



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of the Late Erick Kibe Bomett (Succession Cause  
488 of 2006) [2022] KEHC 11218 (KLR) (23 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11218 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 488 OF 2006  
TM MATHEKA, J  
MAY 23, 2022  
IN THE MATTER OF THE ESTATE OF THE LATE ERICK KIBE BOMETT**

**RULING**

1. On March 18, 2021 I delivered a ruling in which I gave the following orders;
  1. That the respondent and her co administrator are duty bound to:
    - a. To account for the estate of the deceased.
    - b. File summons for confirmation of grant to enable them distribute the estate.
  2. I order that within thirty (30) days, the administrators file;
    - a. A full and accurate inventory of the assets and liabilities of the deceased;
    - b. A full and accurate account of all the dealings therewith to the date of the account;
    - c. An amended Form P & A 5 hereof with all the assets and liabilities of the estate as per (a) above.
    - d. Summons for confirmation of the grant to be served upon all the beneficiaries of the estate.
  3. In default of any of (1) or 2 the court will exercise its discretion in appointing other administrators to the estate.
  5. Each party to bear its own costs.
  6. Mention on the May 11, 2021 to confirm compliance.
2. On May 25, 2021 the matter came for confirmation of compliance with the orders.
3. The court issued summons to the administrator to appear on June 10, 2021 to show cause they had not complied.



4. On June 10, 2021, Ms Magana appeared for Nancy Bomet. She told the court that she had just been instructed, and needed time to regularize her position and get further instructions on compliance with the court's ruling.
5. On June 24, 2021 Mr Waiganjo appeared on behalf of Ms Magana for the administrators. He told the court that they needed seven (7) days to file their Notice of Appointment. I directed that the firm of Gatu Magana to file the notice of appointment within 7 days and within 45 days thereof the administrators to comply with the ruling of March 18, 2021. The matter was fixed for mention before the Deputy Registrar on August 16, 2021 and before me on October 4, 2021.
6. On August 16, 2021 the record shows that it was said that one of the administrators was residing abroad and she had not been traced.
7. On October 18, 2021 the matter was mentioned. Mr Ayuka appeared holding brief for Mr Geke for applicant, he had been served with notice of appointment by Ms Magana. Ms Magana informed the court that she was appearing for the administrators. Ms Magana told the court that the administrators had not given her sufficient instructions and Nancy was present, and she could speak for herself.
8. Ms Bomet spoke, she requested the court to give her 21 days to comply. Ms Magana, submitted that perhaps Ms Bomet could get 30 days, now that the firm of Kimatta & Co Advocates (the court was aware that Mr Kimatta passed on) was still on record. The court determined that the 21 days Ms Bomet was asking for were sufficient, and the matter was fixed for mention on November 8, 2021.
9. On that date Mr Ayuka and Ms Magana appeared, Ms Magana said she was appearing on behalf of the firm of Kimatta & Company, she said Ms Bomet was having problems logging into the courts platform.
10. She submitted "I spoke to Mr Ayuka that we give parties time to attempt negotiations we take 2 weeks they may reach an amicable settlement." Mr Ayuka confirmed; "We have spoken. We hope our combined wisdom can move this matter forward." The matter was fixed for mention on November 22, 2021 for confirmation of settlement.
11. On November 22, 2021 Mr Ayuka and Mr Waiganjo for Ms Magana appeared. Mr Ayuka reported that a meeting had been held and their respective clients had participated. That there had been no agreement. They asked for a little more time, 2 weeks, I allowed this, so that parties could settle and fixed matter for mention on December 6, 2021.
12. On that date, Mr Geke and Ms Magana appeared. Mr Geke 1<sup>st</sup> said they could not agree. Ms Magana told the court that she had spoken to Mr Ayuka, and this matter could be settled amicably. The matter was fixed for January 24, 2022.
13. On February 14, 2022, Mr Geke appeared, he reported that they had been unable to settle and urged the court to enforce the orders of March 18, 2021. I directed that now that negotiations had collapsed, the orders of May 25, 2021 had come into force, and summons to issue to the administrators to appear and show cause why they had not complied.
14. On March 3, 2022 the notice to show cause had been issued in the name of the deceased administrator. This was pointed out by Ms Magana. Mr Ayuka admitted the error. Ms Magana further submitted that there had been negotiations and any possibility of amicable settlement would be best, that the previous week, the applicant had approached the administrator Nancy Bomet and wished to withdraw his application. Ms Magana also pointed out that there were 2 administrators and only one had been served with notice to show cause.



15. Mr Ayuka responded on issue of negotiations, that the administrators had refused to comply with court orders, to file a complete list of the estate, that she had no honest intent to negotiate.
16. On April 21, 2022, Mr Ayuka appeared, Mr Waiganjo for Ms Magana. Mr Waiganjo told the court that they had filed a notice of change of advocate, Mr Ayuka said they had served summons dated March 28, 2022 upon Ms Bomet to show cause. Mr Waiganjo submitted that his firm had filed a preliminary objection, but since the same had not been served, the notice to show cause was extended to May 5, 2022.
17. On May 5, 2022, Mr Waiganjo told the court that they were filing an affidavit to show cause, the court gave time for the same to be served upon Mr Ayuka for his response. Mr Ayuka pointed out that the affidavit of Ms Bomet did not address the issues set out in the court's ruling of March 18, 2021. He urged the court to invoke condition number 3 of the ruling.
18. In the affidavit sworn on May 5, 2022 Ms Nancy Jeruto Bomett begins by stating that she does not speak for her co-administrator Daisy Chelimo, who she says had not been "enjoined, served or summoned in the instant proceedings." She goes on to state; "That it is trite law that joint administrators are enjoined to act jointly, and not severally, in the said administration of the estate. To that extent, the applications, proceedings, orders, summons, and notice to show cause taken out solely against me herein, are wanting, inadequate, and incapable of a complete and comprehensive response, owing to the non-participation of my co-administrator."
19. She continues to depone that her inability to comply with the court's ruling is for various reasons that;
  - 1) By the time of the ruling on March 18, 2021, her lawyer had passed on in October 2020.
  - 2) She did not get to know of the ruling until months later when the same was served on her personally.
  - 3) She did not have a substantive advocate representing her.
  - 4) The estate is embroiled in numerous court cases.
  - 5) She could not get her file from the firm of Kimatta because she was required to pay legal fees running to tens of millions of shillings.
  - 6) She was properly able to appoint counsel Ms Magana in April 2022.
  - 7) That it is difficult to say which asset belongs to the estate herein or what is available for distribution.
  - 8) That the applicant is not a son of her brother, therefore a stranger to the estate.
  - 9) DNA be conducted to enable a compilation of the form P & A 5 with the correct list of beneficiaries.
  - 10) She needs at least 6 months to make comprehensive report.
20. The affidavit is drawn and filed by the firm of Gatuu Magana & Company Advocates.
21. I have set out the record of this matter since my ruling of March 18, 2021 as the backdrop to this notice to show cause. Ms Magana began to appear in this matter on June 10, 2021, at times on behalf of the firm of Kimatta & Company Advocates. The said Nancy Bomett has been aware of the court's ruling at least since then. She has been before this court asking, the first time for 21 days, another time for 30 days etc to enable her comply with the said court orders . She has severally through Ms Magana sought



time to settle the matter out of court. If she was not acting with the authority of her co-administrator, it means therefore that all along she misled the court, deliberately and when Ms Magana submitted, severally that this was a family matter that could easily be settled out of court, where was that coming from?

22. These actions and statements and their evident inconsistencies now supported by a sworn affidavit lead the court to draw one conclusion, that the administrators in this matter are not taking their role seriously and it is evident that they are unable to administer the estate.
23. These administrators do not seem to understand their duties as set out by the *Law of Succession Act* at section 83 which I set out hereunder for the avoidance of doubt:

“Duties of personal representatives

Personal representatives shall have the following duties—

- (a) to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;
- (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
- (d) to ascertain and pay, out of the estate of the deceased, all his debts;
- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased a full and accurate account of all dealings therewith up to the date of the account;
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests
- (g) 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;
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration therein under the will or on intestacy, as the case may be;



24. The administrators refuse to comply with the orders of the court with respect to their own duties to account for what they have been doing with the estate. The key word here is account for both assets and liabilities, debts etc.
25. Ms Bomett has been saying this same thing about court cases against the estate of the deceased, but has not explained how that stops her from complying with section 83 (b), (e) & (h). Nothing stops them from presenting to this court a list of those cases because they are parties to them, and their status against those assets in the form P & A 5. Or what of the deceased's estate is not tied up in court cases if any.
26. Neither does that stop them from listing for the court who the current beneficiaries to the estate are.
27. That is their duty and they have failed.
28. There is no way Ms Nancy Jeruto Bomett can say that she is not aware of all the dealings in the estate. It is stretching it too far to state that she cannot provide the list of beneficiaries because suddenly she has become aware that the applicant is not a son of her brother.
29. Until she files the form P & A 5 with all the assets of the estate of the deceased, and the liabilities thereof, she cannot be heard to say that she cannot file summons for confirmation of grant.
30. The ruling dated March 18, 2021 was directed to the administrators of the estate. It is evident from her own affidavit that she is the one administrator doing everything in the estate. Let her read her own affidavit and it is clear that her co-administrator is not in touch with the estate, despite the fact that her name appears on the grant of letters of administration.
31. Nevertheless, the two are bound by the law to do what is right by the estate. It is an abuse of the court process and contemptuous on her part to turn now and ask for six (6) months to comply with orders that have been awaiting compliance since last year, yet there is no reasonable explanation. Surely court orders are not made in vain, and the statutory powers of an administrator can be taken away by the court.
32. Clearly Ms Nancy Jeruto Bomett and her co-administrator have, by their conduct since being made administrators of this estate, and more particularly since my ruling of March 18, 2021, brought themselves into the purview of section 76(d) (iii) of the *Law of Succession Act*, which states:
 

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

  - (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
    - (i) .....
    - (ii) .....
    - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular.”
33. They have refused, in my view, deliberately to comply with a clear court order issued in terms of section 83 (e) and proceed to act with defiance.



34. Court orders are not made in vain. They are made to be obeyed, and the continued defiance of the orders given on March 18, 2021, despite their extension on May 25, 2021 is a clear indication that the administration have no intention to comply.
35. For that reason, this court has no option but to follow through with the condition number 3 of my ruling, to revoke the grant made to the administrators and appoint new administrators.
36. To enable this court to do so, I direct that the applicant to, within seven (14) days hereof, propose another name to this court to enable the court proceed accordingly.
37. In the meantime, the applicant has temporary letters of administration with respect to the estate of the late Eric Kibet Bomett.
38. In default of 36 above the grant will stand revoked and the court will appoint another administrator.

**DATED, SIGNED AND DELIVERED VIA EMAIL THIS 23<sup>RD</sup> DAY OF MAY, 2022.**

**MUMBUA T MATHEKA,**

**JUDGE.**

In the presence of;

CA Edna

Gatu Magana & Co Advocates

gatumaganaco.advocates@gmail.com

AN Geke & Co Advocates

andrewgeke@yahoo.com

