



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Ahmed Abdulle Noor (Succession Cause E501 of 2022)  
[2022] KEHC 13564 (KLR) (Family) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13564 (KLR)

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

**FAMILY**

**SUCCESSION CAUSE E501 OF 2022**

**MA ODERO, J**

**SEPTEMBER 23, 2022**

**IN THE MATTER OF THE ESTATE OF AHMED  
ABDULLE NOOR ALIAS AHAMED ABDULLE NOOR  
(DECEASED)**

**BETWEEN**

**FOZIA MOHAMMED HAROON ..... APPLICANT**

**AND**

**HAWO DAGNE HASSAN ..... RESPONDENT**

**RULING**

1. Before this Court are two applications for determination. The first is the Chamber Summons dated April 24, 2022 by which the Applicant Fozia Mohammed Haroon seeks the following Orders:

- “1. Spent.
2. Spent
3. Spent
4. That pending final distribution of the estate of the late Ahmed Abdulle Noor alias Ahamed Abdulle Noor an order be issued restraining the Respondent personally, or through her agents, servants or relatives or any other employees or proxies from intermeddling, or in any manner dealing with, handling any shares, affairs or properties belonging directly or indirectly, to the estate of the deceased.



5. That that pending final distribution of the estate of the late Ahmed Abdulle Noor alias Ahamed Abdulle Noor, the Respondent be and is hereby restrained from purporting to manage, attempting to take over management, intermeddling with, or otherwise mismanaging or disposing any property of the estate directly or indirectly, through her nominees, agents, servants, relatives, including purporting to transfer or disposing of shares in shareholder companies owned by the deceased, whether such companies are situate in Kenya , or not.”
2. The application was premised upon section 2 (4), 45, 47 of the [Law of Succession Act](#) Cap 16 of laws of Kenya, Rule 49 of the [Probate and Administration Rules](#), Order 40 Rules of the [Civil Procedure Rules](#) was supported by the Affidavit of even date as well as the Supplementary Affidavit dated May 19, 2022 both sworn by the Applicant.
3. The Application was opposed by the Respondent Hawo Dagne Hassan through her replying Affidavit dated May 10, 2022.
4. The Second application for determination is the Chamber Summons dated May 11, 2022 in which the Respondent/Applicant Hawo Dagne Hassan sought the following Orders: -
  - “1. Spent
  2. Spent
  3. That this Honourable court be pleased to include the Respondent/Applicant as an Administrator and beneficiary to the estate of the deceased as separated wife, a dependant and/or a beneficiary in trust for the minors who are the biological children of the deceased to ensure the Estate is not wasted or misappropriated.
  4. That this court do issue an order that the Applicant/Respondent furnish the Applicant and the Honourable Court with a detailed account of the proceeds from the estate of the deceased since his death.
  5. That court grants any other order that it deems necessary in the interest of preserving the Estate until it is properly distributed.”
5. The application was premised upon section 2 (4), 45, 47 of the [Law of Succession Act](#), Cap 160 laws of Kenya Rule 1 of the [Civil Procedure Rules 2010](#) and any other enabling provisions of law and was supported by the Affidavit of even date sworn by the Respondent/Applicant.
6. The second application was opposed by the Applicant/Respondent Fozia Mohammed Haroon through her Replying Affidavit dated May 19, 2022.
7. The court directed that the two applications be heard together by way of written submissions. The Applicant filed the written submissions dated July 27, 2022 whilst the Respondent relied upon the written submissions dated June 29, 2022.

## **Background**

8. This matter relates to the estate of Ahmed Abdulle Noor alias Ahamed Abdulle Noor (hereinafter ‘the Deceased’) who died on October 23, 2021. A copy of the Death certificate serial number xxxx is annexed to the supporting Affidavit dated May 11, 2022.



9. According to the Applicant 'Fozia' who claims to be the only widow of the Deceased, her late husband during his lifetime was a practicing Sunni Muslim. The Applicant denies that the Respondent Hawo was also a widow of the Deceased. She states that the Deceased had lawfully divorced the Respondent in accordance with Islamic Sharia Law.
10. On her part the Respondent 'Hawo' states that she was once married to the Deceased and they bore three (3) children together. The Respondent insists that as a separated wife she is entitled to a share of the estate of the Deceased. The Respondent further claims that the Applicant is not a wife to the Deceased as the Deceased had divorced the Applicant three (3) times.
11. I will now proceed to deal with each application individually.

**(1) Chamber Summons Dated April 26, 2022**

12. It is common ground that the Deceased passed away on October 23, 2021. At the time of his demise, the Deceased was married to the Applicant 'Fozia'. The Respondent 'Hawo' concedes that she is a former (separated) wife of the Deceased whom the Deceased divorced on February 10, 2012. Annexed to the Respondent's Replying Affidavit dated May 10, 2022 is a copy of the Divorce certificate issued on February 10, 2012. (Annexure 'HD1').
13. The Deceased and the Respondent bore three (3) children together. The Respondent avers that the Deceased during his lifetime provided for the said children. The Applicant readily concedes that the three (3) minors are the biological children of the Deceased and are beneficiaries to his estate. Indeed, in a letter dated 8<sup>th</sup> March 2022 (Annexure 'FMH – 2' to the Applicants Supporting Application) is a letter written by the chief Kilimani Location Nairobi County which indicate that the Deceased was survived by the following persons: -

| NO | NAME                     | RELATIONSHIP | AGE |
|----|--------------------------|--------------|-----|
| 1. | Fozia Mohammed Haroon    | Wife         | 61  |
| 2. | Fardosa Ahmed AbduFAAlle | Daughter     | 37  |
| 3. | MAA                      | Son          | 35  |
| 4. | RAD                      | Daughter     | 33  |
| 5. | IAA                      | Daughter     | 29  |
| 6. | OAA                      | Son          | 27  |
| 7. | AAA                      | Daughter     | 13  |
| 8. | AAA                      | Daughter     | 13  |
| 9. | ZAA                      | Son          | 10  |



14. The Applicant avers that the Respondent has been interfering with the peace of her family by purporting to forcefully take over the businesses run by the Deceased specifically a property known as [particulars withheld] Plaza located on 8<sup>th</sup> Street Eastleigh Nairobi.
15. That on 17<sup>th</sup> March 2022 in an attempt to execute her threat, the Respondent accompanied by her siblings and hired goons stormed the said Ocean Plaza, claiming to be taking over the ownership and management of the property. That she proceeded to evict the caretaker who reported the assault to the area Chief who came to the premises and restored order.
16. The Applicant alleges that the Respondent has continued to issue threats against the Deceased's son MAAN through her relatives. That on 4<sup>th</sup> April, 2022 being fully aware of the fact that the Deceased's Son was in possession of the Death Certificate the Respondent fraudulently and with ulterior motives attempted to acquire a parallel death certificate by swearing an Affidavit falsely alleging that the Deceased's National Identity Card got lost and by lodging a police report at Makupa Police Station regarding the allegedly 'lost Identity Card'.
17. The Applicant stated that a family meeting was held on 6<sup>th</sup> March, 2022 which meeting was attended by the Respondent, with a view to discussing the distribution of the estate of the Deceased. That in the said meeting it was agreed that the status quo be maintained and the Applicant was to continue providing for the three (3) minor children of the Deceased. That in pursuance of that agreement, various payments were made to the Respondent and other service providers to cater for the needs of the said minor children.
18. However, despite the agreement reached at the family meeting the Applicant avers that the Respondent persisted with her threats and abusive language. The Applicant seeks for injunctive orders to restrain the Respondent from further intermeddling with the estate of the Deceased.
19. In response, the Respondent confirms that she and the Deceased were once married but are now divorced. She asserts that she and her minor children were fully dependent upon the Deceased prior to his demise. The Respondent alleges that she has been excluded from the management of the estate of the Deceased.
20. The Respondent claims that the Applicant is not a wife to the Deceased having been divorced by the Deceased three (3) times prior to his demise. She complains that the Applicant is in possession of all the properties left behind by the Deceased including certain gifts bequeathed inter vivos to her children. The Respondent further alleges that the Applicant is collecting the rental income from the Deceased's properties which rental income the Applicant utilizes alone to the exclusion of the Respondent and her children.
21. According to the Respondent since both she and the Applicant were divorced by the Deceased, the Applicant cannot claim to have greater priority in respect to the estate of the Deceased. The Respondent denies the allegation that she has been intermeddling with the estate of the Deceased. She urges the court to dismiss in its entirety the application dated 26<sup>th</sup> April, 2022.
22. The only issue for determination is whether the prayers for injunctive orders sought by the Deceased ought to be granted.
23. The principles upon which an interlocutory injunction may be granted are set out in the often cited case of *Giella v Cassman Brown* [1973] E.A. 358 as follows:-
  1. The Applicant must establish a *prima facie* case with a probability of success.



2. The Applicant must demonstrate that he stands to suffer irreparable harm if the orders sought are not granted.
  3. If there is any doubt then the court will decide the case on a balance of probability.
24. The definition of what constitutes a ‘prima face’ case was given in the case of *MRAO Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 where the court held as follows:-
- “In civil case a *prima facie* case is a case in which as the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. This is clearly a standard which is higher than an arguable case.”
25. The Applicant has accused the Respondent of intermeddling with the estate of the Deceased by storming into properties owned by the Deceased in an attempt to take over management of the said properties and by abusing and threatening the other beneficiaries of the estate.
26. Section 45 of the *Law of Succession Act* Cap 160 Laws of Kenya makes it an offence to intermeddle with the estate of the Deceased person. The said provision of law provides as follows:
- “45 (1) Except so far as expressly authorized by this Act or by any other written law, or by a grant of representation under the Act no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of the deceased person
- (2) Any person who contravenes the provision of the 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 which he has intermeddled after deducting any payments made in the due course of administration” [own emphasis]
27. It is important to note that in this matter neither the Applicant nor the Respondent holds letter of Administration to the estate of the Deceased. Therefore, strictly speaking neither has locus standi to file suit on behalf of the estate of the Deceased. What the Applicant ought to have done is to file a petition for *Grant Ad colligenda Bona* to enable her file suit to protect the estate of the Deceased.
28. In the case of *Millicent Mbatha Mulavu & another v Annah Ndunge Mulavu & 3 others* [2018] eKLR the learned Judge stated that;
- “Our Courts have churned out numerous authorities in affirmation of this well settled principle. It is therefore trite that anyone seeking to do anything on behalf of a deceased person must first obtain the relevant authorization.” (own emphasis)



29. Section 82 of the *Law of succession Act* provides for the powers of personal representatives of an estate. Section 82 (a) provides as follows-

“ 82 personal representatives shall, subject only to any limitation imposed by their Grant, have the following powers:

- (a) to enforce by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death for his estate.” [own emphasis]

30. In Machakos High Court Succession. Cause No. 80 of 2011; *Alexander Mutunga Wathome v Peter Lavu Tumbo & another* (2015) eKLR, the Court stated as follows:

“In law one can only represent the estate of the deceased person when a grant of representation has been made in respect of the estate of such deceased person under the {{>/akn/ke/act/1972/14 Law of Succession Act. In addition, Section 82 of the *Law of Succession Act* provides that it is the personal representative who has the powers to enforce, by suit or otherwise, all causes of action which by virtue of any law survive the deceased. A personal representative is defined under section 3 of the Act as the executor or Administrator, as the case may be, of a deceased person. The Applicant has in this respect not produced evidence to show that he has been given such a grant of representation with respect to the 2<sup>nd</sup> protestor’s estate and cannot therefore be substituted in the place of the 2<sup>nd</sup> protestor”

31. From the evidence available the Respondent has not actually taken over or occupied any of the properties left behind by the Deceased. The actions of the Respondent can certainly be said to amount to harassment and/or disturbance of the peace, which the Applicants ought to address through the relevant authority being the Kenya Police Service. Indeed, the Applicant stated that a report has been made at Kilimani Police Station. Therefore, the matter is best left to the police to handle. The Applicant not holding any Grant of Administration to the estate of the Deceased cannot use the probate court to settle her disagreements with the Respondent.
32. The Applicant claims to have filed this application in her capacity as a widow of the Deceased on behalf of the estate of the Deceased. I find that the Applicant has no locus standi to file this application as she does not hold any form of Grant of Administration in respect of the estate. The Application is therefore a non-starter.
33. Notwithstanding, the above finding is evident to this court that there exists disagreement regarding the management and/or distribution of the estate of the Deceased. I note that the Applicant has filed a petition for grant of probate with written Will dated 18<sup>th</sup> July, 2022. The Respondent has filed a Notice of Objection to the making of Grant. These matters are yet to be heard by the court. In the meantime, it is necessary to ensure that the estate of the Deceased is not in any way interfered with and/or intermeddled with pending the appointment of a substantive legal representative for the estate.
34. Under section 47 of the *Law of Succession Act*, the High Court has inherent powers to make appropriate orders in the interest of justice and for the preservation of the deceased’s estate. It reads as follows: -

“The High Court shall have jurisdiction to entertain any application and determine any dispute under the Act and pronounce such decrees and make such orders therein as may be expedient; provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”



35. Similarly, Rule 73 of the [P&A](#) also provides:-

“Nothing in these Rules 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 process of the court.”

36. Based on the above provisions of law this court makes orders that the current status quo regarding the estate of the Deceased is to be maintained. The Respondent is directed to immediately cease from in any manner whatsoever interfering with the estate of the Deceased and to desist from abusing and/or threatening the Applicant or any of her family members. The Respondent’s objection to the petition for Grant of probate dated 18<sup>th</sup> July 2022 will be heard by way of oral evidence in open court.

## **2. Chamber Summons dated 11<sup>th</sup> May 2022**

37. I have considered the above application as well as the prayers sought therein. In my view prayer (3) seeking the inclusion of the Applicant ‘H’ as an Administrator and beneficiary of the estate can be canvassed under the objection dated 27<sup>th</sup> July 2022 filed by the Applicant which objection will be heard in open court.

38. Prayer (4) seeking that the Respondent ‘F’ be ordered to provide detailed statement of account is premature as the Respondent has not as yet been appointed as Administrator of the estate. This prayer will have to abide the appointment of an Administrator to the estate.

## **Conclusion**

1. The summons dated 26<sup>th</sup> April 2022 seeking injunctive orders is dismissed.
2. The Chamber Summons dated 5<sup>th</sup> May 2022 is also dismissed.
3. In order to preserve the estate of the Deceased pending the appointment of a substantive Administrator the court directs that the current status quo regarding the management of the estate of the Deceased is to be maintained.
4. The Respondent Hawo Dagane Hassan is directed to immediately cease from interfering with the management of the estate or abusing/threatening the Applicant or any of her family members.
5. The Objection to the petition for Grant of Probate will be heard by way of oral evidence in open court.
6. Each party to meet its own costs.

**DATED IN NAIROBI THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2022.**

.....  
**MAUREEN A. ODERO**  
**JUDGE**

