



**In re Estate of Alumasa Lungaho (Deceased) (Succession Cause
21 of 2022) [2023] KEHC 20944 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20944 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
SUCCESSION CAUSE 21 OF 2022**

**JN KAMAU, J
JULY 26, 2023**

BETWEEN

STEPHEN ALUMASA ASENSA PETITIONER

AND

HEMAN CHAGALA ALUMASA OBJECTOR

RULING

1. In his ruling of April 30, 2019, Njagi J revoked the Grant of Letters of Administration Intestate that was issued on May 27, 1985 and confirmed on January 14, 1986 and directed that a fresh Grant be issued in the name of the objector herein.
2. In his Summons for Confirmation of Grant dated September 4, 2019 and filed on September 6, 2019, as the administrator of the deceased's estate, the objector herein sought for orders that the grant of probate for letters of administration intestate (for with will annexed) (sic) made to him on August 6, 2019 be confirmed. The petitioner filed an affidavit of protest on November 27, 2019.
3. Musyoka J heard the said Summons for Confirmation of Grant by way of viva voce evidence. In his Judgment that he delivered on July 22, 2022, he declined to confirm the Grant of Letters of Administration Intestate or determine the distribution as the court found that there was no compliance with the proviso to section 71 (2) of the Law of Succession Act and rule 40(4) of the Probate and Administration Rules.
4. In Paragraph 20 of the said decision, he rendered himself as follows:-

“ I shall postpone the application by dint of section 71(2)(d) of the Law of Succession Act, to allow compliance. I give the administrator 45 days to ascertain the two daughters of the deceased, to ascertain their children, and to file a further affidavit on the matter. The contents shall be on the full names of the daughters, whether they are alive, and, if dead, disclose their survivors or children. They shall file affidavits of these individuals on



the distribution of the estate, and at the mention of the matter, produce them in court to confirm the position. I shall only confirm the grant after that has been done.”

5. On July 22, 2022, the Learned Judge transferred the matter from Kakamega High Court to Vihiga High Court where the deceased’s assets were situated. Pursuant to the above decision, the Objector/ Administrator swore an Affidavit on July 29, 2022. The same was filed on August 22, 2022. This ruling herein is therefore based on the said objector’s /administrator’s affidavit.

Legal Analysis

6. Section 71 of the *Law of Succession Act*, cap 160, Laws of Kenya, provides for confirmation of Grants. It states as follows:

1. After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.
2. Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may—
 - 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 law, confirm the grant; or
 - b. if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 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
 - c. 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 period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.

7. The principal purpose of confirmation of grant is distribution of the deceased’s assets to his or her beneficiaries and/or to third parties, such as purchasers for value of whatever assets the deceased may have sold to such purchasers.
8. The proviso to subsection (2) of section 71 requires that the court must be satisfied that the administrator of a deceased’s estate has properly ascertained all the persons who are beneficially entitled to a share in the estate and properly identified the shares that are due to them before confirming the grant of letters of administration intestate.
9. This requirement is re-emphasised in rule 40(4) of the *Probate and Administration Rules* which provides that:-

“Where the deceased has died wholly or partially intestate the applicant shall satisfy the court that the identification and shares of all person entitled to the estate have been ascertained and determined.”



10. This court was to ascertain whether or not the objector/administrator herein complied with the provisions of section 71(2) of the Act and Rule 40(4) of the *Probate and Administration Rules* in line with the directions of Musyoka J of July 22, 2022.
11. In his Affidavit that he swore on July 29, 2022, the Objector/Administrator explained that the deceased had two (2) wives namely, Chadeya Minyoso and Rose Ogonya (hereinafter referred to as the 1st and 2nd houses respectively) who were both deceased.
12. He averred that the children of the 1st house were Ezekiel Lugaho and Harun Adembekwa Lugaho while the children of the 2nd house were Biriha Vwamura (deceased), James Jandi (deceased), Justus Mutiva (deceased), Stephen Alumasa Asena (deceased), Jason Tsisaga (deceased) and himself.
13. He further stated that James Jandi was survived by Nelson Magadia Jandi and Allan Mujusi while Edwin Asena, Newton Alumasa and Lilian Makungu survived Justus Mutiva. He averred that Francis Mwariki, Violet Kage and Judith Kenyani were the surviving children of Biriha Vwamura. He pointed out that that Jenipher Asena and Gladys Kagai Ngogoto were widows to the Petitioner and Jason Tsisaga respectively who had both since passed on.
14. Notably, it had emerged from the oral evidence and the Judgment of July 22, 2022 by Musyoka J that the deceased had two (2) daughters namely Bilia and Ada Malesi. The Learned Judge had also noted that the fact that Ezekiel Lugaho Alumasa had benefitted from a life time gift from the deceased did not mean that he ceased being a son to the deceased or to have an interest in his assets.
15. A reading of the aforesaid Administrator's affidavit showed that Ezekiel Lugaho Alumasa had now been listed in the said objector's affidavit. However, Ada Malesi's name was still missing from the list of beneficiaries. He thus failed to identify all the persons who were beneficially entitled to the deceased's estate as it failed to list Ada Malesi. Further, he did not also identify or specify the respective shares of those beneficiaries making it difficult for the court to ascertain their respective shares.
16. The requirement to have all the persons beneficially entitled to a deceased's estate ascertained is so that they can be brought forward and be involved in the process so that they can indicate whether or not they would be entitled and/or interested in taking a share in the estate of the deceased. Indeed, nothing stops any beneficiary to a deceased estate from waiving his interest in such estate. However, such beneficiary must explicitly express such waiver so and the same recorded before the grant of letters of administration intestate can be confirmed.
17. Notably, confirmation of grant is the most critical of the processes of administration. The whole essence of administration of estates and initiation of succession proceedings is distribution of the estate of the deceased amongst the individuals who are beneficially entitled to it. It must be done properly and correctly, otherwise it will not leave the parties at peace. Indeed, succession proceedings can take years to be concluded if confirmation proceedings are mishandled by both the parties and the court.
18. Effort must therefore be made to ensure that all the relevant statutory provisions relating to the proceedings are fully complied with. This is from the time the petition for grant of letters of administration intestate is lodged through to the time the grant is confirmed until the administrator confirms to the court that he or she has complied with section 83(g) of the *Law of Succession* which provides for confirmation of complete administration of a deceased's estate whereafter the file can now be closed.
19. As administrators to estates of deceased persons derive authority and mandate to act from the court through the grant of letters of administration intestate and the confirmed grants, they therefore have an obligation to account to the court of the exercise of power under the grant which appointed them.



It is a solemn duty that they should discharge with the seriousness that it serves. They are therefore mandated to take cognisance of section 71(2) of the Law of Succession Act cap 160 (Laws of Kenya) before filing a summons for confirmation of grant.

20. It was this court's considered view that the objector/administrator herein had not taken this duty seriously, given the casualness that was exhibited in the Summons for Confirmation of Grant dated September 4, 2019 and filed on September 6, 2019 and the Affidavit that was filed on August 22, 2022. The provisions in section 71 of the Law of Succession Act were not meaningless. They had to be complied with and given effect.
21. This court therefore found and held that there was insufficient material upon which it could confirm the Grant of Letters of Administration Intestate at this stage.

Disposition

22. For the foregoing reasons, it is hereby directed as that the objector/administrator comply with the provision of section 71 of the Law of Succession Act cap 160 (Laws of Kenya) within thirty (30) days from the date of this Ruling. The objector/administrator be and is hereby also directed to file the requisite consent for confirmation of grant and consent as to the mode of distribution of assets of the deceased's estate duly executed by all beneficiaries. To this end, leave be and is hereby granted to the objector/administrator to file a supplementary affidavit.
23. It is hereby directed that this matter be mentioned on October 30, 2023 to confirm compliance and/or for further orders and/or directions.
24. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 26TH DAY OF JULY 2023

J. KAMAU

JUDGE

