



**In re Estate of Peter Nzuki Ndeti (Deceased) (Succession Cause
261 of 2015) [2022] KEHC 11045 (KLR) (3 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 11045 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 261 OF 2015**

MW MUIGAI, J

AUGUST 3, 2022

IN THE MATTER OF THE ESTATE OF PETER NZUKI NDETI (DECEASED)

BETWEEN

FREDRICK NGAO NZUKI NDETI 1ST APPLICANT

SILVESTER PETER NDETI 2ND APPLICANT

WILLIAM KIILU PIN NDETI 3RD APPLICANT

AND

RAPHAEL MUSYOKA NDETI 1ST RESPONDENT

WAVINYA NDETI ODUMWOLE 2ND RESPONDENT

RULING

1. The Summons dated August 4, 2020 under Sections 45,47,55, 83 (e) and 95 (a) and (b) of the [Law of Succession Act](#), Rules 49 of the Probate and Administration Rules, the Applicant seeks the following orders;
 - i. Protection orders to issue against Raphael Musyoki Ndeti and Wavinya Ndeti Odumwole prohibiting interference and intermeddling with the asses and estate of the deceased by disposing of and/or utilizing any proceeds due to the Estate and accessing the various bank accounts held in the name of the deceased in any Bank in breach of the [Law of succession Act](#).
 - ii. The said Raphael Musyoki Ndeti and Wavinya Ndeti Odumwole be called to account for all rental sums collected from the rental properties belonging to the Estate, dividends paid on shares, proceeds on sale of shares (if any) and any sums whatsoever paid and due to the estate.



- iii. The said Raphael Musyoki Ndeti and Wavinya Ndeti Odumwole do produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings thereof from May 30, 2016 to date.
 - iv. The said Raphael Musyoki Ndeti And Wavinya Ndeti Odumwole be compelled to surrender the revoked grant issued on 30th May 2016 to court for purposes of issuance of a fresh grant of letters of Administration intestate in line with the orders of the court made on January 22, 2020 and eventual confirmation and distribution of the estate.
 - v. Any other orders that are deemed just and expedient that will meet the ends of justice.
 - vi. Costs of this application be paid by the said Raphael Musyoki Ndeti And Wavinya Ndeti Odumwole
2. The summons is supported by the Affidavit of Fredrick Ngao Nzuki, a co-administrator and a beneficiary dated 4th of August 2020 in which he deponed that the deceased died on March 4, 2015 and his co administrators Raphael Musyoki Ndeti and Wavinya Ndeti Odumwole petitioned for grant of probate on October 22, 2015 and the grant was issued on 30th May 2016 and dated June 14, 2016 which grant was not confirmed.
 3. On March 21, 2020 he moved the court for revocation of the grant and on January 22, 2020, the Honourable Court set aside and/or vacated the grant of probate of will dated June 14, 2016 and ordered that a fresh grant of letters of administration intestate be issued in the names of Raphael Musyoki Ndeti, Wavinya Ndeti Odumwole and himself.
 4. Mr. Alphonse Muema Mbindyo, Advocate wrote to the Advocate on record for the administrators on February 24, 2020 seeking the surrender of the original revoked grant of probate to court towards issuance of the fresh grant of letters of administration intestate in line with the orders of the Hon. Court but he has not received any confirmation of surrender to date. He deposed that there is no confirmed grant of letters of administration in this estate
 5. He averred that since May 30, 2016, Raphael Musyoki Ndeti and Wavinya Ndeti Odumwole who are brother and sister have interfered with the assets of the deceased by collection of monthly rental income from the vast estate and/or many rental properties forming part of the estate within and out of Athi River including receiving dividends from shares without accounting to anybody and have refused to disclose or account to the rest of the beneficiaries to their detriment and to that of the estate of the deceased.
 6. He opined that despite his attempts to get them to account, they have blatantly refused to give accounts and he contends that such actions are detrimental to the rest of the beneficiaries and estate and if not stemmed in by the Hon. court is likely to lead to wastage, plundering and misuse of the estate of the deceased. He avers that nobody should meddle with or dispose of anything belonging to the deceased person in the absence of a court order and further that the personal representatives ought to give a full and accurate inventory of the assets and liabilities of the deceased and account for all dealings therewith up to date of the account.

Responses

7. Raphael Musyoki Ndeti, a co administrator of the estate filed a replying affidavit dated July 26, 2021 in which he averred that pursuant to the orders issued on January 22, 2020, he believes the next step is distribution of the estate and he is aware that the beneficiaries are currently negotiating on a proper



and amicable mode of distribution of the estate and once they agree, the administrators shall apply to the court.

8. It is misleading to allege that he and Wavinya Ndeti Oduwole intermeddled and/or interfered with the estate herein whereas they are executing their duties. He contends that the allegation that they have refused to give accounts is false and the order sought restraining them from collecting rent and/or monies payable to the estate, accessing the accounts in the name of the deceased held at various banks is misguided since they remain the co-administrators of the estate. He asks the court to dismiss the application for lack of merit.
9. Alphonse Muema Mbidyo, the 3rd Respondent's advocate filed a replying affidavit dated July 29, 2021 in which he contended that no reasons have been advanced as to why the summons dated 4th August 2020 is misguided, frivolous and/or abuse of the court process. After the ruling on January 22, 2021, he wrote to the counsel for the 1st and 2nd Administrators seeking to have them surrender the original revoked grant of probate to court for issuance of grant of letters of Administration intestate in line with the orders of the court.
10. According to him, the grant has not been surrendered since it was issued on 14th June 2016. He contends that under the law, personal representatives have a duty within six months from date of grant to produce to the court 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, which requirement is not subject to confirmation and/or distribution of the estate he contends that the personal representatives need to be requested to abide by the law and failure to do so for the last five(5) years does by necessity call for issuance of the orders sought.

3rd Administrator's / Applicant Submissions

11. The Applicant filed submissions dated November 18, 2021 in which it was submitted that the original grant earlier issued to the two administrators has not been returned despite writing to counsel for the 1st and 2nd administrator by a letter dated February 24, 2020.
12. The Applicant relied on *Law of Succession Act*; Section 45 (1) prohibiting intermeddling; Section 55 (1) no grant of representation shall confer power to distribute any properties until it is confirmed; Section 83 (e) duties of Personal Representatives; and 95 (a) and (b) on offences by personal representatives.
13. The Applicant submitted that the personal representatives have an obligation and are legally bound to abide by the said provisions and should not wait to be requested to fulfil the mandatory provisions of Section 83(e) LSA as deponed by the 1st Administrator in his Affidavit. It was submitted that the mandatory requirements of Section 83(e) of the *Law of Succession Act* do not have to wait for the confirmation and/ or distribution of the estate in that after confirmation of the grant, the personal representatives have a duty to complete administration of the estate in respect of all matters other than confirming trusts , and to produce to the court a full and accurate account of the complete administration.
14. It was submitted that the 1st and 2nd Administrator have been administering the estate to his exclusion and thus he and/or any other persons beneficially interested in the Estate have a right to approach the Honorable Court and have the personal representatives compelled to obey the provisions of section 83(e) and/or refrain from doing any act forbidden by the *Law of Succession Act*.
15. As at the time of writing this ruling, the Respondent's submissions were not on record.



Determination

16. I have considered the Summons, affidavits and submissions on record and I find that the issue for determination is whether the 1s and 2nd Administrator are intermeddling with the assets of the estate and whether they should be called to account for the assets and liabilities in the form of an inventory.
17. It is not in contention that on January 22, 2020, the Hon. Court set aside and/or vacated the grant of probate of will dated June 14, 2016 and ordered that a fresh grant of letters of administration intestate be issued in the names of Raphael Musyoki Ndeti, Wavinya Ndeti Odumwole and Fredrick Ngao Nzuki Ndetyi. It is also not in contention that no new grant has been taken out since January 2020, in essence the orders of the court have not been complied with.
18. The 1st Administrator believes that the next step is to apply to court for distribution of the estate. But how can this be done without first complying with the orders of the court dated January 22, 2020? The 1st Administrator seems to be jumping the gun. These orders have not been set aside nor is there an appeal before a higher court.
19. Court orders are not mere suggestions. This was held in the case of *Teachers Service Commisison v Kenya Union of Teachers & 2 others* [2013]eKLR where the court stated as follows: -

“The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.

A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”
20. Section 45 of the *Law of Succession Act* provides that;
 - (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
 - (2) Any person who contravenes the provisions of this section shall—
 - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.
21. The order is clear and must be complied with first. Any act that was done after January 22, 2020 is therefore illegal as there is no operational grant in this estate. Such acts will amount to intermeddling and it is dangerous as there likelihood of the estate going to waste and no personal representative can be held responsible or liable.



22. Secondly, on the issue of the duties to give an account and/or provide a full inventory of the assets and liabilities of the estate, I refer to Section 83 of the *Law of Succession Act* which is a proviso on the duties of personal representatives. This proviso states as follows;

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 and 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 therein under the will or on intestacy, as the case may be;
- (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.

23. Section 95 (1) of the *Law of Succession Act* provides that;

- 1) Any personal representative who, as regards the estate in respect of which representation has been granted to him—
 - (a) wilfully or recklessly neglects to get in any asset forming part of the estate, misapplies any such asset, or subjects any such asset to loss or damage; or
 - (b) wilfully fails to produce to the court any such inventory or account as is required by the provisions of paragraphs (e) and (g) of section 83; or



- (c) wilfully or recklessly produces any such inventory or account which is false in any material particular; or
- (d) knowing or having reason to believe that the estate will prove to be insolvent, continues to administer it without petitioning for administration thereof in bankruptcy, shall be guilty of an offence, and shall be liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

24. The court in *Re Estate of the Late Mwaura Makuro (Deceased)* [2021] eKLR stated as follows;

“The duty to account for the assets, liabilities and dealings of any estate purely lies on the personal representatives. There is no short cut about it. It is a statutory obligation to which the administrator of an estate must adhere without any discretion.

.....

The production of accounts is a key component of the administration process of a deceased person’s estate. From the moment a grant is issued to a personal representative of a deceased person, the grant holder becomes responsible to the Court in the carrying out of the duties of administrator. Accounts are an accountability tool that will tell the Court whether the administrator has been faithful to the role entrusted to him or her. When an administrator fails to file accounts as required, questions as to the integrity of the process are bound to arise as in the present case. The law has empowered the Court on either of its own motion or on the application of any interested party in the estate, to order an administrator to produce 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.”

- 25. Administrators stand in a fiduciary position with respect to the estate to the beneficiaries, dependents and creditors. As such they are obligated to account to the court and to the beneficiaries, dependents and creditors for their handling of such estate property. If the administrators do not appear to be doing the right thing, then the available remedy will be in asking that the administrators or personal representatives render a true account of their management of estate as is the case herein.
- 26. There is no evidence that the administrator completed the administration of the estate within the period specified by law. The administrator has also not filed accounts 6 months from May 30, 2006 when the Grant was issued. Section 83(e) and (g) have therefore not been complied with. This despite a request by the 3rd Administrator’s advocate to the 1st and 2nd Administrators advocate dated February 24, 2020.
- 27. Rule 73 of the Probate and Administration Rules enshrines the inherent power of the court as follows:
 - “Nothing in this rule shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court”.
- 28. Raphael Musyoki Ndeti & Wavinya Ndeti Odumwole have not complied with their fiduciary duty to the beneficiaries of the estate as listed in the Petition paragraph 8. They have not carried out their mandate as envisaged by Section 82 & 83 of LSA and have offered no explanation why they have not complied with the Court orders from this Court’s ruling of January 22, 2020; that is a new/fresh grant is issued to include the Applicant; Fredrick Ngao Nzuki Ndeti. They have insisted that the old grant is released before the new one is issued. This assertion has no basis in law. They have been alleged to be collecting rents from suit properties that comprise of the estate of the deceased without disclosing



or accounting for the same to beneficiaries and operating the deceased's accounts without recourse to beneficiaries. This means the estate is going to waste and if left unchecked there will be nothing to distribute to all beneficiaries except benefit the 2 Administrators contrary to the law.

29. In view of the following, by virtue of Section 66 of LSA; I therefore issue the following orders;
- a. The orders dated January 22, 2020 to be complied with within 30 days a new/fresh grant to issue to Raphael Musyoki Ndeti and Wavinya Ndeti Odumwole and Fredrick Ngao Nzuki Ndeti failure to which thereafter the applicants Fredrick Ngao Nzuki Ndetyi , Silvester Peter Ndeti Winnie Kalondu Kivuti and William Kiilu Pin Ndeti shall be appointed the administrators of the estate of the deceased herein by this Court.
 - b. Raphael Musyoki Ndeti And Wavinya Ndeti Odumwole shall within 90 days from the date hereof produce 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.
 - c. The suit properties that comprise of the estate of the deceased as outlined in Paragraph 10 of the Petition shall be preserved and not sold, leased, transferred, subdivided, registered, or in any way interfered with until the Summons for Confirmation is filed and confirmed.
 - d. All rental proceeds from the suit properties of the deceased's estate shall be deposited in an account jointly held by Administrators and shall be signatories to the said Account(s)
 - e. Any funds or properties held used transferred or sold by the Administrators Raphael Musyoki Ndeti and Wavinya Ndeti Odumwole, they shall be held to account as the same shall be deemed to be held in trust for all beneficiaries and be taken into account of their share during distribution of the estate.
 - f. Further Mention for Directions and Compliance is on 7/10/2022

**DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS ON 3RD AUGUST 2022.
(VIRTUAL CONFERENCE)**

M.W. MUIGAI

JUDGE

