



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 398 OF 2012**

**IN THE MATTER OF THE ESTATE OF EUTYCUS MUTHUI (DECEASED)**

**BETWEEN**

**MIRIAM KENDI MUTHUI.....1<sup>ST</sup> APPLICANT**

**CATHERINE KINYA MUTHUI.....2<sup>ND</sup> APPLICANT**

**AND**

**JAMES KIMATHI MUTHUI.....1<sup>ST</sup> ADMINISTRATOR**

**LINCOLN MUTHUI MUITA.....2<sup>ND</sup> ADMINISTRATOR**

**RULING**

1. By chamber summons dated 01<sup>st</sup> April, 2021 and filed on 07<sup>th</sup> April, 2021, the 1<sup>st</sup> Administrator seeks orders THAT:

a) **The Honourable be pleased to rectify the grant issued on 27<sup>th</sup> April, 2020 to include SAFARICOM SHARES- A/C NO.xxxxxxxxxxand distribute the same to the Applicant**

b) **The Honourable be pleased to stay the orders issued on 18<sup>th</sup> March, 2021 pending the hearing and determination of this application**

c) **The Honourable be pleased to order that the costs and expenses incurred by the 1<sup>st</sup> Administrator in the process of preservation, protection and administration of the estate amounting to Kshs. 2,000,000/- be borne and payable by the estate of the deceased**

d) **Costs be in the cause**

2. In an undated replying affidavit sworn and filed on 18<sup>th</sup> May, 2021 faults the 1<sup>st</sup> Administrator for not involving family members prior to expending his own resources, did not apply to rectify the grant to include the SAFARICOM SHARES and finally on the ground that this application is desired to delay the distribution of the estate.

3. In a rejoinder, the 1<sup>st</sup> Administrator by his supplementary affidavit sworn on 26<sup>th</sup> May, 2021 and filed on 27<sup>th</sup> May, 2021 contends that he has performed his duties and is by law entitled to recover his expenses.

**Analysis and determination**

4. I have considered the application in the light of the supporting affidavit, the replying affidavit and supplementary affidavit and submission on behalf of the parties.

5. I have also considered numerous rulings made in this matter. Of particular interest is a ruling dated 27<sup>th</sup> April, 2020 where the court noted at paragraph **14 dd** that the beneficiaries were in agreement that the following shares be distributed to the 1<sup>st</sup> Administrator:

i. Nation Media group Ltd Acc No.xxxxxxx

- ii. Centum Investment Co Ltd Acc No.xxxx
- iii. Standard Chartered Bank Kenya Ltd Acc No.xxxx
- iv. Ntimanyakiru Sacco Acc No.xxxx
- v. Ntima Society Acc No.xxx
- vi. Kengen Co Ltd. Acc No xxxxx
- vii. Kenya Airways Ltd Acc No.xxxxx
- viii. Mumias Sugar Co Ltd CDSC B/xxxxxxx/LI-0

6. It is worth noting that the 1<sup>st</sup> Administrator, well knowing that the deceased also owned **SAFARICOM SHARES- A/C NO.xxxxxxxxxx** concealed this information from the court and the same remains undistributed.

7. Section 83(c) and (d) of the Law of Succession Act requires administrators to pay out of the estate all the expenses of obtaining the grant and all other reasonable expenses of the administration and to ascertain and pay, out of the estate of the deceased, all his debts. (See **In re Estate of Mukhobi Namonya (Deceased) [2020] eKLR**).

8. Section 83 (e) requires the administrators to within six months from the date of the grant, produce to the court a full and accurate account of all dealings therewith up to the date of the account.

9. Whereas I am in agreement with the 1<sup>st</sup> Administrator that he is entitled to reimbursement of his expenses and litigation costs over assets forming the estate, he has to date not rendered an account of what these expenses were, how they were incurred and how they were settled. Consequently, I find that an order that the expenses be paid from **SAFARICOM SHARES** is premature and cannot issue at this stage.

10. Having said that, I pronounce that the 1<sup>st</sup> Administrator does not stand to be prejudiced and no meaningful purpose will be served in staying this court's order of 18<sup>th</sup> March, 2021 for the reason that the 1<sup>st</sup> Administrator concedes that the value of the undistributed **SAFARICOM SHARES** is sufficient to compensate his expenses once established.

11. Having considered the chamber summons dated 01<sup>st</sup> April, 2021 and filed on 07<sup>th</sup> April, 2021 as analysed above, I find that it has no merit and it is dismissed with costs to be borne by the 1<sup>st</sup> Administrator.

**DATED AT MERU THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2021**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Court Assistant - Morris Kinoti**

**For Applicants - M/s. Kevin Nyenyire & Co. Advocates**

**For 1<sup>st</sup> Respondent - N/A for M/s. Thangichia M.David Advocates**

**For 2<sup>nd</sup> Respondent - N/A**