



**In re Estate of Nahum Nduku Mutuku (Deceased) (Succession Cause
1635 of 2009) [2022] KEHC 14895 (KLR) (Family) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1635 OF 2009
MA ODERO, J
OCTOBER 28, 2022
IN THE MATTER OF THE ESTATE OF NAHUM NDUKU
MUTUKU (DECEASED)**

BETWEEN

ELIZABETH NDUNGE MUTUKU APPLICANT

AND

ALICE MBUVE MUTUKU ADMINISTRATOR

RULING

1. Before this Court for determination is the notice of motion dated April 26, 2022 by which the Applicant Elizabeth Ndunge Mutuku seeks the following orders:-

- “1. Spent.
2. That temporary orders be and hereby issue directing the Branch Manger, Kenya Commercial Bank Kencom Branch, to release Kenya Shillings Sixty Nine Thousand Nine Hundred and Fifteen (Kshs 69,915) being one quarter of the outstanding balance in Bank Account No xxxx registered under Namu Global Agencies to the Applicant pending hearing and determination of the application herein.
3. That pending hearing and determination of the Application herein, the Respondent be and is hereby ordered to render a full account and statement of the estate within 30 days.



4. That the Honourable Deputy Registrar be pleased to appoint a Registered Valuer to render a just and reasonable open market valuation of all properties forming part of the estate at the cost of the estate.
 5. That all properties forming part of the estate be disposed of and proceeds thereof shared equally among all the beneficiaries upon the hearing and determination of the Application herein.
 6. That the alternative to prayer 5 above, the rest of the beneficiaries do buy out the Applicant's share of the estate within 30 days upon hearing and determination of the Application herein.
 7. That costs be in the cause."
2. The application which was premised upon sections 47,82,83 and 95 of the *Law of Succession Act*, Rules 73 of the *Probate and Administration Rules*, Section 63(e) of the *Civil Procedure Act* and all other enabling provisions of the law.
 3. The Respondent Alice Mbuve Mutuku (who is the Administrator of the estate of the Deceased) despite having been served with the application as well as notice of the hearing did not file any reply to the motion and did not appear in court on the hearing date.
 4. The matter proceeded by way of written submissions. The Applicant filed the written submissions dated July 27, 2022. The Respondent did not file any written submissions.

Background

5. This Succession Cause relates to the estate of the late Nahum Nduku Mutuku (hereinafter 'the Deceased') who died intestate on August 29, 2006. A copy of the Death Certificate Serial Number xxxx is annexed to the Petition for Grant of letters of Administration Intestate dated June 23, 2007. The letter dated November 28, 2006 authored by the Chief of Kijabe location named the following persons as survivors of the Deceased:-
 - (i) Elizabeth Ndunge Mutuku - Daughter
 - (ii) Elizabeth Ndunge Mutuku – Daughter
 - (iii) Roselyne Ngina Mutuku – Daughter
 - (iv) Alice Mbuve Mutuku – Daughter
6. Following the demise of the Deceased, Grant of letters of Administration was on January 28, 2010 made to Alice Mbuve Mutuku (the Respondent herein). The said Grant was duly confirmed on February 20, 2017. The Grant indicated that the estate was to be distributed equally between the four (4) beneficiaries.
7. According to the Applicant the siblings agreed that the rental income collected from the estate properties was to be deposited into a joint account which income would then be shared equally by the four (4) sisters. That upon advice from the Administrator a Savings Account No xxxx was opened in the name of Namu Global Services at Kenya Commercial Bank, Kencom House Branch. The account mandate provided that any three (3) signatories would sign.



8. The Applicant claims that she has been excluded from bank advice and has not derived any benefit from the said account. That she lost her job in the year 2018, her household goods were distressed over rent arrears and she is currently relying on well wishers for assistance.
9. The Applicant now prays to have the estate properties sold and the proceeds divided equally between the four (4) beneficiaries.
10. As stated earlier this application was not opposed.

Analysis and Determination

11. I have carefully considered this application as well as the written submissions filed by the Applicant.
12. It is not in doubt that the Respondent Alice Mbuve Mutuku was with the consent of the other beneficiaries appointed as the Administrator of the estate. The applicant averred that the siblings agreed to open an estate account into which rental income derived from the estate properties would be deposited.
13. That consequent to that agreement they registered Namu Global Services in which all four (4) beneficiaries were named as proprietors. A copy of the search is annexed to the Supporting Affidavit (Annexure 'ENM-2').
14. An account was then opened at Kenya Commercial Bank in the name of Namu Global Service. All four (4) beneficiaries were signatories to the account but the mandate provided that any three could sign to operate said account. The applicant has annexed to her supporting Affidavit copies of bank statements from the said Account (Annexure 'EMM-3').
15. The Applicant claims that various withdrawals have been made from that account without her knowledge and/or involvement. That her sisters have allocated to themselves funds from the said account leaving out the Applicant.
16. The Applicant has prayed that orders be directed to the Manager Kenya Commercial Bank, Kencom House Branch to release an amount of Kshs 69,915 to her to enable her cater for her immediate expenses. The Applicant did not enjoin the Bank to these proceedings. The court will not make adverse orders against a party who has not been granted an opportunity to be heard. As such, I decline to make any orders against the Bank.
17. The Respondent Alice Mbuve Mutuku is the Administrator of the Estate. The duties of personal representatives are set out in Section 83 of the [Law of Succession Act](#). One of duties is set out under Section 83(a) and (h) as follows:-
 - “(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 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.”

18. As an Administrator the Respondent is a trustee of estate property and is accountable both to the court and to the beneficiaries regarding the use of such estate property.

19. *In Re Estate of Julius Mimamo(Deceased)* [2019] eKLR Hon Justice Musyoka stated as follows:-

“Personal representatives administer estates on the strength of legal instruments made to them by the Probate Court. The vesting of the estate of the deceased on the personal representatives by virtue of section 79 of the Act, flows from the instrumentality of the grant of representation. Upon representation being made, the grant holder then becomes entitled to exercise the statutory powers conferred upon personal representatives by section 82 of the Act and incurs the duties imposed on them by section 83 of the Act. Additional powers flow from and duties are imposed by other statutes, such as the Trustee Act. Under Section 82 of the Act, there are powers to enforce and defend causes of action on behalf of the estate, to sell or convert estate assets, to assent to vesting of bequests and legacies on the beneficiaries, among others. Acts done or actions taken on behalf of the estate or for the benefit of the estate would have to be accounted for. In other words, the personal representatives are bound to account for every action they take on behalf of the estate, for they exercise the powers on delegation.....” (own emphasis)

20. The confirmed Grant dated February 20, 2017 provided that the estate was to be distributed equally amongst the four (4) beneficiaries. The Applicant claims that she has not received her fair equal share of the rental income. The Administrator has a duty to account to this court regarding the income and assets of the estate.

21. In the case of *Re Estate of Julius Mimamo (supra)* the court went on the state:-

“Section 83 (e) commands the personal representatives to produce in court a full and accurate inventory of the assets and liabilities, no doubt generated from the exercise of getting in the assets and ascertaining the debts of the estate. There is also an obligation to render an account of all their dealing with the assets and liabilities up to the point of the account. The second occasion for rendering accounts is the completion of administration. The duty is stated in section 83(g) of the Act. The object of the second and final account is to give opportunity to the personal representative to demonstrate that they have complied with the duty in section 83(f) of distribution of the estate to the beneficiaries.” (Own emphasis)

22. Finally the court makes the following orders:-

- (1) The administrator file in this court within a period of sixty (60) days full and accurate inventory of all the assets and liabilities of the estate as well as a statement of accounts From February 20, 2017 to date.
- (2) The other prayers made by the applicant are held in abeyance and will be considered once accounts have been filed as ordered.
- (3) No orders on costs.

DATED IN NAIROBI THIS 28TH DAY OF OCTOBER, 2022.

MAUREEN A. ODERO



JUDGE

