



**In re Estate of Huseinbhai Karmhai Anjarwalla (Deceased) (Succession Cause 118 of 1989) [2022] KEHC 10739 (KLR) (27 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 10739 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 118 OF 1989**

**JN ONYIEGO, J**

**MAY 27, 2022**

**IN THE MATTER OF THE ESTATE OF HUSEINBHAI  
KARMHAI ANJARWALLA (DECEASED)**

**RULING**

1. Huseinbhai Karimbhai Anjarwalla the deceased herein died testate on 19<sup>th</sup> February 1989. He had executed a written will dated on 19<sup>th</sup> August 1969. He was survived by a widow and 3 children namely; Salim Anjarwalla (Salim) Salma Anjarwalla (Salma) and Tehzeen Anjarwalla (Tehzeen). According to the will, he bequeathed 1/3 of his estate to his wife and the balance to be distributed in accordance with the law applicable to him.
2. A grant of probate of written will was on 10<sup>th</sup> January, 1990 issued to the widow and his brother Saifuddin Karimbhai Anjarwalla as the executors after the 3<sup>rd</sup> executor Asgerali Mohamedali Juvanjee by deed of disclaimer renounced probate.
3. In their petition, several assets were listed as well as liabilities. The grant was subsequently confirmed on 23<sup>rd</sup> July, 1990. Unfortunately, Saifuddin died in England on 7<sup>th</sup> April 1995 while the widow Mehmuda Huseinbhai Anjarwalla died in Mombasa on 16<sup>th</sup> March, 2016.
4. Vide summons dated 19<sup>th</sup> February, 2018 Tehzeen and Salim sought for revocation of the grant as the same had become useless and inoperative. They also sought to be appointed as joint administrators in place of the deceased executors.
5. Later, Salma filed summons dated 22<sup>nd</sup> October, 2019 seeking similar prayers. After protracted arguments between the three siblings, the court appointed the 3 of them as joint administrators on 11<sup>th</sup> May, 2020 hence issued with a grant of letters of administration with will annexed on 16<sup>th</sup> October 2020.
6. Through court's directions, Tahzeen filed an application for confirmation of the grant dated 12<sup>th</sup> May, 2020. Unfortunately, parties could not agree. Vide a ruling dated 2<sup>nd</sup> February, 2021 and delivered on 5<sup>th</sup> March, 2021, the honourable court confirmed the grant after identifying the assets comprising the estate to be shared as follows;



- a. Estate of Mehmuda Huseinbhai Karahai Anjarwalla 42%
  - b. Salim Anjarwalla 29%
  - c. Salma Anjarwalla 14.5%
  - d. Tehzeen Anjarwalla 14.5 %
7. Consequently, the court directed the administrators to cooperate and distribute the estate and thereafter report back on 26<sup>th</sup> April 2021. What followed was another round of acrimony.
8. Vide summons for removal of co-administrator and rectification of certificate of confirmation dated 24<sup>th</sup> May, 2021 Tehzeen sought the following orders;
- a. Salma Anjarwalla be removed as co-administrator;
  - b. The grant of letters of administration with written will annexed granted on 11<sup>th</sup> May, 2020 and issued on 16<sup>th</sup> October , 2020 to Salim Anjarwalla, Salma Anjarwalla and Tehzeen Anjarwalla be revoked.
  - c. A fresh grant of letters of administration with written will annexed be issued to Salim Anjarwalla and Tehzeen Anjarwalla
  - d. The schedule to the certificate of confirmation dated 5<sup>th</sup> March, 2021 be enhanced to reflect the ruling of the court dated 2<sup>nd</sup> February 2021 in respect of the distribution of the assets
  - e. Any other relief this court may deem fit and just to grant.
  - f. Costs of this application.
9. The application is based on the grounds that;
- a. The co-administrator, Salma Anjarwalla has failed and/or deliberately refused to cooperate in the distribution of the estate assets as directed by the court in its ruling dated 2<sup>nd</sup> February and delivered on 5<sup>th</sup> March, 2021.
  - b. The grant of letters of administration with written will annexed issued on 16<sup>th</sup> October, 2020 has become inoperative.
  - c. There is a legal obligation placed upon the administrators to complete administration within a period of six months from the date the grant is confirmed. Any further delay in distribution will occasion violation of the law by the administrators.
  - d. The court had directed the matter be mentioned on 26<sup>th</sup> April 2021 to report on the progress of distribution of the estate as of that date and to date, no progress has been made in terms of distribution of the estate assets because of lack of the co-operation by the co administrator Salma Anjarwalla.
10. The application is further amplified by averments contained in the affidavit in support sworn on 20<sup>th</sup> May, 2021 in which she claimed that the respondent has; failed to sign necessary documents; lack of response to communication; failure to distribute the estate and lack of co-operation.
11. In his reply, Salim Anjarwalla filed his replying affidavit on 10<sup>th</sup> June, 2021 thus associating himself with the sentiments expressed by the applicant. He averred that every effort made to sign necessary documents to facilitate transfer of some assets to the respective beneficiaries have been frustrated by their sister /Salma.



12. On her part, Salma filed a replying affidavit sworn on 23<sup>rd</sup> June, 2021 thus denying the allegations of non-cooperation /refusal to sign documents as alleged.
13. It was her case that she used to manage the estate before the court appointed the three of them as administrators. She claimed that her siblings had hatched a plan to kick her out of the estate administration. She went ahead to list various properties of the estate which she had allegedly managed to save against 3<sup>rd</sup> parties' adverse interests at her own expense.
14. She however went further to state that the court had refused to get involved in decisions affecting distribution of the estate assets and company matters hence there are still a lot of decisions to be made and issues to be agreed on in relation to distribution and valuation of the estate. She gave a list of issues which she considers critical to be considered first before distribution could take place. Among such issues is valuation of assets and determination of shares and final status of ACI and Galu companies
15. It was further her case that she still had the intention of appealing against the decision of 2<sup>nd</sup> February, 2021 hence unsafe for her to sign any necessary documents in respect of the administration of the estate. On lack of communication, she stated that she has always kept in touch with her co-administrators. That it is premature for Tehzeen to transfer assets to herself before recovery of significant amount of debt owed to the estate. She averred that with the notice of appeal in place, it was unsafe to go on with the distribution process.
16. During the hearing, Mr. Rigeru appearing for the applicant adopted the averments contained in the affidavit in support of the application. Learned counsel submitted in support of the ruling dated 2<sup>nd</sup> February, 2021 and delivered on 5<sup>th</sup> March, 2021. He submitted that the estate cannot be administered to completion while Salma was still a co administrator given her attitude and stance taken against the ruling.
17. Mr Echesa for Salim a co-administrator associated himself with the submissions of Mr. Rigeru. Learned counsel contended that Salma cannot hide behind an appeal which does not exist and that the process of administration must come to an end.
18. M Gachuhi for the respondent (Salma) adopted the content of the replying affidavit. Counsel contended that the ruling directing that the estate be shared out according to Islamic law was erroneous as the deceased was from the Sheer and Borha community.
19. That Salim and Tehzeen's application of common law was contrary to the deceased's wishes. To buttress this position, counsel relied on the decision in the case of Zeinab Khalifa Khator and 4 other Vs Abdulrazak and another (2017) eKLR where the court held that the estate of a Muslim should be determined in accordance with Islamic law. Counsel submitted that the assets should be liquidated after valuation and then share the proceeds.
20. In his rejoinder, Mr. Rigeru submitted that in the absence of any appeal or stay, Salma cannot purport to challenge the ruling in question.
21. I have considered the application herein, affidavit in support and counsel's oral submissions. The only issue for determination is whether the estate has been distributed as per the confirmed grant and if not, whether the court can revoke the grant and then remove the administrator responsible for that failure.
22. There is no doubt that Salma, Tahzeen and Salim are siblings who were appointed as joint administrators of their late mother's estate on 16<sup>th</sup> September, 2019 and the grant finally confirmed on the 5<sup>th</sup> March, 2021. In so far as the record reveals, there is no appeal in place nor stay of execution



- orders filed or issued against the said ruling. It then follows that all parties were satisfied and therefore as agents of the court duty bound to honour the order of the court .
23. Section 83 (g) of the [Law of Succession Act](#) does provide that personal representatives of the estate shall
- “ within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration”
24. It is therefore a statutory and mandatory requirement that upon confirmation of the grant, the estate must be distributed within six months. See [In re estate of Joseph Odindo Odongo \(deceased\)](#) (2021) eKLR where the court held ;
- “ indeed , failure to distribute a deceased’s estate, is a ground for revocation of a grant for letters of administration as provided under Section 76 (d) of the Law of Succession . However, such revocation is not automatic. It is conditional .It is dependent on the applicant demonstrating that notice has been issued to that person who has applied for the grant and that person has failed.”
25. Similar position was held in the case of [In re estate of the late Mwaura Makuro \(deceased\)](#) (2021) eKLR in which court stated;
- “ ...under section 83 (g), an administrator is obliged to complete the administration of the estate in respect of all matters within six months from the date of confirmation of the grant and to produce to the court a full and accurate account of the completed administration”
26. In the instant case, Tehzeen and Salim are alleging that Salma has refused to co-operate by refusing to sign necessary transfer documents to facilitate distribution of the estate to individual beneficiaries. Salma on the other hand denied refusing to co-operate but made certain demands among them ; the court did not properly handle the issue of distribution; the court applied common law instead of the law applicable in the Sheer and Borha community; property valuation was not done ; Tahzeen cannot effectively handle her share before valuation issues are resolved among them clearance of debts and liabilities owed to or against the estate; and there is a pending appeal and; that the estate be sold and proceeds shared out.
27. It is apparent from the averments of Salma that she is not ready to facilitate distribution of the estate. The issues she is raising cannot be addressed through the route she has taken. She cannot question the court’s decision through an affidavit or disobeying its implementation. What she should know is that she is an agent of the court as a trustee of the estate and that the court can on its one motion under section 66 of the law of succession remove her from the role of an administrator if confirmed that she has failed to play her role as such.
28. In the absence of any appeal, or stay of execution, the administrators Salma included have no choice but to honour the court order by distributing the estate as per the confirmed grant which is self-explanatory. Shares that are specifically awarded to an individual solely do not need valuation. They should automatically be transferred to the beneficiary.
29. Valuation will only be necessary where there is joint property and parties are not agreeable on its value in which case they can engage a mutually agreed valuer to do the valuation and each beneficiary gets his share as stated in the ruling. This can be done even after parties have assumed ownership depending



on the nature of the property which in my view is not applicable here as the court had exhaustively dealt with same issue.

30. I do not find the grounds advanced by Salma for her refusal to sign necessary transfer documents justified. She should honour the court order or she exits so as to enable the rest of the administrators serve her. In a nutshell, I do not wish to belabour on the issues challenging the ruling as I am not an appellate court hence cannot sit on the decision of my colleague.
31. Having found as above, I am inclined to find that Salma is obligated to execute all necessary transfer forms or any other documents relevant to facilitate full and complete administration and distribution of the estate within 45 days in default she shall cease to be an administrator and a fresh grant issued to the two remaining administrators.
32. Regarding the reflection of schedule of assets in the certificate of confirmation as per the ruling of 2nd February, 2021, the same is allowed and the certificate be amended to reflect distribution as captured in the ruling for ease of implementation.
33. As regards costs each party to bear own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 27<sup>TH</sup> DAY OF MAY 2022**

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**J. N. ONYIEGO**

**JUDGE**

