



**In re Estate of Joseph Mukuri Mungai (Deceased) (Succession Cause
357 of 2020) [2023] KEHC 17411 (KLR) (Family) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17411 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 357 OF 2020

MA ODERO, J

APRIL 28, 2023

**IN THE MATTER OF THE ESTATE OF JOSEPH MUKURI
MUNGAI (DECEASED)**

BETWEEN

MONICAH WAMBUI MUKURI APPLICANT

AND

MICHEAL MUNGAI MUKURI RESPONDENT

JUDGMENT

1. Before this Court for determination is the summons for revocation of Grant dated June 10, 2022 filed by Monicah Wambui Mukuri who is the 1st Administrator of the estate of the Deceased. The summons was supported by the Affidavit of even date sworn by the Applicant as well as the Further Supporting Affidavit dated November 7, 2022 sworn by Peter Mundia Mukiri a beneficiary of the estate.
2. The 2nd Administrator/Respondent Micheal Mungai Mukuri opposed the summons through his Replying Affidavit dated June 23, 2022 and the Further Replying Affidavit dated November 28, 2022.
3. The summons was canvassed by way of written submissions. The Applicant filed the written submissions dated December 6, 2022 whilst the Respondent relied upon his written submissions dated January 9, 2023.

Background

4. This Succession Cause relates to the estate of the late Joseph Mukuri Mungai (hereinafter ‘the Deceased’) who died intestate at the Kenyatta National Hospital on April 30, 2011. A copy of



the Death Certificate Serial Number 135940 is annexed to the Petition for Grant of letters of Administration Intestate dated June 15, 2020.

5. The Deceased was survived by the following persons:-

- (a) Monicah Wairimu Mukuri - Widow
- (b) Micheal Mungai Mukuri - Son
- (c) Josephat Mwangi Mukuri - Son
- (d) Peter Mundia Mukuri - Son
- (e) Hiram Kagori Mukuri - Son
- (f) Jane Wairimu Gichuiri - Daughter
- (g) Francis Wakinga Mukuri - Son
- (h) Anne Njeri Mukuri - Daughter
- (i) Winfred Mwendu Njuguna - Son

6. The estate of the Deceased comprised the following assets:-

- (a) Plot No Muranga/Location 4muruka/6XX
- (b) Plot No Muranga/Mitubiriwempa Block 2/XX
- (c) Plot No Muranga/Location 4muruka/8XX
- (d) Plot No Muranga/Location 4muruka/4XX
- (e) LR NO 36/11/XX Eastleigh – Nairobi
- (f) LR NO 36/V/2XX JUJA Road - Nairobi
- (g) Shares Standard Bank
- (h) Shares Kenya Commercial Bank (KCB)
- (i) Shares National Bank
- (j) Shares Kenya Airways
- (k) Shares Kengen Limited

Total Estimate SHS 3,000,000

7. Following the demise of the Deceased his widow Monicah Wambui Mukuri and son Micheal Mungai Mukuri petitioned the court for Grant of letters of Administration Intestate. The Grant was issued to the two (2) on October 12, 2020. Thereafter on October 27, 2021 the Grant was duly confirmed.

8. On June 10, 2022 the Applicant filed this summons seeking revocation of the Grant on ground that her Co-Administrator had sidelined her in the administration of the estate. That the Respondent had totally declined to meet with the Applicant in order to plan on how to distribute the estate to the beneficiaries.

9. The Applicant accused that the Respondent of *inter alia* solely collecting rent alone from the residential units on LR No XX/V/273 Juja Road - Nairobi. That the Respondent has been utilizing



- the rental income so collected alone to the detriment of the other beneficiaries. That the Respondent has been wasting estate property which he treats as his own personal property.
10. The Applicant states that the Respondent has breached his duty as a personal representative by failing to give an account to the Applicant and to the other beneficiaries of his administration of the estate. That if the Grant is not revoked the Respondent will continue mismanaging the estate to the prejudice of the other beneficiaries who have so far received no benefits said estate.
 11. The Respondent in his Replying Affidavit denied all the allegations made against him by his Co-Administrator. The Respondent denies that he has converted LR No XX/V/273 Juja Road - Nairobi to be his own personal property. He explains that although the confirmed Grant indicated that the said property was to be registered in the Joint names of himself and the Applicant, the family later held a meeting at which it was agreed that the Applicant transfer her share of the property to the Respondent for a consideration of Kshs 3.5 Million which monies have been paid in full.
 12. The Respondent further denies that the other beneficiaries have not received any benefit from the estate. He avers that out of the money paid for LR No XX/V/273 Juja Road - Nairobi the sons of the Applicant each received an amount of Kshs 700,000/=.
 13. The Respondent states that the Applicant is his biological mother and it would be unthinkable that he would seek to exclude her from the administration of the estate. He urges the court to dismiss this summons entirely

Analysis and Determination

14. I have carefully considered the summons before this court, the Reply filed thereto as well as the written submissions filed by both parties. The only issue for determination is whether the Grant which was confirmed on October 27, 2021 ought to be revoked
15. Section 76 of the [Law of Succession Act](#) provides for revocation of grants under as follows:-
 - “76. Revocation or annulment of grant
A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-
 - a. that the proceedings to obtain the grant were defective in substance;
 - b. that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case:
 - c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
 - d. that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
 - i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or



- ii. to proceed diligently with the administration of the estate; or
- iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of Section 83 or has produced any such inventory or account which is false in any material particular; or
- e. that the grant has become useless and inoperative through subsequent circumstances.”

16. It is not in dispute that the confirmed Grant in respect to the estate of the Deceased was issued jointly to the Applicant and the Respondent. That being the case the two were authorized by the court to act jointly in administering the estate and ensuring distribution to all the other beneficiaries in terms of the confirmed Grant.
17. The Grant herein was confirmed in October 2021. To date the estate has not been fully administered. The Applicant alleges that her Co-Administrator (the Respondent) has been the stumbling block to the administration of the estate. The other beneficiaries through the Further Affidavit sworn by Peter Mundia Mukuri appear to support the allegations being made by the Applicant (their mother).
18. It is evident that there is division within the family of the Deceased regarding the manner in which the estate is being distributed. There is no meeting of minds between the two Administrators of the estate. The cannot be beneficial to the estate. Where the two appointed Administrators are no longer capable of working in concert then my view is that the family should go back to the drawing board and appoint new Administrators who will be able to proceed with the distribution of the estate.
19. In the meantime it must be pointed out that the law does impose certain obligations upon persons who have been appointed to administer an estate. The relationship between the Administrators of an estate and the beneficiaries is one which is fiduciary in nature. The Administrators have a legal obligation to give an account of their administration of the estate.
20. The duties of an Administrator are clearly set out in Section 83 of the *Law of Succession Act*, Cap 160 Laws of Kenya. Sections 83(e) and (9) of the said Act provide as follows:-

“ 83.

- (a)
- (b)
- (c)
- (d)
- (e) to produce to the Court, if required by the Court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the Deceased and a full and accurate account of all dealing therewith up to the date of the account.



- (f) Subject to Section 55 to distribute or retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this Section and the income therefrom, according to the respective beneficial interests therein under the Will or on intestacy, as the case may be.
- (g) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the Court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.” [own emphasis]

21. In the case of *RE: Estate Of Julius Mimano (Deceased)* [2019] eKLR, Hon Justice William Ouko stated as follows:-

“Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the *Trustee Act*, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.” (own emphasis)

22. Likewise in *RE Estate Of Adam Haji Ali Talib (Deceased)* 2019 e KLR the court stated as follows:-

“Under Section 83 (g) an administrator(s) is obligated to complete the administration of the estate in respect of all matters within six (6) months from the date of confirmation of the grant and to produce to the court a full and accurate account of the completed administration.

23. The court in the above case went on to state:-

“The production of account is a key component of the administration process of a deceased person’s estate. From the moment a grant is issued to a personal representative of a deceased person, the grant holder becomes responsible to the court in the carrying out of the duties of administrator. Accounts are an accountability tool that will tell the court whether the administrator has been faithful to the role entrusted to him or her. When an administrator fails to file accounts as required, questions as to the integrity of the process are bound to arise as in the present case.”

24. The current administrators of the estate have failed to comply with this statutory obligation. Moreover their bickering is in my view detrimental to the estate. In the circumstances I find there exists sufficient ground to revoke the Grant issued to the two Administrators as the two are clearly incapable of working together for the benefit of the estate.



25. The mode of administration was clearly set out in the confirmed Grant dated October 27, 2021. Both the Applicant and the Respondent have a statutory duty to account and to explain what steps they have taken (if any) to distribute the estate in accordance with the confirmed Grant. This must be done before new Administrators can be appointed to take over the administration of the estate.
26. In coming to any decision regarding the administration of an estate a court is obliged to give priority to the best interests of the estate. Section 47 of the *Law of Succession Act* Cap 160 Laws of Kenya provides as follows:-
- “The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”
27. Similarly Rule 73 of the *Probate and Administration Rules* provide that:-
- “Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
28. In the circumstances I make the following orders:-
- (1) The Administrators of the estate to file in court full and accurate accounts regarding their administration of the estate of the Deceased with effect from October 12, 2020 to the date of this judgement.
 - (2) The said Accounts to be filed within sixty (60) days.
 - (3) The Grant issued to the Applicant and Respondent is hereby revoked.
 - (4) The family of the Deceased to deliberate and to present to court within sixty (60) days the names of two (2) or three (3) persons to be appointed as administrators in place of the Applicant and the Respondent.
 - (5) This being a family matter each side will meet their own costs.

DATED IN NAIROBI THIS 28TH DAY OF APRIL, 2023.

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MAUREEN A. ODERO

JUDGE

