



REPUBLIC OF KENYA



**In re Estate of Margaret Mumbi Kihui (Deceased) (Probate & Administration
E109 of 2022) [2023] KEHC 3669 (KLR) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3669 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PROBATE & ADMINISTRATION E109 OF 2022**

A MSHILA, J

APRIL 28, 2023

RULING

1. Before the court for determination is the summons application dated November 29, 2022 brought under a certificate of urgency under section 63 of the *Law of Succession* and Order 45 of the *Civil Procedure Rules* 2010, seeks the court to review its orders and grant a limited Grant Ad Litem in the cause.
2. The application is premised on the grounds that the applicant desires to recover the only property of the estate of the deceased Margaret Mumbi Kihui, which property was grabbed and transferred to third parties upon the demise of the deceased, the efforts to recover the same bore no fruits without the limited grant ad litem.
3. The application is supported by the annexed affidavit of Peter Kuria Kihui sworn on November 29, 2022, in which he deponed that the deceased is his mother, who was the owner of L.R. Ruiru/East/Block 2/2197 in Nyakinyua Women investments, he has not obtained letters of administration and upon conducting some private investigations he discovered the property has been transferred to other 3rd parties. A similar application seeking the grant ad litem was declined by the court and an order to file a full grant which has not been complied with on the grounds that the property has been fraudulently transferred to third parties.
4. At the hearing of the application Mr. Kamunyu counsel for the applicant submitted the applicant intends to pursue a limited Grant Ad Litem to pursue the estate of the deceased. The directions to file a full grant is not tenable as the property has been grabbed. He urged the court to review the orders of October 17, 2022, by Justice Ngetich.



Analysis

5. The matter was first placed before Justice Rachel Ngetich on October 17, 2022, who declined to issue a limited grant and ordered the beneficiaries to file a full grant. she stated

“I however note that the deceased died on September 22, 2004, and no reason has been demonstrated to warrant grant of letters of administration ad litem. The beneficiaries to file petition for full grant.”

6. The applicant thereafter came to court on March 6, 2023 under a certificate of urgency seeking the same orders of letters of administration ad litem, Justice Chepkwony did not find any urgency in the matter and directed the same to be placed before this court for hearing and further directions.
7. Having read the application, the applicant seeks a review of Hon. Lady Justice Ngetich’s orders of October 17, 2022 and prays that he be granted letters of administration ad litem limited only to the recovery of the suit land L.R. Ruiru/East/ Block 2/2197, which he disposes belonged to his late mother but has been fraudulently transferred to other third parties.
8. The issue for determination is whether this court should review the orders made on October 17, 2022 and grant the Letters of administration ad litem as sought.
9. Order 45, Rule 1 of the *Civil Procedure Rules* sets the threshold for a review of orders or decree. It provides as follows:

“(1). Any person considering himself aggrieved-

- a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is hereby allowed.

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

10. The above provisions set out three conditions for a review as follows: discovery of new evidence which was not within the knowledge of the applicant at the time the order was issued, error apparent on the face of the record and any other sufficient cause.
11. In the instant case, the first two grounds are not applicable in this case and therefore this court finds the appropriate ground for the review as presented by the applicant to be any other sufficient cause. The applicant submits that unless the orders of October 17, 2022 are reviewed the property of his deceased mother will waste away and he will not be able to recover the same.



12. The provisions of rule 45 are based on section 80 of the *Civil Procedure Act*, which states as follows:

“Any person who considers himself aggrieved:-

- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is allowed by this Act.

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

13. The applicant submits that filing a full grant is not tenable as the deceased did not have other properties and the property in dispute has already been fraudulently transferred to other 3rd parties.

14. Section 54 of the *Law of Succession Act* provides:

“A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.”

15. Further the Fifth Schedule (14) provides: -

“When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.”

16. A grant ad Litem is issued for a specific purpose and where there is an urgency that cannot wait for the full grant to be granted. The applicant intends to represent the estate of her late mother who died on September 22, 2004, letters of administration have not been obtained, and he is apprehensive that since the property has been fraudulently transferred it will continue to waste away and he will not be able to recover the said property. He also argues that the deceased did not have any other properties and thus taking out a full grant is not tenable.

17. Section 67 of the *Law of Succession Act* provides for a limited grant for purposes of collection and preservation of assets of the estate of a deceased person. Rule 36 of the *Probate & Administration Rules* provides that:-

1. Where, owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defuncti of the estate of the deceased.
2. Every such grant shall be in Form 47 and be expressly limited for the purpose only of collecting and getting in and receiving the estate and doing such acts



as may be necessary for the preservation of the estate and until a further grant is made.

18. The applicant contends that filing the full grant is not possible as the estates has been transferred to third parties.
19. This court is clothed with the discretion to enlarge time. As provided by section 67 of the [Succession Act](#), which section provides:

“Where any period is fixed or granted by these Rules or by an order of the court for the doing of any act or thing, the court upon request or of its own motion may from time to time enlarge such period notwithstanding that the period originally fixed or granted may have expired’.
20. This court finds that the applicant has sufficiently demonstrated the existence of any other sufficient cause. Thus it is in the interest of justice that the court exercises its discretion and review the orders of October 17, 2022 and grant letter of administration ad litem to the applicant for the purposes only of recovering the property known as L.R. Ruiru/East/ Block 2/2197.
21. In the circumstances, therefore this court satisfied that the application dated November 29, 2022, is meritorious and reviews the orders of October 17, 2022, and allows the grant ad litem to be issued solely for the purpose of institution of legal proceedings for the recovery of parcel No. L.R. Ruiru/ East/ Block 2/2197.

Findings & Determination

22. For the forgoing reasons this court makes the following findings and determinations;
 - i. This court finds the application for review to be with merit.
 - ii. The applicant be issued with a Grant Ad Litem solely for the purpose of institution of legal proceedings for the recovery of parcel No. L.R. Ruiru/East/ Block 2/2197;
 - iii. There shall be no order as to costs.

Orders Accordingly.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU THIS 28TH DAY OF APRIL, 2023.

A. MSHILA

JUDGE

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