



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

SUCCESSION NO. 388 OF 2009

IN THE MATTER OF THE ESTATE OF JAMES SIMON BELLHOUSE (DECEASED)

JOY NADZUA BELLHOUSE.....APPLICANT

VERSUS

LUCY NYOMOITA MOMANYI t/a

L.N. MOMANYI & CO ADVOCATES.....RESPONDENT

RULING

1. Before me for consideration is an application dated 27.2.19 (the Application) by Joy Nadzua Bellhouse seeking the following orders:

1. spent

2. THAT the Co-executor/Respondent discharged of her duties on the 11 May 2015 be compelled to submit a true and accurate inventory of assets and liabilities of the account of the deceased and full and accurate account of all dealings to wit:

a) The following shares held by James Simon Bellhouse (deceased) for the year 2007 to 2015.

i) CMC shares

ii) East African Breweries Limited

iii) Uchumi shares

iv) Kenya Power Generators shares

v) Kenya Airways Shares

vi) Mumias Sugar shares

vii) Scan group shares

viii) East African Cables shares

ix) Kenstrel Capital E. A. Limited shares

b) Status at Central depository security Fund Limited Account Number [xxxx]

c) Statements of Accounts number [xxxx] in the joint names of Joy Nadzua Bellhouse and James Simon Bellhouse (Now deceased) for the period January 2007 to June 2010.

3. The Executor/Respondent be compelled to disclose to this Honourable Court her conduct in dealing with shares held by Kestrel Capital E.A Limited.

4. The Executor/Respondent be compelled to disclose to this Honourable Court any discoveries of the deceased assets not

included in the will and their current status.

5. THAT the Applicant and Respondent do appoint jointly a qualified accountant to undertake the said accounts at the cost of the deceased estate.

6. THAT 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.

7. THAT the Respondent be ordered to forthwith desist from inter meddling with the said account and any other property of the deceased.

8. THAT this Honourable Court be pleased to make such other orders and give such directions as it shall deem fit and

9. THAT the cost of this application be met by the co-executor/Respondent.

2. The undisputed facts of this case are that James Simon Bellhouse the deceased died on 25.2.09 at Mombasa Hospital. The deceased left a will dated 10.1.07. He was survived by his wife, the Applicant and 2 children. A grant of probate (the Grant) was on 22.5.12 issued to the Applicant and Lucy Nyamoita Momanyi, the Respondent and confirmed on 10.9.13.

3. By an application dated 29.5.14, the Respondent sought the revocation of the Grant on grounds that the Applicant had declined to sign letters for true status and transactions relating to the deceased's bank accounts and shares. The Respondent further claimed that the Applicant had made serious and unfounded allegations against the Respondent of fraud and theft of shares and moneys belonging to the estate. The said application was compromised by way of a consent order dated 20.4.15 and issued by the Court on 11.5.15. The order *inter alia* discharged the Respondent and the Applicant remained the sole executor of the will of the Deceased.

4. The grounds upon which the Application is premised are that the Respondent discharged herself without rendering a full and accurate account of all dealings in the estate and handing over the estate to the Applicant as beneficiary.

5. The Respondent did on 25.3.19 file a notice of preliminary objection. The grounds are that the application is bad in law as the Respondent was by the order of 11.5.15 discharged as executor of the estate of the deceased. As such the Respondent cannot be called to give an account of the estate.

6. On 25.3.19, directions were taken that the Application and preliminary objection would be disposed of by way of written submissions and timelines were given for filing of submissions. The Court further directed that any submissions not filed within the timelines given would not be admitted. On 29.4.19, the Respondent had not complied with directions and had filed a replying affidavit out of time. She sought 14 days to file submissions which was opposed by the Applicant's counsel. As the reasons proffered by the Respondent for failure to comply with Court orders were not clear, the Court directed the Respondent to file a formal application by 6.5.19 seeking to review the directions stating reasons why the same were not complied with for hearing on 13.5.19. These subsequent directions were also not complied with and the application was filed on 4 days late on 10.5.19. Having blatantly failed to comply with the directions of the Court on 2 occasions, the Court penalised the Respondent by expunging the application dated 10.5.19 from the record.

7. I have considered the Application, preliminary objection and the Applicant's submissions. The issue for determination is whether the Respondent having been discharged is under an obligation to account for her dealings with the estate of the deceased.

8. By the Grant, the Applicant and the Respondent were appointed by the Court as trustees to collect in and manage the assets of the estate for the benefit of its beneficiaries in accordance with the will of the deceased and the law. The wording of the Grant is instructive. The administration of the estate of the deceased was granted to the Applicant and the Respondent **"the executors named in the will they having undertaken faithfully to administer such estate according to law and to render a just and true account thereof whenever required by law so to do"**. As executors therefore the parties took on a fiduciary role and owe a fiduciary duty to the beneficiaries of the estate of the deceased and are further accountable to the law.

9. The duties of a personal representatives over the estate of a deceased person are clearly set out in Section 83 of the Act. The obligation to render accounts is the tool provided by statute to monitor the dealings by the personal representatives with the estate of the deceased. The requirement is stipulated in the following provisions of Section 83:

(e) within six months from the date of the grant, to produce to the court 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;...

(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.

10. It is evident from the provisions of Section 83 of the Act that the executors were required to produce to Court, accounts within 6 months from issuance of the Grant and also within 6 months from confirmation of the grant or after completion of the administration of the estate. Accounts must also be produced when the Court of its own motion or on the application of an interested party requires the same either before or after completion of administration of the estate.

11. There is nothing in Section 83 of the Act to suggest that once an executor is “discharged” the ceases to be accountable to the estate and to the Court for their dealings with the estate. Indeed the term “discharge” as a means of relieving a personal representative of his duties is unknown in the Law of Succession Act. The procedure available in law to an executor who seeks to be relieved of his duties is an application for revocation of the grant issued to them. As matters stand, the Grant issued to the Applicant and Respondent on 22.5.12 remains in force, the same not having been revoked.

12. The requirement to render accounts is a statutory duty. Under Section 83(h), any interested party may apply to the Court for an order that a personal representative renders accounts. The Court itself may of its own motion require the production of accounts of all dealings with the estate. It must be noted that even personal representatives whose grants are revoked are invariably required by the Court to render accounts of all their dealings with the estate during their tenure, the revocation notwithstanding. In re Estate of Francis Waita Mbaki (Deceased) [2018] eKLR, Muriithi, J. upon revoking a grant further ordered as follows:

The respondents herein, as the outgoing administrators to be replaced by the new administrators to be appointed as above, shall within three months (90) days furnish to the parties and to Court a full and accurate account of their dealings with the estate property from the date of appointment to the date of account.

13. The Court notes that the Applicant seeks an order that the Respondent be ordered to forthwith desist from inter meddling with the estate of the deceased. As stated earlier, the Respondent remains an executor of the will of the deceased. She cannot therefore be said to be intermeddling with the estate. Under Section 45 of the Act, an intermeddler is a person who is not expressly authorized by a grant of representation to deal with the estate of the deceased.

14. The Court further notes that the Respondent is not the sole executor but was appointed co-executor with the Applicant. Both have an obligation to render accounts of their dealings with the estate. In the premises and having taken all factors in the matter herein into account, I make the following orders:

- i) The Applicant and the Respondent shall each within 60 days produce to the Court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith from 22.5.12 up to the date of the account.
- ii) The accounts to be produced shall be in affidavit form, supported by appropriate documentation.
- iii) Mention on 30.9.19 to confirm compliance and for directions.
- iv) Costs shall be in the cause.

DATED, SIGNED and DELIVERED in MOMBASA this 21st day of June 2019

M. THANDE

JUDGE

In the presence of: -

..... **for the Applicant**

..... **for the Respondent**

..... **Court Assistant**