



In re Estate of Halima Kahiya Osman (Deceased) (Succession Cause E2108 of 2021) [2022] KEHC 14756 (KLR) (Family) (21 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14756 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E2108 OF 2021
MA ODERO, J
OCTOBER 21, 2022
IN THE MATTER OF THE ESTATE OF HALIMA KAHIYA OSMAN (DECEASED)**

RULING

1. Before this court is the summons dated October 19, 2021 by which the applicant Abdi Nasir Hassan seeks the following orders:-
 - “ 1. Spent.
 2. That Khalif Hassanbe ordered to produce, deliver and deposit the original title of plot Number LR No 36/1/882 in Eastleigh with court.
 3. That the Petitioner(s) in KSCUCC/E105.2021 be granted leave to obtain a copy of the said title.
 4. That such other orders deemed just and expedient by court.
 5. Costs of this application be provided for”.
2. The application which is premised upon rule 49 of the *Probate and Administration Rules* and all other enabling provisions of law was supported by the affidavit of even date and the further affidavit dated December 16, 2021 sworn by the applicant.
3. The application was opposed through the replying affidavit dated November 18, 2021 and the supplementary affidavit sworn by the respondent Khalif Hassan Abulrehman. The application was canvassed by way of written submission. The applicant filed the written submissions dated June 21, 2022 whilst the respondent relied upon is written submissions dated July 21, 2022.

Background

4. This succession matter relates to the estate of the late Halima Kahiya Osman (hereinafter ‘the deceased’) who died intestate on October 27, 2009 at the Kenyatta National Hospital. *Vide* the letter dated



October 7, 2021 authored by the Chief of Eastleigh location, the deceased was said to have been survived by the following persons:-

- (1) Hussein Hassan – son
- (2) Ahmed Hassan – son
- (3) Abdi Nasir Hassan – son
- (4) Abdiazi Hassan – son
- (5) Khalif Hassan – son
- (6) Muhidin Hasson - son

Therefore, the applicant and the respondent are brothers.

5. The applicant herein Abdi Nasir Hassan averred that the respondent and the deceased were registered as joint owners of the property known as plot no LR No 36/1/882, Eastleigh (hereinafter ‘the suit property’) which property the applicant alleges was purchased using the proceeds from their late father’s business. Therefore, the applicant alleges that the suit forms part of the estate of deceased and is being held by the respondent in trust for the other beneficiaries.
6. The applicant alleges that the respondent has custody of the title deed which he has used to charge the suit property to Gulf African Bank without the consent and/authority of the other beneficiaries. The applicant told the court that a summons for Grant of letters of Administration intestate in respect of the estate is pending before the Kadhi Court. The Applicant therefore contends that the Respondent has been intermeddling with property belonging to the estate of the Deceased. He prays that this court intervene by compelling the Respondent to deposit the original Title Deed for the suit property in court.
7. As stated earlier the application was opposed. The Respondent insists that the suit property belongs solely to himself. He stated that he purchased the property utilizing his income earned from his job as a Flight Attendant. The Respondent stated that the Deceased who was his mother did not make any monetary contribution towards the acquisition of the suit property.
8. The Respondent concedes that the suit property is in fact registered in the joint names of himself and the Deceased. The Respondent explains that given the nature of his job and due to his frequent trips out of the country, he decided to include the Deceased as a joint owner of his property to enable her manage the property, sign leases with tenants etc, during the periods when he was out of the country.
9. The Respondent asserts that the suit property does not form part of the estate of the Deceased. He states that he is not aware of the Petition for Grant of letters of Administration filed in the Kadhi Court.
10. Finally, the Respondent states that this court has no jurisdiction to entertain this application. He urges the court to dismiss the application with costs.

Analysis and Determination

11. I have carefully considered this application, the Affidavits filed in reply as well as the written submissions filed by both parties. It is common ground that the Applicant and the Respondent are brothers. They are both the sons of Halima Kahiya Osman who is the Deceased in this matter.
12. The main issue for determination is whether the suit property forms part of the estate of the Deceased or whether said property belongs to the Respondent as he has alleged. The Respondent submitted that this court had no jurisdiction to entertain this application. It is trite that without jurisdiction a court



must immediately down its tools (see *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR).

13. This court is a Probate Court with the mandate to oversee the distribution of the estate to the genuine beneficiaries. The dispute herein falls squarely within that mandate as it involves a dispute between the beneficiaries of the estate relating to what assets form part of said estate.
14. The court has been informed that a Petition seeking Grant of letters of Administration Intestate has been filed in the Kadhi Court. It is not for this court to usurp the powers of the Kadhi Court by making a determination regarding the assets of the estate. The question of whether or not the suit property forms part of the estate of the Deceased is a matter which ought to be canvassed in the Kadhi Court at the first instance. It is only once a decision has been made in the Kadhi Court that the matter may then come to the High court on Appeal.
15. For this reason I decline to entertain this application. I direct that the matter be canvassed in the Kadhi Court under the Succession Cause filed regarding the estate of the Deceased. This being a family matter I make no orders on costs.

DATED IN NAIROBI THIS 21ST DAY OF OCTOBER, 2022.

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MAUREEN A. ODERO

JUDGE

