



REPUBLIC OF KENYA



In re Estate of Peter Kibisu Indimu (Deceased) (Succession Cause . E25 of 2021) [2023] KEHC 1196 (KLR) (23 February 2023) (Ruling)

Neutral citation: [2023] KEHC 1196 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE . E25 OF 2021
RN NYAKUNDI, J
FEBRUARY 23, 2023**

BETWEEN

FLORENCE KADALI KIBISU PETITIONER

AND

BRIAN INDIMU KIBISU OBJECTOR

RULING

1. This matter relates to the estate of Peter Kibisu Indimu, who died on December 24, 2020. On November 14, 2022, this Court issued the amended letters of administration intestate dated November 15, 2022, of all the estate of Peter Kibisu Indimu (Deceased) to Florence Kadali Kibisu and Brian Indimu Kibisu being the wife and son of the deceased herein respectively.
2. Before this court are two applications filed by Brian Indimu Kibisu, the Objector herein. In the application dated January 17, 2022, the Objector seeks the following orders: -
 1. Spent.
 2. That this Honourable Court be pleased to order that all proceeds from Bethel Junior Academy be deposited in a joint account for Limo R.K. & Co. Advocates & Nyekwei & Co. Advocates pending the hearing and determination of the objection proceedings dated August 16, 2021.
 3. That Florence Kadali Kibisu the Respondent herein be prohibited and stopped from wasting, selling or alienating the estate and be restrained from managing accounts of Bethel Junior Academy pending the distribution of the of the estate.
 4. That the Honourable Court be pleased to compel the Petitioner/Respondent to render accounts of proceeds of sale motor vehicle registration No. KBW 619D and the accounts of Bethel Junior Academy since the demise of the deceased to date.



5. That in the alternative the Objector/Applicant be appointed as a co-administration of the estate of the deceased.
6. Costs be on cause.
3. In the second application dated March 17, 2022, the objector seeks the following orders: -
 1. That a monthly stipend and provision of Kshs.100,000/= be made from the estate of the deceased to cater for the Objector's/Applicant's needs and basic necessities pending the hearing and determination of this matter.
 2. That costs of the application be in the cause.
4. Following the orders of this Court issued on November 14, 2022, the Objector was consequently, made a co-administrator of the estate of the deceased together with the Petitioner.
5. In determining the two application in the first instance I refer to the provisions of section 71 (2) (A) of the Law of Succession Act which reads as follows:
 - (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering and will administer the estate according to the law confirm the grant or
 - (b). if it is not so satisfied issue to some other persons or persons in accordance with the provisions of section 56 to 66 of this Act a confirmed grant of letters of administration in respect of the estate or so much thereof as may be administered or

Order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control or
 - d) postpone confirmation of the grant for such or periods, pending issues of further citation or otherwise as may seem necessary in all the circumstances of the case.
6. Respectively, from the affidavits in support of the two applications, the remedies being sought are in consistent with sections 45 and 55 of the Act which expressly state as follows: 45 “No person shall for any purpose, take possession or dispute of or.....intermeddle with any free property of a deceased 55 “ No grant of representation, whether or not limited in its terms shall confer prior to distribution any capital assets consisting the net estate, or the make any division of property, unless and until the grant has been confirmed as provided by section 71 of the Law of Succession Act.” In addition rule 41 (3) of the Probate and Administration Rules signifies as follows: “ where a question arises as to the identity share or estate of any person of any person claiming to be a beneficiary interested in or any condition or qualification attaching to such share or estate which cannot at any stage be conveniently determined the court may be prior to confirming the grant but subject of provision of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceeding under order XXXVI, rule 1 of the Civil Procedure rules and may thereupon subject to the proviso to section 7(2) of the Act, proceed to confirm the grant”
7. Applying the tests which I have indicated to the present case, the purpose of distributing part of the estate to the Applicant in the summons dated March 17, 2022 will contravene section 55 of the Law of Succession Act. The analogy and implication prayers No. 2 and 4 of the Application dated the same day for protection and preservation of the estate amounts to transmitting the assets of the intestate estate to a third party before distribution.
8. Having found so, the Court cannot therefore delve into the merits of or otherwise of the two aforementioned applications as doing so will only result into the partial distribution of the estate of



the deceased herein which in my view should only be dealt with upon parties filing summons for confirmation of grant.

9. With the foregoing in mind, I hereby directed that parties will only file summons for confirmation of grant together with their respective models of distribution for this Court's consideration. In the interim the Petitioner be and is hereby directed to render a full and accurate statement of account of her dealings with the estate of the deceased from the date of his demise. In that case I direct that the petitioner submits all receipts, statements of account, books so far containing details of the proceeds of sale of Motor vehicle Registration No. KBW 619D and that of Bethel Junior Academy since the demise of the deceased to a qualified accountant/auditor who shall then contact a forensic analysis of the estate. In that respect, the Accountant ICPAK membership of Kenya within 21 days from today's date. The professional fees of work done and accomplished by the Accountant Auditor so appointed will be payable from the estate account. Thereafter the Administrators shall file summons for confirmation of grant with corresponding affidavit and consents on the mode of distribution.

Auditor shall be appointed by the Deputy Registrar from

10. Each party shall bear their own costs noting that the claim herein is a Succession Cause involving members of one family.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 23rd DAY OF FEBRUARY 2023

.....

R. NYAKUNDI

JUDGE

limorkadvocates@gmail.com

Coram: Hon. Justice R. Nyakundi

Limo R.K & Co. Advocates

Senet Oburu & Co Advocates

Nyekwei & Co.Advocates

