



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

SUCCESSION CAUSE NO. 58 OF 2016

IN THE MATTER OF THE ESTATE OF SARASTINO M'CHABARI

M'UKABI alias CHABARI MUKABI (DECEASED)

AND

JOHN NJERU MBARE.....APPLICANT

-VERSUS-

MARGARET KARIMI CELESTINO.....RESPONDENT

RULING

1. This cause relates to the estate of the late **SARASTINO M'CHABARI M'UKABI Alias CHABARI MUKABI** (deceased) who died on 3rd August 2015 domiciled at Kiangondu within Tharaka Nithi County.
2. The Respondent herein was appointed as the executrix of the Will of the deceased vide a Grant of Letters of Administration Testate made on 11th July 2017. The said grant was confirmed on 14th February 2019 and later rectified on 13th May 2020.
3. The present application is a Summons for Accounts of Estate dated 11th January 2021. It seeks orders **THAT**:
 - a. This Honourable court be pleased to compel the Respondent to produce to court within 14 days a full and accurate inventory of all assets and liabilities of the deceased including the deceased's parcels of land and location, bank accounts and businesses.
 - b. This Honourable court be pleased to compel the Respondent to deposit into court all the title documents which they are holding in respect of property forming part of the subject estate.
 - c. This Honourable Court be pleased to compel the Respondent to render a true, proper and comprehensive account of their administration of the Estate including funds received by and spent by themselves from the date of their appointment up to date.
 - d. This Honourable Court be pleased to order the Respondent to produce or avail in court Bank Statements in respect of all the Deceased's bank account (KCB Bank Ltd, Chuka Branch, Account No. 1148459855) from the date of appointment to date.
 - e. The Respondent be compelled to disclose to this Honourable court all discoveries of the deceased's assets not included in the Will and their current status.
 - f. Should there be a finding of misappropriation of the accounts mentioned above, the Respondent be ordered to reimburse the same to the estate of the deceased.
 - g. Costs of this application be met by the Respondent.
4. The Application is supported by the applicant's own affidavit sworn on 11th January 2021 and premised on the grounds **THAT**:
 - a. The Respondent has failed to proceed diligently with the administration of the estate.

- b. The Respondent has failed to provide accounts of the estate from the date they were appointed up to now.
- c. The Respondent has failed and/or neglected to account for income due to the estate.
- d. The Respondent has failed to comply with the Law of Succession Act.

5. The Respondent herein, Margaret Karimi Celestino, has opposed this application through a Replying Affidavit sworn on 5th February 2021.

6. On 9th February 2021, the court ordered that the application be disposed off by way of written submission. The Applicant filed their written submissions on 3rd March 2021 while the Respondent filed their written submissions on 31st March 2021.

Applicant's Case

7. The Applicant contends that not all assets and properties that belonged to the deceased were listed in the schedule of distribution appended to the Certificate of Confirmation of Grant. Among the properties left out according to the Applicant are:

- a. **TIGANIA-DUNYU-BARIKUI LR 2562-2088**
- b. **MAREMBO-KARURUKO LR 235**
- c. **MAREMBO-KARURUKO LR 236**
- d. **L.R. KARINGANI/NDAGANI/1614 (Including all permanent fixtures upon the property)**
- e. **KARINGANI/MUGWE LR 583**
- f. **SHARES AT WAKULIMA SACCO HEKD BY AN ACCOUNT AT SOUTHERN STAR BANK**
- g. **CO-OPERATIVE BANK LIMITED ACCOUNT HELD BY DECEASED**

8. The Applicant further contends that the Respondent has delayed in the completion of the administration and distribution of the estate as required by **Section 83 of the Law of Succession Act**.

9. It is thus the Applicant's proposition that the grant of probate of written Will ought to be revoked and the estate referred to the Public Trustee for final administration and distribution.

Respondent's case

10. In response to the application, the Respondent submitted that upon obtaining the Certificate of Rectification of Grant on 13th May 2020, she diligently proceeded to distribute the estate of the deceased to the beneficiaries as per the said grant.

11. The Respondent admits that she has an obligation in law as the personal representative of the deceased to render accounts. She however states that she has not been able to fully distribute the estate due to financial constraints.

Issues for determination

12. The agreed issues for determination in the present application are as follows:

- a. Whether the Respondent has proceeded diligently with the administration of the deceased's estate.
- b. Whether the Respondent has provided a full and accurate statement of account to date as required by law.
- c. Whether the Respondent should be compelled to give a full statement of accounts of the Estate.

Analysis

13. Musyoka, J. in the High Court case of **In re Estate of Julius Mimano (Deceased) [2019] eKLR** analyzed the unique position in law held by the personal representative of a deceased person by stating 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.”

14. As per the schedule on the Certificate of Rectification of Grant dated 13th May 2020, the subject estate was to be distributed as follows:

a) L.R. KARINGANI/MUGIRIRWA/583

Margaret Karimi Celestino - Wholly

b) L.R. KARINGANI/MUGIRIRWA/57

David Mugendi Mabre - Wholly

c) L.R. KARINGANI/NDAGANI/10987&10988

Grace Ciamairu Mbare - Wholly

d) L.R. KARINGANI/NDAGANI/655

1. Grace Ciamairu Mbare }
2. Joyce Njeri Mbare } to get 4 Ha jointly
3. Margaret Karimi Celestino }
4. George Munene Mbare - 2.84 Ha
5. Albert Gitonga Mbare - 3.64 Ha
6. John Njeru A. Mbare - 2.84 Ha
7. Grace Ciamairu Mbare - 1.62 Ha
8. Grace Ciamairu Mbare - 1 Acre

e) A/C NO. 1148459855 – KENYA COMMERCIAL BANK – CHUKA BRANCH

Grace Ciamairu Mbare

f) L.R. MAREMBO/RIANTHIGA/1185

1. John Njeru A. Mbare - 0.205Ha
2. George Munene Mbare - 0.205Ha
3. David Mugendi Mbare - 0.205Ha
4. Joyce Njeri Mbare - 0.205Ha

g) L.R. MAREMBO/RIANTHIGA/1219

1. Grace Ciamairu Mbare - 0.266Ha
2. Albert Gitonga Mbare - 0.266Ha
3. Margaret Karimi Celestino - 0.266Ha

h) NTOGOTO COFFEE FACTORY BC050

1. Grace Ciamairu Mbare }

2. Albert Gitonga Mbare } Jointly

3. Joyce Njeri Mbare }

i) NTOGOTO COFFEE FACTORY BC050A

John Njeru A. Mbare - Wholly

j) NTOGOTO COFFEE FACTORY BC050B

George Munene Mbare - Wholly

15. The duty of a personal representative to render accounts to beneficiaries was considered **In re Estate of Julius Mimano (Deceased)** (*supra*) where the court held as follows:

“Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the Trustee Act, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.”

16. The present application is brought under Sections 83(g), (h), (i) & 94 of the Law of Succession Act which provide as follows:-

“83. Personal representatives shall have the following duties—

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(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 own 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.”**

“94. When a personal representative neglects to get in any asset forming part of the estate in respect of which representation has been granted to him, or misapplies any such asset, or subjects it to loss or damage, he shall, whether or not also guilty of an offence on that account, be liable to make good any loss or damage so occasioned.”

17. Section 83 of the Law of Succession Act imposes a statutory duty on the Respondent herein as the personal representative of the subject estate to render accounts at two stages. According to Musyoka J. in **In re Estate of Julius Mimano (Deceased)** (*supra*);

“The first instance is in the first six months of the administration. It is at this stage that they ought to account as to whether the spent any funds from the estate for the purpose of disposing the remains of the deceased and, if so, how much. State whether they got in or gathered or collected or brought together all the assets that make up the estate. The getting in of the estate is critical, it should precede settlement of debts and liabilities and distribution of the assets. Indeed, these duties can only be discharged if there are assets sufficient to settle debts leaving a surplus for distribution. It would also be from the assets collected that the estate would have a pool of resources for administration expenses. 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 dealings with the assets and liabilities up to the point of the account. The second occasion for rendering accounts is at 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.”

18. The duty to render accounts on the two stated stages is imposed by statute and it is so critical that default to do so is listed in **Section 76(d)(iii) of the Act** as one of the grounds upon which the court may consider revoking a grant. The said section provides as follows:

“76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

(a)...

(b)...

(c)...

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

(i) ...

(ii) ...

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular;...”

19. The law clearly commands rendering of accounts by personal representatives whether the deceased died testate or not. In the instant matter, the executrix does not appear to have rendered any accounts. The grant herein was confirmed on 14th February 2019 and rectified on 13th May 2020. Accordingly, the Respondent ought to have rendered accounts by now. According to her, she has already transferred most of the estate to the beneficiaries save for L.R. NO. MAREMBO/RIANTHIGA/1185 and MAREMBO/RIANTHIGA/1219 which are yet to be transmitted to the respective beneficiaries because the Respondent fell short of finances to cater for the process of subdivision and transfer. It is therefore clear that the Respondent has not complied with **Section 83(e)(g)** of the Act.

20. In accordance with the law, the Respondent is bound to render accounts for the period that she has been in office as the executrix of the subject estate. The reason given for the default in rendering accounts in this case is in my view unsatisfactory as funds for the administration of the estate should be drawn from the estate.

21. At this point, it should also be noted that the Applicant’s interpretation of the Will is incorrect in so far as he submits that the funds for administration of the estate should either be drawn from the estate or in any other event, from the Respondent’s personal finances. Notably, the Will refers only to funds that the Respondent would incur in contracting legal services for purposes of proving the Will for the grant of probate. It does not refer to the costs to be incurred in administering the estate.

22. In light of the foregoing, I find that this court has jurisdiction to deal with the issue of the Respondent’s diligence in the management and administration of the estate once she has rendered the accounts. It would be only after thereafter that the court would be in a position to find whether or not the Respondent properly executed her mandate as the executrix. Further orders and directions on the next course of action, including whether the executrix should be removed as a personal representative, should follow after accounts have been rendered in accordance with Section 83 of the Act.

Conclusion

23. I find that this application has merits. I direct the Respondent to **file a full and accurate inventory of the assets and liabilities of the estate and an account of their handling of the estate of the deceased in keeping with Section 83 of the Law of Succession Act (Supra). Upon the filing of the aforementioned inventory and accounts, the Applicant will be at liberty to move the court appropriately for other or further orders arising from the said account. The respondent is already out of time in rendering the account. I therefore direct that the respondent has 60 days from today to do so.**

I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 24TH DAY OF JUNE 2021.

L.W. GITARI

JUDGE