



REPUBLIC OF KENYA



In re Estate of Gerishon Kamau Kirima (Deceased) (Succession Cause 1298 of 2011 & 1516 of 2018 (Consolidated)) [2023] KEHC 2663 (KLR) (Family) (29 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2663 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1298 OF 2011 & 1516 OF 2018 (CONSOLIDATED)
PM NYAUNDI, J
MARCH 29, 2023
IN THE MATTER OF THE ESTATE OF THE GERISHON
KAMAU KIRIMA (DECEASED)

RULING

1. Vide Summons dated November 23, 2022, the Applicant seeks that the firms of Advocates;
 - i. Messrs s Musalia Mwenesi Advocates
 - ii. Messrs P C Onduso
 - iii. Messrs Nyamu and Nyamu Co Advocates
 - iv. Messrs Kaplan & Stratton Advocates

all representing the Estate in the following matters; HC ELC No 509 of 2014, ELC No 1257 of 2014, ELC No 252 of 2011, ELC No 138 OF 2013, ELC No 1496 and ELC No 850 of 2014 be paid their legal fees which are owing for 2020, 2021 and 2022. The amount payable to each firm would be Kshs 1 million per year. Therefore, working out to Kshs 3m per firm and for the 4 firms listed. The urgency of the matter is that the matters are now concluded pending submissions and the Advocates are unlikely to submit the Applications unless their fees is paid. Further the Applicant (who is a co administrator) has negotiated with the Counsel on record and the Advocates have agreed to accept a deposit of Kshs 1 million each as this is what the estate can afford.

2. On 7th March the Court gave directions that the Application be served on all the parties and that the unrepresented parties would pick the copies of their application from the offices of the firm of Nyamu and Nyamu Advocates. The Court further directed that the firm of Wambugu prepare and serve on all parties (with the unrepresented parties collecting the copies from the office) with a schedule of the Court orders that have not been complied with.



3. The Applicant also presented Application dated March 27, 2023 seeking similar orders to those in the Application dated November 23, 2022 praying that three Advocates representing the Estate in the ELC No 440 of 2016 Fairview Estate Limited Vs Ann Wangari Kirima & Teresia Warimu and Maria Karima being;
 - i. M/S Musalia Mwenesi Advocates
 - ii. M/S Nyamu and Nyamu Advocates
 - iii. M/S Kaplan & Stratton Advocates be each paid Kshs 1 million as legal fees.
4. That the firms representation the Estate and beneficiaries in HC P&A1298 of 2011 be paid each Kshs 1 million as deposit of legal fees and further that the sum of Kshs 12, 181,177.00 be paid to the Kenya Revenue Authority with respect to accumulated income tax payable by the Estate.
5. The Application is opposed by Bishop Jane Gathoni Kirima by affidavit sworn on March 15, 2023. Principally she asserts that the fees are in respect of matters outside the jurisdiction of the Court. That the administrators have routinely failed to comply with court orders requiring payment to the beneficiaries that are self-representing. That it is not clear how the fees for the Advocate has been arrived at. That this payment if made will be detrimental to the estate and the beneficiaries.
6. Ruth Kirima and Susan Kirima who are both beneficiaries of the Estate opposed the Application and voiced concern that the beneficiaries of the Estate are not benefitting from the estate in accordance with the wishes of their deceased parents. Like Bishop Jane Gathoni Kirima they are concerned with non-compliance of orders on the part of the Administrators.
7. The Counsel for the Co Administrator supports the Application for payment of counsel fees and informed that there is documentation for payment to the unrepresented beneficiaries that is pending before the Deputy Registrar for signature. That the challenges faced in Administration are occasioned by the non-cooperation of her co administrator.
8. It was common ground that the monthly collections by the estate paid into the estate bank account have dipped from Kshs 20 million per month to approximately Kshs 3-4 Million per month. This has a bearing on the amount of payments that the estate can make.

Determination

9. Whereas the payment to the firm of advocates representing the Estate in the ELC matters has been challenged on account that it is for matters outside the jurisdiction of the Court. It is not disputed that these are high value assets of the Estate and further the Court record is clear that in the past these sums have been authorised for payment by the Court. The orders mandating this are yet to be vacated.
10. I have also considered the Application dated March 27, 2023, as stated this Application pursuant to court orders requiring that payment of legal fees to be made under the sanction of the Court. Payments made to counsel will be factored in at the time of distribution.
11. I also note that the Beneficiaries have not received payments as per court orders in respect of legal fees and school fees for children.
12. There is also the issue of outstanding payment to the Kenya revenue Authority for the sum of Kshs 12, 181, 177.
13. Mindful of the fact that the Estate has limited funds and also conscious that there should be equal treatment of all the beneficiaries whether or not represented.



14. It Is Hereby Ordered

- a. That the firms of
 - i. Messrs s Musalia Mwenesi Advocates
 - ii. Messrs P C Onduso
 - iii. Messrs Nyamu and Nyamu Co Advocates
 - iv. Messrs Kaplan & Stratton Advocates be paid the sum of Kshs 1 million each for representing the Estate in the matters: HC ELC No 509 of 2014, ELC No 1257 of 2014, ELC No 252 of 2011, ELC No 138 OF 2013, ELC No 1496 and ELC No 850 of 2014
- b. The firms of
 - i. Messrs Musalia Mwenesi Advocates
 - ii. M/s Nyamu & Nyamu Co Advcates
 - iii. M/S Kaplan & Stratton Advocates representing the estate in ELC No 440 of 2016 Fair View Estate Limited Vs Anne Wangari Kirima and Teresia Wairimu and Maria Karima be paid the sum of Kshs 1 million each.
- c. That the firms of
 - i. M/S Kyalo and Associates Advocates
 - ii. M/s Musalia Mwenesi Advocates
 - iii. M/s Nyamu & Nyamu Advocates
 - iv. M/S Kaplan & Stratton Advocates
 - v. M/S Muriu Mungai & Co Advocates
 - vi. M/S Simba & Simba Advocates
 - vii. M/S Mwangi Kigotho & Co. advocates
 - viii. M/S Prof. Migai Akech & Co. Advocates
 - ix. M/S Michael Daud & Co. Advocates representing the Estate and Beneficiaries in Succession Cause 1298 of 2011 be paid the sum of Kshs 1 million each.
- d. That for the unrepresented Beneficiaries (Margaret Wanjiru Kirima, Jane Gathoni Kirima, Ruth Wanjiru Kirima and Susan Wangari Kirima) the Deputy Registrar to execute the documents for pending payments submitted earlier by Anne Wangari Kirima (Co-Administrator) within the next 14 days so as to facilitate payment.
- e. That the sum of Kshs 12, 181, 177 be paid to Kenya Revenue Authority and receipt be filed in Court as proof of payment.
- f. That all the payments to be made out of Estate Account No 67xxxxxx held at NCBA Bank Kenya PLC. Wabera Street Branch, Nairobi.

It is so ordered.



SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 29th DAY OF MARCH, 2023.

P M NYAUNDI

JUDGE

In the presence of:

..... Advocate for Applicant

.....Respondent

Karani Court Assistant

