



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 249 OF 1992

IN THE MATTER OF THE ESTATE OF EPHRAHIM KAVAI (DECEASED)

RULING

1. The file herein is a skeleton of the original file, having been reconstructed vide an order of the court made on 1st September 2020, in Kakamega HC Miscellaneous Application No. 41 of 2020. The handwritten records of the Judges who handled the matter, from its inception in 1992, are missing, and only some of the filings and rulings dating back to those days were availed. I have, however, come across a comprehensive ruling that Waweru J delivered 16th November 2001, dated 15th November 2001, which neatly captures the events in the matter up to that date. Before I address my mind to what is before me, let me recapitulate the said events, to provide a background to the ruling herein.

2. The deceased herein died on 18th June 1992. Representation was obtained in this cause by Ebby Kanguha Kawai, vide a grant that was made to her on 12th October 1992. I shall refer to her hereafter as the administratrix. The said grant was confirmed on 24th November 1993. The court subsequently, in the ruling of 16th November 2001, vacated the orders on confirmation of the grant, on grounds that the administratrix had not disclosed the 2 children of the deceased, Hebert Jumba Kawai and Zippy Lodenyi, and that the distribution that the court had allowed did not cater for the two. The consequence of the order was that all the transactions carried out on the basis of the confirmation orders were cancelled, and the assets were to be reverted to the name of the deceased. The grant itself was not revoked, and the administratrix remained in office.

3. The application that I am tasked with determining is the summons, dated 10th September 2020. It is brought at the instance of Herbert Jumba Kawai, the son of the deceased, who I shall refer hereto as the applicant. It transpires that the administrator died on 26th January 2001. The applicant claims that nothing has happened since the orders of 16th November 2001, to bring the administration to a close. He would like the grant revoked, and the administratrix substituted, and that he be appointed as administrator in her place. He would also like to have a prohibition order made for preservation of the estate. He has not attached copy of a certificate of death in respect of the administratrix, but there is a copy of a funeral programme, which indicates that she died on 26th January 2020, and her remains were interred on 8th February 2020.

4. The application was served on James Kelonye Muguzu, a brother of the administratrix, who was said to be in illegal occupation of the one of the estate assets; and on Zippy Lodenyi, the daughter of the deceased. It was also served on Rose Kiyunzi, for some reason that is not documented. Of the three, only James Kelonye Muguzu has responded, by filing grounds of opposition. He argues that the applicant was not entitled to the orders sought, as the administratrix, and another person who had filed an objection were all dead. He also argues that he ought not be dragged into the matter as he was not the administrator of the estate of the late administratrix.

5. The parties took directions, for disposal of the application by way of written submissions. Both sides have filed detailed written submissions, supported by comprehensive judicial authorities. I have read through them and noted the arguments made.

6. It is not contested that the administratrix died on 26th January 2020, and, therefore, the estate currently has no administrator. It is also not disputed that the orders that were made on 24th November 1993, confirming the grant and paving way for distribution, were vacated on 16th November 2001. Given that there is no administrator in office, the estate has been in limbo since 26th January 2020. There is no reason why another administrator cannot be appointed to take over and complete administration. The applicant herein is a son of the deceased, according to the ruling of 16th November 2001, and he is the proper person to make the instant application. The administratrix is dead, so her grant has become useless and inoperative. It has to be revoked to make way for appointment of a fresh administrator.

7. The applicant has asked for prohibitions to issue to preserve the estate. Such orders are necessary to secure the assets. They can issue even at the instance of the court, *suo moto*, given the circumstances of the case.

8. Who should appoint be as administrator? The applicant invites me to appoint him. I note that the deceased had only two children. I believe the two should be appointed joint administrators, so that each can look out for their own interests.

9. The final orders that I shall make in the circumstances are:

a. That the grant of letters of administration intestate, that was made on 12th October 1992 to Ebby Kanguha Kawai, is hereby revoked, for having become useless and inoperative on account of her death;

b. That I appoint Hebert Jumba Kawai and Zippy Lodenyi administrators of the estate herein, and a grant of letters of administration intestate shall issue to them, accordingly;

c. That the new administrators shall move with due dispatch to file for confirmation of their grant to facilitate distribution of the assets;

d. That any person who shall feel aggrieved by the proposals to be made in the proposed application shall be at liberty to lodge affidavits of protests to that application;

e. That prohibitions shall issue in terms of prayer 1 of the application;

f. That each party shall bear their own costs; and

g. That any party, aggrieved by any of the orders made above, has leave, of 28 days, to move the Court of Appeal, appropriately, on appeal.

10. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 6TH DAY OF AUGUST, 2021

W. MUSYOKA

JUDGE