



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

SUCCESSION CAUSE NO. 1298 OF 2011

IN THE MATTER OF THE ESTATE OF G K K

RULING

G K K (the deceased) died on 21st December 2010 in Johannesburg in South Africa. On 17th May 2011 A W K and J N K filed an application for grant of letters of administration ad colligenda bona based on a Will allegedly made by the deceased on 10th September 2010. On 19th May 2011, S N K, S K and C W K-Aura also filed an application for a similar grant based on a Will and Codicil dated 20th July 2006 and 6th May 2008 respectively also allegedly made by the deceased. These two applications were filed in Succession Cause No. 913 of 2011.

On 29th June 2011 the said A W K and James Njuguna Kirima petitioned this court for a grant of probate with the annexed Will dated 10th September 2010. On 1st July 2011 S K and C W K-Aura also petitioned for a grant of probate with the annexed Will dated 20th July 2006 and Codicil dated 6th May 2008. Both of these petitions were filed in Succession Cause No. 1298 of 2011.

Neither of the Applications for Limited grants nor the Petitions for grant of probate have been determined. When the matter came before me on 11th October 2011, by consent of all the parties Succession Causes Nos. 913 of 2011 and 1298 of 2011 were consolidated and I directed that proceedings in this matter shall henceforth be recorded in Succession Cause No. 1298 of 2011 and the matter was adjourned to 12th October 2011 for directions.

On 12th October 2011 all the parties agreed that the first and main issue for determination in this cause is the validity of the two Wills allegedly made by the deceased and that pending that determination interim administrators should be appointed to collect and preserve the estate.

Mr. Ojiambo teaming up with Mr. Arwa for the petitioners A W K and J N K submitted that the court has already appointed interim managers who have been allowed access to part of the estate and have filed accounts as directed by the court. In his view those interim managers should be allowed to continue managing the estate until the issue of the validity of the Wills is determined.

Mr. Arwa holding brief for Mr. Mubea for a beneficiary and Mr. Munjla for some other beneficiaries also concurred with Mr. Ojiambo that the two managers should continue managing the estate until a full grant is issued.

Mr. Nyamu for the said Petitioners, S K and C W K-Aura was of a different view. He submitted that

the interim managers were appointed to act upto 29th September 2011 when the court was to hear the applications for limited grants. Their appointment was therefore very temporary. He submitted that interim administrators should be appointed pursuant to the two applications for limited grants. He said the deceased had three wives and there should therefore be one representative from each house and one of the deceased's brothers. M/s Mwenesi and Kyalo for other beneficiaries concurred with Mr. Nyamu that the deceased's three houses should be represented in the appointment of interim administrators. Messrs Mwenesi and Kyalo further submitted that there is no provision under the Law of Succession Act for appointment of managers over a deceased person's estate. Mr. Mwenesi proposed that A W K, J N K, S K K and A N K should be appointed interim administrators.

In their riposte Messrs Ojiambo and Arwa were firm that according to their instructions the deceased had only two houses. Whether or not he had a third house is a matter that cannot be decided in this application. It should await the hearing to determine the validity of the two Wills. For now they reiterated that the interim managers should be left to continue managing the estate.

As I considered the matter, before perusing the proceedings on what had transpired earlier, I immediately thought of picking 2 to 3 people whose names appear in both Wills and appoint them as interim administrators. I therefore perused the two Wills and noted that the names of the deceased's brother J N K and the deceased's daughter J W K and son Sy N K (whom I take to be one and the same person as S D K) appear in both Wills. On perusal of the proceedings I discovered that Hon. Justice Lenaola had also settled on those three.

Before Justice Lenaola after the parties had been given time to agree on who should be appointed interim administrators, Mr. Arwa submitted that the parties could not agree on whether or not there were two or three houses, whether or not the estate should be managed by the deceased's children alone or jointly with their uncles or whether or not it should be managed by the Trust that the deceased had established.

In response to that Mr. Nyamu submitted that the Trust had not failed. He said it is A W K and J N K who had mismanaged the estate leading to three cases being filed against them. He suggested that three interim administrators, one from each of the deceased's three houses should be appointed.

Justice Lenaola then suo moto appointed A W K, J N and S N K to jointly manage the estate until further orders of the court. S N K unfortunately died soon thereafter. After the parties had been given time to pick his replacement the record shows that on 28th August 2011, A N K was by consent appointed as the replacement.

From the foregoing it is clear that both sides agreed on A, J and A as interim managers. Now Messrs Nyamu, Mwenesi and Kyalo's clients would like in addition to the three, to have S K added so that, according to them, all houses are represented.

As pointed out, there is an issue as to whether or not the deceased had 2 or 3 houses. There is also an issue as to whether or not S K is indeed a son of the deceased. Those issues will have to be decided after taking evidence in the matter. To avoid appearing to prejudge the issue of whether or not S K is a son of the deceased, I have decided to leave out his name at this stage. Consequently I hereby appoint A W K, JN K and A N K as interim administrators of the estate. To avoid accusations of benefiting their respective houses, I have decided to limit their duties. Their duties shall be as follows:-

- (a) To compile an inventory of all the assets of the deceased whether or not they are in the two will.

- (b) To appoint an estate agent to collect rent from all the tenants in the deceased's properties.
- (c) In conjunction with the Estate Agent appointed, to compile an accurate list of the tenants in all the deceased's properties and the amount of rent each tenant is paying and determine rent payable in respect of each property.
- (d) In conjunction with the Agent to determine the outgoing charges, that is, water, electricity and security charges payable by the estate and not those payable by the tenants.
- (e) To open one joint account into which all the income from the deceased's properties shall be deposited. They shall not withdraw any amount from that account without the authority of this court.
- (f) The Interim Administrators shall within two weeks file and serve upon all parties their monthly fee not for approval by court.

The duties of the appointed Agent shall be

- (i) The appointed Agents shall within two weeks file and serve upon all parties their monthly fee note for approval by court.
- (ii) The appointed Agents shall deposit all the rent collected in the account to be opened less their agreed fees and the outgoing charges payable by the estate which they shall pay to the relevant authorities.
- (iii) The Agents shall, besides depositing the rent into the said account, file and serve upon the Interim Administrators a statement of account of the rent collected and the names, if any, of the tenants defaulting in payment.

The Interim Administrators have a right to question any item in the Agents' statement of account and take appropriate action against the defaulting tenants.

Save for the three Interim Administrators who shall deal with the tenants through the agent, none of the deceased's children should attempt to collect rent from any of the deceased's properties or interfere with the tenants in those properties.

DATED and delivered this 18th day of October 2011.

D.K. MARAGA

JUDGE



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