

