



REPUBLIC OF KENYA



**In re Estate of Kibowen Komen (Deceased) (Succession Cause
500 of 1997) [2022] KEHC 10810 (KLR) (30 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 10810 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 500 OF 1997**

TM MATHEKA, J

MAY 30, 2022

IN THE MATTER OF THE ESTATE OF KIBOWEN KOMEN (DECEASED)

RULING

1. The only surviving administrator of the estate of Kibowen Komen (deceased) Stephen Kiptui Komen died in August 2021. That effectively caused the grant issued by this court on July 31, 2018 to become inoperative and useless through subsequent circumstances as stated in section 76 (e) of the *Law of Succession Act*.
2. Section 66 of the *Law of Succession Act* provides the court with a general guide on who ought to be appointed as an administrator. Preference to be given to certain persons to administer where deceased died intestate.

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

3. The court is given the discretion to determine who finally becomes an administrator with preference given to the spouse for obvious reasons. He or she is the first in line in entitlement having been part and parcel of the creation of that estate.



4. Upon the demise of the administrator herein, different parties in this cause made their own proposals as to who the administrators ought to be.
5. The court directed parties to try and out of court settlement towards this as there could only be a maximum of four (4) administrators. The advocates on record agreed that Mr. Karanja Mbugua would be the convener.
6. He wrote to them making a proposal. When the matter came to court for mention for settlement, counsel: Karanja Mbugua advocate, Ayuka holding brief for Geke for Richard Komen & Others, Mrs Gatei for Patricia Komen & others, Mr Waiganjo for Sote Komen, Mr Akang'o for Abdulkadir Kiplangat agreed on the following to be the administrators:
 - i. Mr Peter Kipruto Komen
 - ii. Mr Abdughani Mohamed Komen
 - iii. Mr Adukadir Mohammed Komen
 - iv. Mr Evans Kiptui Kimutai
7. The only objection to this list was by Mr Kisila, who argues that his client Rachel Komen as the widow of the deceased has a superior right over all the other proposed administrators.
8. I have carefully considered all the submissions placed before me, with respect to Rachel Komen. There is no doubt that a widow has priority over others when it comes to the administration of the estate of their deceased husband.
9. However, it is not given, it is a general guide, which shall be accepted, without prejudice to the court's discretion, to accept the guide.
10. In this case Rachel Komen was an administrator of this estate. She was resigned from her duties as an administrator, vide her affidavit sworn on April 11, 2017, setting out reasons that she could not continue being an administrator. The main reason, she deponed was that there had arisen 'some conflicts of interest and as such I am unable to continue to as an administrator of the estate'. Her own words.
11. According to the affidavit of Peter Kipruto Komen sworn on the January 11, 2022 this conflict arose out of acts of intermeddling by Rachel whereby her own parents were occupying 80 acres of the deceased's estate, and fact that she had failed to disclose and that she had concealed information with respect to the deceased's shares at Kenya Commercial Bank.
12. It is on these allegations that she withdrew out of being an administrator when she was co administrator.
13. With the demise of the surviving administrator she is now re-claiming her position yet she has not made any attempt to explain to this court whether the circumstances of conflict of interest that led her to resign from her duties as an administrator have been resolved. It is this act of withdrawal, and the circumstances under which she did so that has made the other beneficiaries reject her as an administrator.
14. It is noteworthy even now she has not responded to those issues. From her Affidavit sworn on August 12, 2021 in support of her application for joint appointment with two (2) others (grandsons of the deceased herein) she makes no reference to her resignation as administrator when she held that position, and whether what made her resign, has changed. Her deposition that the family agreed to her



appointment is not supported by the alleged family agreement, and the fact that the other beneficiaries chose different representatives is evidence that there was no family agreement.

15. In the circumstances and with due respect to her position as the surviving widow of the deceased, she may not be the best person to be the administrator of the estate.
16. In any event there is already a Certificate of Confirmation of Grant on the distribution of the estate. Every beneficiary knows what their share is, including Rachel. In my view, she will not suffer any prejudice.
17. Hence, it is my considered view that as matters stand in the circumstances of this case, and in the exercise of my discretion as granted by section 66 of the *Law of Succession Act*, it is in the best interest of the estate of the deceased that the proposed administrators of the estate of the deceased be appointed the administrators of the estate of the deceased herein.
 - i. Mr Peter Kipruto Komen
 - ii. Mr Abdughani Mohamed Komen
 - iii. Mr Adukadir Mohammed Komen
 - iv. Mr Evans Kiptui Kimutai
18. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF MAY 2022.

MUMBUA T MATHEKA

JUDGE

In the presence of;

CA Edna

Mr K Mbugua for Peter Komen

Mrs Gatei for Kibet Komen & 3 others

Mr Akang'o for Abdulkadir Komen

Mr Muriithi for Rachel Komen

Ms Odhiambo, Mr S M Nyagaka Mr Wepo alongside Mr Kibungei for beneficiary Grace Komen

Ms Wangari for Mr Waiganjo for Evans Kimutai

