



In re Estate of Gerishon Kamau Kirima (Deceased) (Succession Cause 1298 of 2011) [2024] KEHC 15300 (KLR) (Family) (29 November 2024) (Ruling)

Neutral citation: [2024] KEHC 15300 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1298 OF 2011
PM NYAUNDI, J
NOVEMBER 29, 2024
IN THE MATTER OF THE ESTATE OF GERISHON KAMAU KIRIMA (DECEASED)**

RULING

1. This ruling relates to application dated 16th September 2023 (sic) that is presented under Sections 82 and 83 of the *Law of Succession Act* and rules 59(5), 61, 62, 72 and 73 of the *Probate and Administration Rules*. The Application is filed by Teresia Wairimu Kirima (a Co-Administrator) and she seeks the following orders;
 1. Spent.
 2. Spent
 3. That order that the Deputy Registrar to execute documents where joint administratrix Teresia Wairimu Kirima fails to sign be lifted and or be set aside.
 4. The Management and the letting contract executed between Legent (sic) Management (on the one part) and Anne Wangari Kirima and Deputy Registrar (on the second part) be terminated and/or declared null and void.
 5. That costs of this application be provided for.
2. The Applicant seeks to set aside the orders issued on 8th December 2020 that allow the Deputy Registrar to execute documents on behalf of Teresia Wairimu Kirima (Co- Administrator). The basis of the Application is that the Deputy Registrar is acting ultra vires the order and has in effect replaced Teresia Wairimu as Administrator.
3. According to her, the office of the Deputy Registrar is being used to execute decisions made solely by her co administrator Anne Kirima. She argues that the Deputy Registrar has been dragged to execute sale transactions in respect to properties known as LR No. 5908/8 and 6825/2. On 26th January 2024, Anne Kirima manipulated the Deputy Registrar to execute a management and letting contract she



unilaterally negotiated based on an order that had remained unenforced for 12 years. There was need for due diligence on the company.

4. Clause 5 of the contract provided that 5% of the rent collected monthly was to be paid to the agent. On 15th August 2024, the firm of MMC Asafo who represent Anne Wangari Kirima forwarded to her advocates bank instructions to pay Legend Estate Agent Kshs. 400,000 as monthly deposit not based on any rent collected. She protested against the instructions by writing a letter dated 20th August 2024 to MMC Asafo and the Deputy Registrar.
5. However, the Deputy Registrar proceeded to sign the instructions to pay the agents Kshs. 400,000. According to her, the management company does not collect rent or manage the estate. The management company is a ploy designed to siphon funds from the estate of the deceased.
6. She further argued that Anne Wangari Kirima does not execute documents generated by her. That the activities of Anne Wangari Kirima and the Deputy Registrar are meant to sideline her on matters administration of the estate. She argued that it is in the interest of preservation and protection of the estate the orders sought should be granted.
7. The Applicant has presented the following documents in support of the Application
 - a. Letter dated 8th May 2024 addressed to Deputy Registrar Family Division by the firm of Kaplan Stratton forwarding documents for execution
 - b. Letter dated 22nd April 2024 signed by Anne W Kirima (Co Administrator) and the Deputy Registrar, Hon. Catherine Nganga addressed to The Manager Equity Bank Attn Mr. Kihara, instructing the Bank to transfer Kshs 2,589,896.00 from the Estate Account.
 - c. unsigned letter dated 22nd April 2024 addressed to Kaplan and Stratton Advocates forwarding documentation
 - d. Letter dated 22nd April 2024 addressed to the Manager Equity Bank, attention Mr. Kihara with instructions to pay money into accounts of the Beneficiaries signed by Anne W Kirima and Deputy Registrar Family Division.
 - e. Copies of Cheques drawn on the Estate of Gerishon Kamau Kuria – Expenses Account
 - f. Extracted order of Hon Lenaola J (as he then was) issued on 19th December 2012
 - g. Managing and Letting Contract dated 1st March 2024 between the Registered Trustees of Kirima Trust and Legend Management Ltd, (only Anne Kirima has signed the agreement).
 - h. Letter dated 14th August 2024 addressed by MMC Asafo to Nyamu and Nyamu Advocates forwarding documents for execution, the same is copied to the Hon. Deputy Registrar and their Client.
 - i. Letter dated 12th August 2024, addressed to Ms. Doris Njuki of NCBA with instructions to make monthly payments to Legend Management Limited.
 - j. Letter dated 20th August 2024 from Ms. Nyamu and Nyamu Advocates declining to sign the instruction letter to bank with regard to payments to Legend Management Limited. The letter is copied to the Deputy Registrar Family Division and Counsel on record for the Beneficiaries.
8. The Application is opposed and Anne Wangari Kirima has sworn affidavit on 17th October 2024. That her actions are validated by order of the Court issued on 8th December 2020 which mandated the



- Deputy Registrar to execute documents when her co administrator failed. The said order was pursuant to a consent entered by the parties.
9. That the orders of 13th December 2023 which are being implemented were also founded on a consent by the parties. It is contended therefore that the current application is unfounded.
 10. With regard to the Contract with Legend, it is stated that the orders of the Court on 19th December 2012 are valid.
 11. Maria Njeri Kirima, a beneficiary to the Estate has sworn an affidavit in opposition to the Application on 18th October 2024. It is her position that it is the failure to cooperate on the part of the Administrator/ Applicant, Teresia Wairimu that has necessitated the involvement of the Deputy Registrar. She contends that it is in the interest of the Estate that the Registrar continue signing the documents in line with the orders of 8th December 2020.
 12. She presents the following documents
 - a. Agreement dated 29th January 2024 between Estate of Gerishon Kamau Kirima and Legend Management Limited signed by Anne Kirima, the Deputy Registrar and the Manager and Director/ Secretary of Legend Management Limited
 - b. Bundle of Letters addressed by MMC Asafo to Nyamu and Nyamu Advocates forwarding documents for authorization/ signature with corresponding instructions to the Bank to make payments, signed by Anne Kirima and Deputy Registrar, Family Division
 - c. Report prepared by Legend Management Limited dated 5th April 2024
 - d. Letter dated 12th March 2024 addressed to the Director, Criminal Investigations Department and signed by Anne Kirima, Co Administrator of the Estate.
 13. None of the parties filed submissions.

Analysis and Determination.

14. Having considered the pleadings herein I discern that the issues for determination can be framed as hereunder
 - a. Whether the Court should lift or set aside the orders of 8th December 2020
 - b. Whether the Orders of the Court issued on 19th December 2012 as relates to the appointment of Legend Management Limited remain valid.
15. On the 1st issue, in my ruling herein delivered on 18th October 2024, I found that the authority of the Deputy Registrar was founded on the Consent of the parties, which was adopted by the Court on 8th December 2020.
16. The Court in *Flora N. Wasike v Destimo Wamboko* [1988] eKLR spelled out the principles to guide Courts in determining applications to vacate consent orders. The Court stated-

It is now settled law that a consent judgment or order has contractual effect and can only be set side on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out: see the decision of this court in *JM Mwakio v Kenya Commercial Bank Ltd* Civil Appeals 28 of 1982 and 69 of 1983. In *Purcell v F C Trigell Ltd* [1970] 2 All ER 671, Winn LJ said at 676;



It seems to me that, if a consent order is to be set aside, it can really only be set aside on grounds which would justify the setting aside of a contract entered into with knowledge of the material matters by legally competent persons, and I see no suggestion here that any matter that occurred would justify the setting aside or rectification of this order looked at as a contract.

Both Lord Denning MR and Buckley LJ appeared to agree with this statement, moreover, that there was very little distinction between interlocutory orders (which was the kind of order there being considered) and final orders in this respect. Lord Denning thought (at 675) that a consent order of a judge would, subject to the Rules, be appealable with leave, and there is express provision for this in S 31 (1) (h) of The Supreme Court of *Judicature (Consolidation) Act* 1925. There is no similar provision in Kenya. This decision was followed in *Chanel Ltd v F W Woolworth & Co Ltd* [1981] 1 All ER 745, per Buckley LJ at 751, and in *Siebe Gorman & Co v Pneupac* [1982] 1 WLR 185, per Lord Denning MR at 189 and Eveleigh LJ at 191.

It seems that the position is exactly the same in East Africa. It was set out by Windham J, as he then was, and approved by the Court of Appeal for East Africa, in *Hirani v Kassam* (1952) 19 EACA 131, at 134, as follows:

...Prima facie, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them ... and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court ...; or if the consent was given without sufficient material facts, or in general for a reason which would enable the court to set aside an agreement.

This passage was followed by the same court in *Brooke Bond Liebig Ltd v Mallya* [1975] EA 266 at 269 in which Law Ag P said:

A court cannot interfere with a consent judgment except in such circumstances as would afford good ground for varying or rescinding a contract between the parties.

17. I am satisfied by the evidence placed before me that the Deputy Registrar has executed documents when the Co- Administrator Teresia Wairimu has failed to do so and has therefore acted in accordance with the orders of 8th December 2020.
18. On the 2nd Issue, the contract with Legend Management (assuming it is the one dated 29th January 2024, since it is the one duly signed by all the parties) is executed on the basis of the orders of 19th December 2012. The Applicants lament is that coming so long after the Order, there should have been due diligence done on the Company.
19. Section 4 (4) of the [Limitation of Actions Act](#), provides that

An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.



20. The action to execute the agreement is within the time frames provided by the law. The Affidavit of Maria Njeri Kirima provides a rebuttal of the allegations made on the payment to the Management firm. This has not been controverted. The Management Company having been contracted are entitled to the payment of their professional fees.
21. In light of the foregoing I will dismiss the Application with costs to the Anne Wangari Kirima, the Co Administrator herein. The same to be paid by Teresia Kirima personally. The costs are assessed at Kshs 35000 and are payable within 30 days.

DELIVERED ON THE VIRTUAL PLATFORM, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF NOVEMBER, 2024.

PATRICIA NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

