



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

In the Estate of Dudley Paul Charlesworth Harwood (Deceased) (Succession Cause E012 of 2020) [2021] KEHC 9821 (KLR) (19 April 2021) (Ruling)

Neutral citation: [2021] KEHC 9821 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE E012 OF 2020
JN ONYIEGO, J
APRIL 19, 2021**

RULING

1. The deceased herein died intestate on March 26, 2020 while domiciled in Diani, Kenya. He left a written will executed on May 18, 2020 in which he appointed his friends Stewart Saunders, John Buckle, Stephanie Moya Atkinson and the firm of Slee Blackwell as executors and trustees.
2. On October 29, 2020, John Harry Buckle and Stephanie Moya Turnbull petitioned for a grant of probate. In their petition application (form 78), they averred that one of the appointed executors hereof Stewart Saunders had died and that the firm of Slee Blackwell solicitors being the 4th executor/ trustee had renounced their executorship vide their letter dated September 15, 2020.
3. Consequently, a grant of probate of written will was made and issued on February 1, 2012 to the joint applicants. Subsequently, on March 17, 2021, they filed a Chamber Summons dated 4th February, 2021 pursuant to Section 71 (3) and (4) of the Law of Succession seeking that the grant of probate be confirmed before the expiry of six months.
4. The application is premised upon grounds set out on the face of it and an affidavit sworn on March 17, 2021 by the applicants jointly. Among the reasons advanced in support of the application is the argument that there are no dependants of the deceased within the meaning of Section 29 of the Law of Succession; the bulk of the properties of the deceased requiring succession are in the United Kingdom with the only property in Kenya comprising Kshs 1,700,000 in two bank accounts; there is need for resealing of the grant in the United Kingdom first before the said estate can be distributed to the beneficiaries; there are no immovable properties comprising the estate in Kenya; it is just in the circumstance's that the grant be confirmed to pave way for resealing in U.K.
5. During the hearing, the petitioners appeared online thus confirming that there was no objection from any quarters. They further confirmed that the deceased had no wife nor children.
6. I have considered the application herein, affidavit in support and submissions by counsel for the applicants. The application herein was filed under Section 71 (3) of the Law of Succession which allows



- confirmation of a grant of probate or letters of administration before the expiry of six months in case there are no dependants or if the circumstances or expediency of the matter so requires.
7. The purpose of waiting for expiry of six months before confirmation of grant is meant to give sufficient time to could be objectors or dependants to lodge an objection if not satisfied with the manner in which the grant was acquired or proposed mode of distribution or in case of a will, challenge its validity.
 8. This window can only be varied at the discretion of the court after satisfying itself that there are no dependants nor objections and that the expediency of the circumstances so demands.
 9. In this case, there is a written will and there seems to be no dependants as can be discerned from the wording of the will and confirmation by the petitioners (executors). Why can't the petitioners wait for the expiry of six months so as not to lock out any could be objectors. Besides the executors, there are other named beneficiaries like Maisiel, Russell Kamau and Hannah Violet Ngina who need to attend court and be made aware of their beneficial interest in the estate.
 10. For all purposes and intents, I do not see any urgency and expediency in confirming the grant before time. There is no time limitation in resealing a grant in United Kingdom. Accordingly, I decline to confirm the grant before the expiry of six months.
 11. Section 71 (3) of the *Law of Succession* should be applied sparingly and only in extremely deserving cases lest we lock out several interested parties in the estate. Application is therefore rejected and the applicants to apply for confirmation of the grant when the time is ripe.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 19TH DAY OF APRIL, 2021

J. N. ONYIEGO

JUDGE

