



REPUBLIC OF KENYA



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

**In re Estate of Mzee Ibrahim Memia (Deceased) (Succession Cause
34 of 2019) [2021] KEHC 9792 (KLR) (26 November 2021) (Ruling)**

Neutral citation: [2021] KEHC 9792 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 34 OF 2019
JN ONYIEGO, J
NOVEMBER 26, 2021**

IN THE MATTER OF THE ESTATE OF MZEE IBRAHIM MEMIA (DECEASED)

BETWEEN

**AYUB MZEE MWANGI 1ST APPLICANT
KIBIBI WAIRIMU MWANGI MZEE 2ND APPLICANT
RAMADHANI MWANGI MZEE 3RD APPLICANT
ELIZABETH NYAMU 4TH APPLICANT
NORAH SHADRACK GAKERE 5TH APPLICANT**

AND

DAPHINE IBRAHIM MEMIA RESPONDENT

RULING

1. This matter was fully canvassed through *viva voce* evidence. During the hearing, parties had an opportunity to call their respective witnesses. The respondent having closed her case on May 18, 2021, parties then agreed to file written submissions and mention fixed for June 16, 2021 for highlighting and fixing judgment date. On June 16, 2021, the respondent sought extension of time to comply with filing submissions after claiming that the applicants had served him late with his submissions.
2. The court then extended time by 7 more days and judgment fixed for September 24, 2021. Later, the court was confronted with a notice of motion dated September 20, 2021 filed under certificate of urgency by the applicants seeking, arrest of delivery of judgment scheduled for September 24, 2021 and that the same be deferred pending hearing and determination of the said application. That the honorable court be pleased to order the respondent to give a statement of accounts of the estate of the deceased herein.



3. The application is based on grounds stated on the face of it and averments contained in the affidavit in support sworn on September 20, 2020 in which the applicant stated that; the deceased owned a commercial and Swahili house generating monthly rental income of Kshs 49,000 and 28,000 respectively. That he also held a bank account at KCB treasury and silver jewelry all of which must be valued and the respondent called upon to give a statement of accounts for the just determination of the suit.
4. The respondent filed a replying affidavit on October 12, 2021 claiming that; the application is an afterthought coming too late in the day and that it is overtaken by events.
5. During the hearing, M/s Kyalo for the applicants reiterated the content contained in the affidavit in support. Equally, Mr Matheka relied on the averments contained in the affidavit in response.
6. I have considered the application herein, response thereto and oral submissions by both parties. The application is basically seeking delivery of judgment arrested pending submission of statements of accounts.
7. What is pending determination is a revocation application in which the applicants have dismissed the existence of a will by the deceased as well as the demand for recognition that they are dependants. In all fairness, the applicants should wait for the outcome of the judgment so as to know whether they are dependants entitled to any share out of the estate or not. In any event, if the court recognizes them, they will have a chance to demand for valuation and accountability of the assets of the deceased.
8. The issues being raised by the applicant have been in existence throughout the hearing of the main application. Why now? I agree with Mr Matheka that to start hearing this application before delivery of the judgment, will amount to unnecessary delay of the main suit contrary to the oxygen principles under section 1A, 1B and 3A of the *Civil Procedure Act* which underscores expeditious delivery of justice. Proceedings will be confluted, lack orderliness and confusing if we are to re-open other proceedings before determination of the substantive application.
9. There is no prejudice likely to be suffered by the applicants if the judgment is delivered before the issue of submission of accounts is resolved. Accordingly, I do not find merit in the application herein. The same is dismissed and judgement delivery to proceed. Costs shall be in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 26TH DAY OF NOVEMBER, 2021.

JN ONYIEGO

JUDGE

