



REPUBLIC OF KENYA



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In re Estate of Mehmuda Huseinbhai Anjarwalla (Deceased) (Succession Cause 66 of 2017) [2022] KEHC 480 (KLR) (27 May 2022) (Ruling)

Neutral citation: [2022] KEHC 480 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 66 OF 2017**

JO NYARANGI, J

MAY 27, 2022

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

RULING

1. The deceased herein died testate on May 16, 2016 leaving behind three children surviving her namely; Salim Anjarwalla (Salim), Salma Anjarwalla (Salma) and Tehzeen Anjarwalla (Tehzeen). However, the two appointed executors Asgerali Mohamedali Jivanjee and Yusuf Mamujee predeceased the deceased. Consequently, the three children were on September 16, 2019 appointed and granted jointly a grant of letters of administration with written will annexed.
2. Subsequently, the administrators engaged in protracted dispute over distribution of the estate thus delaying confirmation of the grant. After hearing parties' sentiments, various objections and suggestions on how to share the estate, the court delivered its ruling on 5th March, 2021 thus making the following orders;
 - a. As to 1/3 of the estate;
 - i. 50% share in the Title No Mombasa /Block XXVI/36 to Tehzeen Anjarwalla absolutely.
 - ii. Credit balance in Account Nos xxx-xx-xxxxxx and xxxx-xxxxx-xxx Habib Bank. London, England to Salma Anjarwalla absolutely
 - iii. Credit balance, account No x-x-x-xxxx-xxx-xxxxx Habib Bank AG Zurich, Zurich, Switzerland, 35% to Salma Anjarwalla and 65% to Tehzeen Anjarwalla
 - iv. Loan from Salim, to Salma Anjarwalla, Tehzeen Anjarwalla and Salim's grandchild, Ayden equally.
 - v. Balance to Salma Anjarwalla and Tehzeen Anjarwalla in equal shares
 - b. Personal effects to Salma, absolutely.
 - c. As to 2/3 of the estate;



- i. To Salim Anjarwalla 50%
 - ii. To Salma Anjarwalla 25%
 - iii. To Tehzeen Anjarwalla 25%
3. Unfortunately, parties could not effect distribution orders as per the confirmed grant owing to misunderstandings between the three of them.
4. Subsequently, by a summons for removal of co- administrator and rectification of certificate of confirmation dated May 24, 2021, Tehzeen Anjarwalla co- administrator moved this court seeking orders that;
 - a. Salma Anjarwalla be removed as co administrator
 - b. The grant of letters of administration with written will annexed granted on September 16, 2019 and issued on 21st February 2020 to Tehzeen Anjarwalla , Salma Anjarwalla and Salim Anjarwalla be revoked.
 - c. Afresh grant of letters of administration with written will annexed be issued to Tehzeen Anjarwalla and Salim Anjarwalla
 - d. The certificate of confirmation dated 5th ,2021 be amended/rectified in the following respects;
 - i. The cause number thereto be amended to read 66 of 2017 instead of 66A of 2017.
 - ii. The schedule thereto be amended to reflect the ruling of the court dated March 2, 2021 in respect of distribution of the assets.
 - e. (e)Any other relief the court may deem fit and just
 - (f) Costs of the suit.
5. The application is premised on the grounds that Salma has failed and or deliberately refused to cooperate in distributing the estate as per the court’s ruling of February 2, 2021 hence rendering the grant issued herein in-operative as the administration of the estate has not been completed within 6 months.
6. She further stated that the cause number reflected as No 66A/20217 should be rectified to read 66/2017 as per the Kenya gazette notice.
7. The application is further amplified by the averments contained in the affidavit in support sworn on March 20, 2021 by Tehzeen Anjarwalla stating that Salma who resides in the U.k has refused and deliberately failed to take any steps to progress distribution of the estate by signing necessary transfer documents which were forwarded to her through her lawyer. She gave particulars of dates of email correspondences as April 6, 2021 and April 21, 2021 among others.
8. She averred that vide a letter dated April 20, 2021 Salma indicated and expressed her dissatisfaction with the ruling of February 2, 2021 delivered on March 5, 2021. In her opinion, she needs further advice before she could take any step in distributing the estate (See letter annexure TA11 (1) to TA 11 (2)”)
9. That Salma is introducing new conditions to the distribution of the estate thus circumventing distribution of the estate as per the court’s ruling in particular the express direction of paragraph 25 of the said ruling.



10. In response, Salma filed a replying affidavit sworn on 23rd June, 2021 denying every allegation of being uncooperative. She stated that the application has no merit as it amounts to abuse of the court process. That no ground for her removal as administrator nor revocation of the grant had been established.
11. She averred that she has done so much towards preserving and safeguarding the estate pending completion of the administration of the same after she travelled to Kenya for 3-4 months at her own expense.
12. 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 3rd parties' adverse interests at her own expense.
13. 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 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
14. It was further her case that she still had the intention of appealing against the decision of February 2, 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 debts owed to the estate. She averred that with the notice of appeal in place, it was unsafe to go on with the distribution process.
15. On his part, Salim filed a replying affidavit on 10th June, 2021. He associated himself with Tehzeen's application. He stated that the administration of the estate should be completed without further delay in terms of the court ruling. He held the position that Salma has refused to complete and sign necessary transfer documents. That Salma was impeding smooth administration of the estate to completion.
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 March 2, 2021 and delivered on March 5, 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. Mr 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 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 September 16, 2019 and the grant finally confirmed on the March 5, 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 the 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 ; Tehzeen cannot effectively handle her share before valuation issues are resolved among them clearance of debts and liabilities owed to or against the estate; there is a pending appeal and; that the estate be sold and proceeds shred 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 own motion under



section 66 of the law of succession Act 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.
31. 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.
32. 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.
33. Regarding rectification of the cause No. Succession No. 66'A' of 2017 to be compatible with the Kenya gazette notice, I confirm the estate was gazetted as Succession cause No 66 of 2017. I have looked at the register. This case was filed as No. 66/2017 on December 11, 2017 and another Succession cause also No. 66/2017 in the name of the estate of Muhiddin Abdalla Muhiddin filed on 14th December, 2017. I think there was an error on the face of the record. The same shall therefore reflect succession cause No 66/2017 and not 66 A/2017. The certificate of confirmation to be rectified accordingly.
34. Regarding the reflection of the schedule of assets in the certificate of confirmation as per the ruling of February 2, 2021, the same is allowed and the certificate be amended to reflect distribution as captured in the ruling for ease of implementation.
35. As regards costs each party to bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 27TH DAY OF MAY 2022

J. N. ONYIEGO

JUDGE

