



REPUBLIC OF KENYA



**KENYA LAW**  
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**LWM v AMM (Succession Cause 805 of 2017)  
[2022] KEHC 13563 (KLR) (Family) (30 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13563 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 805 OF 2017**

**MA ODERO, J**

**SEPTEMBER 30, 2022**

**IN THE MATTER OF THE ESTATE OF AMM (DECEASED)**

**BETWEEN**

**LWM ..... PETITIONER**

**AND**

**AMM ..... OBJECTOR**

**RULING**

1. Before this court is the notice of motion dated July 27, 2020 by which the petitioner/applicant LWM seeks the following orders:

- “ 1. The objector herein AMM do file in court a complete statement of account of all the money collected from the renting tenants of all the estate property from November 2017 to date.
2. All the rent monies be deposited in a joint account in the names of the joint administrators.
3. The joint administrators both do participate in the decision regarding the use of the rent monies, in the interest of all the beneficiaries, pending final distribution of the estate.
4. The objector do file in court a list of all tenants and the monthly rent they are paying together with the property or the section thereof they are renting.
5. The honourable court do order that the petitioner be restored to quiet occupation of the matrimonial house on plot No xxxx Kasarani which is in



the joint names of LWM (petitioner) and her late husband AMM (deceased) and which she was occupying with her late husband as at the time of his death, pending final distribution of the estate.

6. Pending final distribution of the estate the objector and his siblings do occupy two flats on plot No xxxx Kasarani.
  7. The property known as plot No xxxx which is part plot LR xxxx/x situated at Kasarani/Njiru Road, Nairobi be removed from the estate property since the Petitioner is the sole survivor of the joint property.
  8. Any other order deemed necessary in the interest of justice and circumstances of the matter be made.”
2. The application which was premised upon the Law of Succession Act, the Probate and Administration Rules, order 51(11) of the Civil Procedure Rules. Sections 1A, 1B, 3 and 3A of the Civil Procedure Act cap 21 laws of Kenya and all other enabling provisions of law, was supported by the affidavit of even date and the further affidavit dated June 15, 2021 both sworn by the applicant.
  3. The objector/respondent AMM opposed the application through the grounds of opposition dated October 1, 2020. The objector opposed the application on the following grounds:-
    - “ 1. That the application is misconceived and an abuse of the court process.
    2. That the application is premature as the process of administration of the deceased’s estate has not been finalized.
    3. That the application seeks to defeat the rights of the objector and his siblings to their home being plot No xxxx Kasarani which was acquired by the deceased in 2000 long before the applicant was married to the deceased.”
  4. The objector also filed in reply to the application a replying affidavit dated October 2, 2020.
  5. The application was canvassed by way of written submissions. The applicant relied on her written submissions dated April 4, 2022 as well as the further written submissions dated June 6, 2022. The objector relied upon his written submissions dated May 20, 2022.

## **Background**

5. This matter relates to the estate of AMM (hereinafter ‘the deceased’) who died intestate on May 7, 2017. A copy of the death certificate serial number xxxx appears as Annexure ‘A’ to the affidavit sworn by the applicant in support of her petition for grant of letters of administration intestate on June 20, 2017.
6. The deceased was survived by the following persons –
  - a. LWM – widow.
  - b. AMM – son.
  - c. BBM – son.
  - d. SMM – daughter.
7. The estate of the deceased comprised the following properties/assets.



- a. Ruiru/Kiu Block x/xxxx.
  - b. Plot No xxxx Mwana Mukia Housing Co-op Soc Ltd Kasarani.
  - c. Plot No xxx Embakasi.
  - d. Plot No xxxx- Kasarani.
  - e. Mavoko Town Block x/xxxx.
  - f. LR Loc x/Gakoigo/xxxx.
  - g. LR Loc x/Gakoigo/xxxx.
  - h. LR Loc x/Gakoigo/xxx
  - i. Motor vehicle xxx- Nissan Saloon.
  - j. Motor vehicle xxx - Nissan Sunny.
  - k. Shares with Eveready.
  - l. Shares with KCB.
  - m. Shares with KenGen.
  - n. Shares with National Bank of Kenya.
  - o. Shares with Safaricom Ltd.
  - p. Shares with Kenya Airways.
  - q. Shares with Ukaguzi Sacco.
  - r. Shares with Fahari.
  - s. Shares with MSC.
  - t. Account No xxxx with Equity Bank.
  - u. Account No xxx – National Bank of Kenya.
  - v. Account No xxxx – National Bank of Kenya.
  - w. Safaricom sim card.
  - x. Airtel and Equitel sim cards.
8. Following a consent reached between the parties the widow LWM (the applicant herein) and the son of the deceased AMM (the objector herein) were appointed as joint administrators of the estate vide the grant of letters of administration intestate issued by this court on March 11, 2020. That grant is yet to be confirmed.
  9. It is not in dispute that the applicant herein is the widow of the deceased. The objector is one of the three (3) children borne to the deceased and his late wife MWM. Accordingly, the applicant is the stepmother of the objector and the other two children of the deceased.
  10. The applicant accuses the objector of intermeddling with the estate of the deceased. She alleges that despite her appointment as co-administrator the objector has side lined her from the administration of the estate. That there are several properties of the estate which are rented out to tenants, which rent



- the objector has been collecting and utilizing alone without rendering accounts to the court or to the other beneficiaries of the estate.
11. The position of the applicant is that the joint administrators ought to both participate in the collection of the rental income and in decisions regarding how said rental income is to be utilized. The applicant prays for orders that all rental income derived from estate properties be deposited into an account opened in the joint names of both administrators and any expenses required to be applied for and released as necessary from time to time.
  12. The applicant prays that the court do order the objector to file a complete statement of account of all the rental income collected from estate properties from November 2017 to date. That to allow for transparency and fairness in the administration of the estate and to prevent further wastage of the estate, the objector ought to provide a list of all tenants, the property they are renting as well as the monthly rent paid by each tenant.
  13. Further the applicant avers that the property known as plot No XXXX Kasarani (hereinafter the 'Kasarani property') was the matrimonial home which was occupied by herself and the deceased prior to his demise. That title to the said Kasarani property is registered in the joint names of the applicant and the deceased. The applicant avers that based on the 'principle of survivorship' the Kasarani property devolved entirely to herself upon the death of the deceased. Therefore the applicant contends that said property does not form part of the estate of the deceased and is not available for distribution amongst the beneficiaries to the estate.
  14. The applicant states that she was forcibly evicted from the matrimonial home by the objector and his brother named B who incited a crowd of their friends to threaten the applicant with death thereby hounding her out of the Kasarani property. The applicant states that she was not even allowed to go back to the house to collect her personal property despite the existence of a court order directing that she be granted access.
  15. That the objector and his brother 'Brian' then moved into the applicants matrimonial home, occupied part of it and rented out the other part to tenants. The applicant denies the allegation by the objector that the Kasarani property was the family home where they all resided. The applicant insists that the deceased had given his children a separate house which they occupied.
  16. The applicant prays that the property known as plot No xxxx which is part of LR No xxxx/x situated at the Kasarani/Njiru Road in Nairobi be removed from the list of assets forming the estate of the deceased and prays that the court do order that the applicant be restored to quiet occupation of the matrimonial home which is registered in the joint names of the applicant and the deceased.
  17. As stated earlier the application was opposed. The objector denies that he has been intermeddling with the estate of the deceased. He states that he has properly managed the estate and denies that there has been any misappropriation of estate income. The objector states that he is ready and willing to render accounts so long as the applicant also be ordered to render accounts for the period when she was administering the estate of the deceased.
  18. Regarding the status of plot No xxxx- Kasarani the objector categorically denies that said property was the matrimonial home occupied by the deceased and the applicant. According to the objector the Kasarani property was acquired by the deceased and his late wife (the objectors mother) MWM long before the deceased married the applicant. The objector denies the allegation that he forcibly removed the petitioner from the Kasarani property. He states that it was the petitioner who herself opted to leave the said property after neighbours realized that the applicant had locked the minors sister of the objector in the house and opened the door to release the minor. He states that the applicants personal



items are still intact in the house and he denies that the objector has been denied access to the house to collect her said personal items.

19. The objector alleges that the plot certificate annexed by the applicant to her supporting affidavit was obtained two (2) months prior to the demise of the deceased. The objector queries how a property which was acquired by deceased and his late wife way back in the year 2000 was later registered in the joint names of the deceased and the applicant. The objector also denies that the Kasarani property was held under a 'joint tenancy'. He asserts that plot No xxxx Kasarani forms part of the estate of the deceased and is therefore available for distribution in the normal manner.

### **Analysis And Determination**

20. I have carefully considered this application, the grounds of opposition filed by the objector as well as the written submissions filed by the both parties. The issues which arise for determination are:-
- (i) Whether the objector should be ordered to file a statement of account.
  - (ii) Whether the property known as plot No xxxx situate along the Kasarani/Njiru Road forms part of the estate of the deceased.

#### **(i) Statement of accounts**

21. The applicant has alleged that despite having been appointed as joint administrator together with the objector, she has been sidelined in the administration of the estate. That the objector has been collecting and utilizing rental income alone without providing to the applicant any portion of the rental income for her maintenance and upkeep and that the objector has failed to provide any statement of accounts to the court or to the applicant.
22. The objector has not denied having collected the rental income but states that he has done so in his capacity as administrator of the estate. I note that the objector has not denied the Applicants allegation that she has not been involved in the management and/or administration of the estate.
23. It is not in dispute that the court appointed the objector and the Applicants as joint administrators of the estate. Thus, the court granted authority to the objector and the applicant both to jointly administer the estate of the deceased. No administrator has the right to manage/administer the estate to the exclusion of any other co-administrator. The administrators must act in accordance with the instrument that appointed them in this case the grant of letters of administration intestate issued on May 11, 2020.
24. *In re Estate of Teresia Wanjiru Thuo (Deceased)* [2016] eKLR, it was stated as follows:-

“I have noted from the record that the administration of the estate of the deceased was committed ..... to three individuals ..... This required the administration of the estate to be a joint effort of all three. None of them should shoulder the responsibility of administering the estate alone, without consulting or working together with the other administrators. Where there are income-generating assets, the income must be held in bank accounts opened in the joint names of the three administrators, and any withdrawals from the account or expenditure of the money held in such accounts must be at the concurrence of all three. Ultimately all three must account jointly for the income.” (Own emphasis)



25. Further *In Re In Estate of Makokha Idris Khasabuli (Deceased)* [2019] eKLR, the court observed as follows:-

“It must be stated that even though there are four administrators in places in law there is only one administration or representation to the estate of the deceased. The four administrators hold one grant, which appoints all four of them as administrators. None of them holds a grant which makes them the sole administrators of the estate. Since there is only one administration, and not four, it behoves the four administrators to act as one with regard to managing the estate of the deceased. Responsibilities and duties must be shared. They must agree on the management of the assets. They must take a common stand on the expenses of administration and on the settlement of liabilities and debts and other outgoings. It should not be the business of one or a section of the administrators to make decisions on behalf of the estate, that falls upon all four of them.”

26. Therefore, the objector was required to consult with and involve the Applicant in the administration of the estate of the deceased. Any actions to the contrary would violate the grant issued by the court.

27. In his replying affidavit the objector admitted that he took over collection of rents in January 2018. The objector submitted that the rental income realized from estate property were utilized by the objector and his siblings to maintain themselves.

28. The objector claims that the applicant did not forward to him her details to facilitate transmission of part of the rental income to herself. He states that the applicant adamantly refused to co-operate in the administration of the estate.

29. The question which arises is why were these funds being utilized without the concurrence and/or involvement of the co-administrator. What portion of the rental income if any was provided to the applicant who is a widow of the deceased to maintain herself.

30. The actions of the objector do in my view amount to intermeddling with the estate, which if allowed to continue unchecked will result in the wastage and depreciation of the estate to the prejudice of the other beneficiaries.

31. It is trite law that an executor or administrator of an estate is a trustee and is accountable to the beneficiaries for his/her handling of the estate of a deceased person. Section 83 of the *Law of Succession Act* sets out the duties of personal representatives. Section 83(e) provides that a personal representative is required:-

“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;”

32. The objector who has been administering the estate must produce to the court a full statement of account regarding his dealings with the said estate including how much rental income has been collected and the manner in which said rental income has been utilized.

33. The objector has demanded that the applicant also provide accounts for the period which she managed the estate. Although no formal request was made by the objector, I do note that the applicant has annexed to her further affidavit dated June 15, 2020 a statement of accounts and expenses related to



the period June 2017 to December 2017 when she was collecting the rental income. (Annexure “LWM 0012”).

34. In order to promote transparency and fairness and to avoid any wastage of the estate, I do deem it prudent to direct that any and all rental income collected from estate property from the date of this ruling be deposited into an estate account opened in the names of both administrators of the estate. I am fortified in this by the decision of my learned brother Hon Justice William Musyoka *In Re Estate of Makokha Idris Khasabuli (Deceased)* (*supra*) as follows:-

“Since the administration is one and not four, the prudent thing to do should be that all the assets of the estate should be administered centrally. That would mean that all the income collected from the income-generating assets ought to be pooled together and preserved, to be applied to settle debts and liabilities, and ultimately for distribution amongst all those entitled. The best way to preserve rental income, or other income in monetary form, is to have it held in an estate account. Such estate account must, no doubt, be opened in the names of and operated by the administrators. They must identify the debts and liabilities to be cleared, and the administration expenses to be met. Joint administration, such as the one in this case, is a joint enterprise, it cannot be done by one administrator alone without involving the rest.” (own emphasis)

35. Likewise *In Re Estate of Geoffrey Mwangi Chege (Deceased)* Succession Cause No 905 of 2015, the court stated that:-

“Beneficiaries have the statutory right to obtain an account from the executors of the estate, and at any time they may ask for estate books and documents (In the Matter of the Estate of AGW (Deceased) HC P & A No. 32 of 1983 at Eldoret). This is because an executor or administrator is a trustee and is accountable to the beneficiaries for his handling of the estate administration. Further, the executor or personal representative is accountable to the court on how he deals with the estate of the deceased.”

36. Similarly *In Re Estate of Peter Muigai Rubiu (Deceased)* [2015] eKLR where the judge stated in part that:-

“.....financial accounting is not limited to just what was collected as rent or revenue. It extends even to how the moneys so collected have been utilized. The administrators hold an office of trust. They are in a fiduciary position to the beneficiaries with regard to the assets. They must, as trustees, account for every single cent that comes into their hands.....” (own emphasis)

37. I therefore grant prayers (1), (2), (3) and (4) of this application.

#### **(ii) Property Known As Plot No XXXX – Kasarani**

38. The applicant avers that the Kasarani property was the matrimonial home which she occupied with the deceased. She claims that said property is registered in the joint names of herself and the deceased. Relying on the principle of survivorship the applicant prays that the Kasarani property be excluded from the estate of the deceased.
39. The objector vehemently denies that the Kasarani plot was the matrimonial home of the applicant and the deceased. He casts doubt on the plot certificate annexed by the applicant.



40. In my view, the question of the status of this Kasarani plot cannot be determined on the basis of affidavit evidence alone. The court would require to hear oral evidence from both sides before a decision can be taken one way or another. Accordingly, I decline at this stage to make any orders with respect of plot xxxx – Kasarani.

### **Conclusion**

41. Finally, this application is partially successful and this court makes the following orders.

- (1) The objector AMM to file within forty (40) days in court a complete statement of accounts regarding his administration of the estate from January 2018 to date.
- (2) From the date of this ruling all rental income derived from the property comprising the estate of the deceased is to be deposited into an estate account to be opened in the names of the two administrators of the estate.
- (3) Henceforth both the joint administrators to participate in the administration of the estate in the interest of all the beneficiaries pending the final distribution of the estate.
- (4) The question of the status of plot No xxxx- Kasarani will be determined following a hearing at which oral evidence will be adduced by both parties.
- (5) This being a family matter each side will bear its own costs.

**DATED IN NAIROBI THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2022.**

**MAUREEN A ODERO**

**JUDGE**

