



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO.345 OF 2002**

**IN THE MATTER OF THE ESTATE OF GEOFFREY KAMAU**

**MAINGI –DECEASED**

**ELIJAH KIARIE KAMAU )**

**ROBINSON GITHUA KAMAU).....APPLICANTS**

**VERSUS**

**MUIGAI COMMERCIAL AGENCIES.....1<sup>ST</sup> RESPONDENT**

**MIRIAM WAIRIMU KAMAU.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

This application is stated to be brought under Section 45 of the Law of Succession Act (Cap 160). In it the Applicants seek the following orders:-

- “1. THAT the Respondents be ordered to stop collecting rent from all those parcels of land known as Nakuru Municipality Block 1/1646 and Nakuru Municipality Block 2/352 (hereinafter referred to as “the suit premises”)**
- 2. THAT the Respondents do give an account of the monies they have collected from the said premises since the death of the Deceased.**
- 3. THAT the Respondents do personally pay the costs of this application.”**

The application is supported by the affidavit of Mr. Elijah Kiarie Kamau in which it is deponed as follows. Mr. Kamau and his co-applicant are the sons of Geoffrey Kamau Maingi (the Deceased). On August 8, 2002, this court granted the Applicants a limited grant of administration of the estate of the Deceased limited to collecting rent from the tenants occupying the suit premises. They engaged Pata Commercial Agencies to assist them in this exercise. They discovered that Muigai Commercial Agencies, the 1st Respondent in this application were collecting rent from the tenants occupying land parcel number NAKURU MUNICIPALITY BLOCK 2/352. They asked the 1st Respondent to stop doing so. They also asked the 1st Respondent to give them an account of the monies collected by them since

the death of the Deceased. The 1st Respondent supplied a statement which the Applicants did not find satisfactory. The rent in respect of the other property is being collected by the 2nd Respondent. This situation has prevented the Applicants from collecting rents in respect of the suit properties. This is likely to cause the estate of the Deceased to be wasted.

There is no evidence that the 1st Respondent was served with this application. In the circumstances, no order can be made against it.

The 2nd Respondent on her part filed Grounds of Opposition but not a Replying Affidavit. She challenged the application on the following grounds:-

- 1. That the application was incompetent;**
- 2. That the Applicants made this application on the basis of letters of Administration Ad Colligenda Bona which grant was the subject of an application for revocation;**
- 3. That the Applicants did not have a legitimate interest over the estate of the Deceased;**
- 4. That the Applicants did not stand in priority in relation to the Objector for purposes of a grant of Letters of Administration since the Objector is the wife of the Deceased.**
- 5. That the application had no merits in view of “the papers filed by the Objector herein.”**

From these Grounds, it is not possible to determine one way or the other the 2nd Respondent's interest in the estate of the Deceased. Without a Replying Affidavit to guide this court on her grounds for opposing the Applicant's application, the Grounds of Opposition filed by the 2nd Respondent did not offer any meaningful help in the determination of this application. Section 45(1) of the Law of Succession Act is clear beyond peradventure that persons, such as the 2nd Respondent, who are not authorised by that Act or by any other written law or by a grant of representation under the Act are not to take possession or dispose of, or otherwise intermeddle with any free property of a deceased person. Looking at the material placed before me, I cannot understand what right the 2nd Respondent has over the estate of the Deceased to prevent this court from granting the Applicants the orders sought.

I, therefore, allow the Applicant's application dated October 28, 2002, against the 2nd Respondent with costs.

Dated and Delivered at Nakuru this 18th day of December, 2002.

**ALNASHIR VISRAM**

**JUDGE**



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