



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1298 OF 2011

IN THE MATTER OF THE ESTATE OF G K K (DECEASED)

RULING

1. When this matter came up for mention on 15th May 2016, some of parties urged the court to give directions on several pending applications. Those mentioned are dated 4th April 2016, 5th May 2016, 11th May 2016, 8th August 2016, 23rd August 2016 and 14th October 2016. I directed that the parties who had not responded to the application dated 14th October 2016 to do so prior to 23rd May 2017, when I intended to have the matter mentioned next after I have had opportunity to peruse the court file.

2. I have gone through the record. I have noted that Lenaola J. had dealt with some of the applications mentioned, disposed of some and gave directions on others. There are two pending applications for revocation of the grant. On one of them dated 28th April 2016 no directions have been given yet, but on that dated 5th May 2016 it was ordered that it be marked as stood over generally on 9th August 2016. There is also an application dated 9th August 2016, which seeks review of orders that were made on 30th October 2013 on the remuneration of the administrators. The said application also seeks that the Deputy Registrar be directed to sign certain documents on behalf of the administrators. Two applications, dated 8th August 2016 and 9th August 2016, on fencing of an estate property were disposed of on 9th August 2016. While an application dated 11th May 2016 was marked as settled. The other applications that remain pending are those dated 4th April 2016, 24th April 2016, 8th August 2016, 23rd August 2016 and 14th October 2016. No directions have been given on disposal. They seek diverse orders.

3. The primary function of a probate court is distribution of the estate of a dead person. Indeed, the primary reason for initiating a succession cause is to set in motion the process that will lead up to the distribution of the estates. Upon grant of representation being made, the administrators appointed are given the first six months to ascertain the estate, in terms of establishing who the proper heirs and beneficiaries are and the assets that make up the estate, to gather and collect the estate and finally to preserve the same pending distribution. After ascertaining the assets and the heirs and beneficiaries, the next stage should be distribution, which follows after six months. Ideally, administration of an estate ought to take no more than one calendar year. It is understandable though that it may take a much longer period where there is litigation geared to establish some of the heirs or to recover some of the estate assets that might have fallen into the hands of third parties. The role of the probate court should be to facilitate ascertainment of heirs and assets, collection and getting in of the assets and ultimately distribution. It should never be the duty of the court to macro-manage the estate, and therefore preside over all manner of disputes over the assets as between the beneficiaries.

4. I have noted from the record that the estate herein is a vast one, meaning that the administrators needed a little more time to ascertain the assets and gather them together in readiness for distribution. I note that the process of collecting the assets is still on-going, as there are still suits between the estate and third

parties pending in other courts over some of the assets. At the same time, I have noted that some the beneficiaries are restless. They are keen to have the estate distributed, notwithstanding the fact that the exercise of collecting and gathering the estate is still incomplete. There are calls for accounts and interim payments for their maintenance. There are efforts to have the administrators' remuneration reduced, and to have documents that administrators should sign to be signed by the court. There are also calls for refunds or reimbursements for expenses allegedly incurred by some beneficiaries on the estate property, while others demand payment of school fees. The advocates for the beneficiaries would also like to have their fees charged on the estate.

5. This matter is clearly not ripe for distribution of the estate for the prerequisites, the collection and getting in of all the assets, are not quite in place. However, given the large number of beneficiaries and their diverse interests and needs, and of course their restlessness, it has become imperative to have a partial distribution of the estate. Indeed, the estate is already partially distributed for various orders have so far been made for payment of school fees for children of some of the children of the deceased and monies to all the beneficiaries, among others. In any event, directions have already been given on partial distribution or confirmation of the grant.

6. Confirmation of Grants is provided for in section 71 of the Law of Succession Act, Cap 160, Laws of Kenya. The provisions relevant to the circumstances of this case are section 71(1)(2), which, for avoidance of doubt state as follows:

'(1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower distribution of any capital assets.

(2) The court to which an application is made, or to which any dispute in respect thereof is referred, may –

(a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or

(b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 inclusive, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered; or

(c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or

(d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, in cases of intestacy, the grant shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.'

7. From the above provision it should be clear that confirmation is not just limited to distribution, granted though that it paves way for distribution. The confirmation process is about the holders of the grant being confirmed on account of having been properly appointed and of having properly administered the estate of the deceased. The confirmation of the proposed distribution should only follow thereafter. The requirement that the court confirms the holder of the grant, of necessity, means that the said grant holder must seek to demonstrate to the court that he was properly appointed and upon being appointed went about properly managing the estate. No doubt this should give him an opportunity to account for his administration from the date of his appointment to the time he moves the court for confirmation of his grant. It also means that where such grant holder fails to address matters touching on his appointment and his administration of the estate, the persons beneficially entitled to the estate would be entitled to challenge his appointment and his administration of the estates in the course of the confirmation process.

8. I believe it would be premature to pursue revocation of the grant herein, and therefore the pending revocation application should remain dormant until further orders of the court. The said applications can still be prosecuted simultaneously with the summons for confirmation of the grant. I hold the view that all the pending disputes can be disposed of all at once, so the two revocation applications should be handled simultaneously with the summons for confirmation of the grant. The review application should be dealt with similarly. The same thing shall apply to the applications for accounts, reimbursements and the fees for the advocates for the beneficiaries. All these applications raise issues that turn on the manner in which the administrators have handled the estate, principally with regard to compliance with court orders. These are issues that can be comfortably dealt with in the confirmation application.

9. On distribution, the provisions above call upon the court to take into account three critical matters – ascertainment of the persons beneficially entitled to the estate, ascertainment of the assets that make up the estate and proposals on distribution of the assets ascertained amongst all the persons found to be beneficially entitled. In the confirmation application, the grant holder no doubt should strive to address these matters for the court is required to be satisfied of them before it can confirm the grant.

10. The remaining pending applications turn really on these matters. I am referring to the applications on advocates fees and school fees for the grandchildren of the deceased. Such applications raise questions as to whether advocates acting for parties to a succession cause, and in particular for the beneficiaries, fall within the definition of persons beneficially entitled; and similarly whether the grandchildren of the deceased would be persons so beneficially entitled.

11. In the end, the directions that I feel compelled to make in the circumstances are as follows:

(a) That all the issues raised in all the pending applications shall be disposed of within the context of the summons for confirmation of grant to be filed by the administrators, and the same shall be consolidated with the confirmation application;

(b) That upon being served with the summons for confirmation the survivors of the deceased and any other interested person shall be at liberty to file and serve affidavits of protest to the said application;

(c) That during the pendency of the confirmation proceedings no other or further applications shall be filed; and

(d) That the Deputy Registrar is hereby directed not to accept any other application to be filed in the matter, without reference to the Judge, pending the hearing and disposal of the summons for confirmation of grant.

12. It is so directed.

DATED, SIGNED and DELIVERED at NAIROBI this 23RD DAY OF MAY, 2017.

W. MUSYOKA

JUDGE