



**In re Estate of Saphan Marucha Amore & Ezra Ochieng Marucha (Deceased) (Succession Cause 199 of 2015) [2023] KEHC 24342 (KLR) (25 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24342 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
SUCCESSION CAUSE 199 OF 2015  
KW KIARIE, J  
OCTOBER 25, 2023  
IN THE MATTER OF THE ESTATE OF:  
SAPHAN MARUCHA AMORE**

**&**

**EZRA OCHIENG MARUCHA.....DECEASED**

**BETWEEN**

**BENEAH AMORE MARUCHA ..... 1<sup>ST</sup> APPLICANT  
SIMON OOKO MARUCHA ..... 2<sup>ND</sup> APPLICANT  
PASKALIA ACHIENG OJOW ..... 3<sup>RD</sup> APPLICANT**

**AND**

**ESTHER ATIENO OTIENO ..... RESPONDENT**

**RULING**

1. The applicants herein, moved the court by Chamber Summons dated 3<sup>rd</sup> April 2023 under rule 63 of the *Probate and Administration Rules*, section 3A of the *Civil Procedure Act* and order 51 rule 15 and order 22 rule 25 of the *Civil Procedure Rules*. They are seeking the following orders:
  - a. The honorable court be pleased to set aside its orders made on the 28<sup>th</sup> day of March 2023 revoking the grant for failure to render accounts within the prescribed time.
  - b. Thereafter the honorable court be pleased to extend the time stipulated by law for the rendering of accounts.
  - c. The costs of this application be paid out of the estate.
2. The application was premised on the following grounds:



- a. The cause was dismissed on the 28<sup>th</sup> of March 2023 when the matter was scheduled for mention to confirm if the administrators have rendered the account.
  - b. The estate has been distributed and a certificate of confirmation of grant issued outlining entitlement of each beneficiary and there was no pending application at the time when this cause was dismissed
  - c. That the only issue that was pending prior to the distribution was the rendering of accounts.
  - d. The petitioners had submitted the grant, certificate of confirmation, original title deeds, and all required documents for registration and paid the fees awaiting removal of the deceased's name from the titles by the Land Registrar and for the subsequent partitioning by the surveyor by 19<sup>th</sup> September 2022.
  - e. The delay in rendering of accounts has been occasioned by the delay in the land registrar's office to register the content of the certificate of confirmation in the titles and the delay by the land registrar at Homa Bay has become chronic.
  - f. The petitioners stand to suffer if the order made on the 28<sup>th</sup> of March 2023 is not set aside.
3. The application was opposed by the respondent on the following grounds:
- a. That the administrators have not demonstrated good faith.
  - b. That the application is in want of merits.
4. Though the applicants have alleged that they were frustrated at the Registrar of Lands office, this does not explain why they failed to attend court when they were supposed to render accounts and inform the court of their predicament. I agree with Judge Lucy Njuguna *in re Estate of Chirigu Kangerue (Deceased)* [2021] eKLR where she observed:
- The office of the administrator of estate of a deceased person is an office which is built on the foundation of trust and goodwill. Where such is seen to be lacking, then the court ought to invoke its powers to ensure that justice is done to the beneficiaries more so where the administrator puts the beneficiaries in an unenviable position.
5. The goodwill in this case appears to be very thin. In the interest of justice, however, I will allow the application but the applicants must pay the costs of the same. The finalization of the distribution of this estate has taken an unduly long period. I am making an order for the same to be concluded within the next three months. Failure to do so, the grant will be automatically revoked.

**DELIVERED AND SIGNED AT HOMA BAY THIS 25<sup>TH</sup> DAY OF OCTOBER 2023.**

**KIARIE WAWERU KIARIE**

**JUDGE**

