



In re Estate of Abdalla Juma Kibanda (Deceased) (Miscellaneous Application E159 of 2022) [2023] KEHC 21155 (KLR) (Family) (28 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21155 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E159 OF 2022
MA ODERO, J
JULY 28, 2023**

BETWEEN

ASHRAF ABDU KASSIM APPLICANT

AND

KARAR OMAR RESPONDENT

RULING

1. Before this court for determination is the chamber summons dated July 25, 2022 by which the applicant Ashraf Abdu Kassim seeks the following orders.

- “1. Spent
2. That pending the hearing and determination of this application, the honourable court be pleased to commit the respondent to prison and pay a fine not exceeding Kshs 10,000/= for each of the properties he has intermeddled with; in accordance with section 45 (1) of the *Succession Act*, Laws of Kenya owing to the fact that the respondent has been intermeddling with the property of the deceased person.
3. That pending the hearing and determination of this application, this honourable court be and is hereby pleased to make orders that will restrain the respondent from engaging in acts of intermeddling with the estate of the deceased; Abdalla Juma Kibanda by virtue of the valid revoked certificate of confirmation of grant in favour of the respondent.
4. That the honourable court be and is hereby pleased to nullify the transaction for sale of parcel number LR No 5397/40 Athi River Daystar or in the



alternative, the honourable court direct that the applicant gets all the proceeds from the sale.

5. That the honourable court be and is hereby pleased to nullify the transaction for sale of Magongo Bomu Plot No 1856 sector – vi/mv Magongo Mombasa in which the respondent has unlawfully disposed.
 6. That the honourable court be and is hereby pleased to order that the respondent to deposit in court titles in his possession relating to the deceased's property which include:-
 - 1.1.1.1. land reference No 15397/40 Athi River Daystar.
 - 1.1.1.2. land reference No 15397/42 Athi River Daystar.
 - 1.1.1.3. land reference No 15395/1 Athi River Daystar.
 - 1.1.1.4. Magongo Bomu Plot No 1856 Sector – vi/mv Magongo Mombasa.
 7. That this honourable court be and is hereby pleased to make a declaration that the verdict of the Kadhi's Court case number 94/1999 which was further upheld in an appeal by the respondent is the true legal verdict.
 8. That this honourable court be and is hereby pleased to make a declaration that the verdict of the Kadhi Court stand; which upheld the valid will of the late Maryam Juma awarding the applicant the properties;
 - 1.1.1.1. land reference No 15397/40 Athi River Daystar.
 - 1.1.1.2. land reference No 15397/42 Athi River Daystar.
 - 1.1.1.3. land reference No 15395/1 Athi River Daystar.
 - 1.1.1.4. Magongo Bomu plot No 1856 Sector – vi/mv Magongo Mombasa.
 9. That this court be and is hereby pleased to make orders that the mandated Directorate of Criminal Investigations probe into illegal disposal of the properties by the respondent namely LR No 15397/40 Athi River Daystar and Magongo Bomu Plot No 1856 sector – vi/mv Magongo Mombasa.
 10. That the costs of this application be provided for.
2. The application is brought pursuant to section 45 of the *Law of Succession Act*, rule 49 and 73 of the *Probate and Administrative Rules* and sections 1A, 1B, 3, 3A of the *Civil Procedure Act*, chapter 21 of the Laws of Kenya and all other enabling provisions of the law and is supported by the sworn affidavit of the respondent of even date and a further affidavit dated December 20, 2022, both sworn by the applicant.
 3. The respondent Karar Omar opposed the application through this replying affidavit dated December 6, 2022. The matter was canvassed by way of written submissions. The applicant filed the written submissions dated December 19, 2022 whilst the respondent relied on the written submissions dated December 14, 2022.
 4. This matter relates to the estate of the late Abdalla Juma (hereinafter 'the deceased') who died the year 1995. Following the demise of the deceased the records indicate that a confirmed grant was on April 10, 1996 issued to Musa Abraham and Karar Omar (the respondent herein) in succession court No 1790A of 1995.



5. That grant was thereafter revoked on August 30, 2005 on grounds that the widow of the deceased Khadia Abdalla had been excluded in the succession cause.
6. The respondent who is a grand child of the deceased filed succession cause No 935 of 2017 and approached the court seeking to be issued with grant of letters of administration. The court issued the respondent with a grant which was confirmed on November 27, 2017.
7. The applicant herein who claims to be the nephew of the deceased filed a summons seeking to revoke the grant issued to the respondent. The grant was again revoked on November 11, 2021.
8. The applicant states that he is the executor of the estate of Maryan Juma Kibanda who was the sister to the deceased Abdalla Juma Kibanda. He states that the said Maryan Juma Kibanda is one of the beneficiaries to the estate of the deceased.
9. The applicant claims that the respondent has been intermeddling with the estate of the deceased and that the respondent sold LR No 15397/40 Athi River Daystar illegally.
10. The applicant seeks orders to prevent any further intermeddling in the estate of the deceased by the respondent and particularly seeks orders that the respondent deposit in court the title documents for the following parcels of land all of which belong to the deceased:-
 - (a) Land reference No 15397/40 Athi River Daystar.
 - (b) Land reference No 15397/42 Athi River Daystar.
 - (c) Land reference No 15395/1 Athi River Daystar.
 - (d) Magongo Bomu Plot No 1856 Sector -vi/mv Magongo Mombasa.
11. The respondent in opposing the application asserted that the deceased was his grandfather. That the deceased bequeathed his entire estate to the respondent's mother Khadija Abdalla. That the respondent's mother passed away in the year 1990 leaving the respondent as the sole heir to her estate. According to the respondent the applicant has no claim whatsoever over the estate of the deceased herein.

Analysis and Determination

12. I have considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties
13. The law regarding intermeddling with the estate of a deceased person is well codified in the *Law of Succession Act*. Section 45 of the said Act provides as follows:
 - “(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
 - (2) Any person who contravenes the provisions of this section shall-
 - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”



14. According to Musyoka, J in *Veronica Njoki Wakagoto (deceased)* [2013] eKLR:
“The effect of [section 45]...is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by the Law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence”. [own emphasis]
15. The applicant accuses the respondent of intermeddling with the estate of the deceased by disposing of certain properties which belonged to the deceased.
16. In his replying affidavit the respondent concedes that he did sell LR No 15397/40 Athi River – however the respondent claims that he sold the said property during the period when he validly held a certificate of confirmed grant to the estate before the grant issued to him had been revoked. The respondent insists that once the grant issued to him was revoked he ceased all dealings with the property of the deceased.
17. It is doubtful, whether the applicant has locus standi to file this suit on behalf of the estate of the deceased. Locus standi is a latin term which literally means “place of standing” and refers to the right of an individual to file suit or to act in a matter.
18. The only person who is authorized in law to deal with the property of a deceased person is the legally appointed administrator of the estate or an executor appointed under a written will. The applicant herein is neither in respect of the estate of the deceased.
19. The fact that the applicant holds a grant of representation to the estate of his late mother (a sister to the deceased herein) does not grant him legal authority to represent the estate of the deceased.
20. In the case of *Otieno v Ougo* (1986 – 1989) EALR 468 the court stated.
“...An administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does the action is incompetent as of the date of inception”
21. As matters stand neither the applicant nor the respondent holds a grant of representation in respect of the estate of the deceased. In order for the applicant to pursue an action against the respondent for intermeddling he must first obtain a grant of representation to the estate of the deceased. The applicant has not produced any such grant issued to him.
22. In the circumstances I find that the applicant has no *locus standi* in this matter. Accordingly, the chamber summons dated July 25, 2022 is hereby dismissed in its entirety. Each party to bear their own costs.

Dated in **Nairobi** this 28th day of **July, 2023**.

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MAUREEN A. ODERO

JUDGE

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