



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2423 OF 2010

IN THE MATTER OF THE ESTATE OF ENK (DECEASED)

RULING

1. The two applications the subject of this ruling are dated 6th June 2014 and 29th September 2014.
2. The application dated 6th June 2014 is by one of the administrators, PK. He seeks various orders relating to certain estate accounts held by Family Bank Ltd. He would like the court to order Family Bank to furnish statements on the said accounts, that the estate's land agents be ordered to deposit money into some of the said accounts, that the said accounts be operated by the court's Deputy Registrar, that the Chairman of the Institute of Certified Public Accounts of Kenya be authorized to appoint an accountant to prepare books of accounts of the estate, that valuers be appointed to value the assets of the estate, that co-administrators be cautioned from intermeddling with the estate and for directions regarding payment of taxes by two companies in which the estate is a shareholder.
3. In his affidavit sworn on 6th June 2014, the applicant states that none of the administrators had access to the bank accounts operated by the deceased, both personal and commercial. After the deceased died, the bank where these accounts are has declined to furnish details to the administrators unless they provided a certificate of confirmation of grant. The deceased is also said to have had appointed two estate agents – Muigai Commercial Agencies and Genera Agencies – to collect rental income in respect of certain premises. All rental income is now paid into a certain account held in the names of the two widows of the deceased. He alleges that one of the family businesses, Hotstar Investments Ltd, did not operate a bank account, instead income from the said business was paid into the personal accounts of the deceased, and after his death the company's income went into the joint account operated by the two widows. He asserts that the two widows have been disbursing funds from the said account to pay the beneficiaries, but they have neglected to pay taxes on the property owned by the company and by the estate. There is also the allegation that SM, one of the administrators, has caused coffee income from Block 1/1824-29 to be directed into his personal account instead of going to the estate account. He states that estate accounts have not been rendered for the years 2011 through to 2013. He also argues that there is need to have the estate valued to pave way for distribution. He states that there are outstanding taxes that the Kenya Revenue Authority is demanding, and proposes that the same be settled by funds sourced either from a bank or from the shareholders. He has attached a bundle of documents to his affidavit in support of his contentions.
4. The reply to the application dated 6th June 2014 is by BN, through an affidavit sworn on 4th July 2014. On the taxes due to the Kenya Revenue Authority by the two companies – Hotstar Investments Ltd and Hotel Starehe Ltd – he avers that the majority of the administrators have appointed a firm of accountants/auditors to handle the same. In his view that is a matter that should be handled outside the succession process. He concedes that as administrators they were

not aware of the balances outstanding on the estate's bank accounts. He too has attached a bundle of documents to his affidavit to support the position of the other administrators.

5. The other administrators, that is apart from PK, the applicant in the application dated 6th June 2014, filed their own application dated 26th September 2014, and filed in court on even date; seeking orders not entirely dissimilar to those by PK. They would like Family Bank compelled to disclose the balances held in certain accounts alleged to have been in the name of the deceased. They also pray for partial distribution.
6. The affidavit in support of the application was sworn by BN on 24th September 2014. He states that the bank has declined to disclose the balances on the estate accounts without a certificate of confirmation of grant. He alleges that some of the beneficiaries are in dire financial statements, hence the prayer for partial distribution.
7. PK responded to the application *vide* his replying affidavit sworn on 1st October 2014. He noted that there are disputes over the companies, pending before the Commercial Division of the High Court, and that the application of 26th September 2014 seeks similar orders with his application dated 6th June 2014. There are further affidavits by BN sworn on 16th October 2014 and 1st December 2014. The parties have too filed several bundles of the documents.
8. I will first deal with the issue of the disclosure of the bank balances by Family Bank. It is common ground that the bank has been reluctant to disclose the balances before the grant is confirmed. Yet it is legitimate for the administrators to know the amount of money being held in those accounts. As administrators they require funds to meet administration expenses. It would be useful for them to know where they can draw funds from to meet those expenses. There are debts too to be paid. Some debts are statutory and the law is quite clear that debts take priority over distribution. In an ideal situation the application for confirmation of grant should be filed or heard after settlement of all debts and liabilities. What should be available for distribution should be the net estate, that is after debts and liabilities have been dealt with. The bank stands to suffer no prejudice from such disclosure.
9. On the income collected by the estate agents, it must be stated that such agents are trustees. The income collected by them should be accounted for. It is not their property and they collect it on behalf of others. They must account for it. Of course, the relationship between them and the estate is founded on agency, but on all accounts it is one of trust. They are bound to account for what they have collected and for how they have applied the funds.
10. Regarding the two companies and their tax burden, I do note that these matters relate to limited liability companies which are separate legal entities from the estate. The companies should be able to take care of their own affairs, without allowing the same to spill on to the succession matter. I note that there are certain suits pending elsewhere in this court between the companies and the estate or certain individuals who are survivors of the deceased. Venturing into the affairs of the businesses would only complicate the matters. Suffice it to say that a firm of accountants has been appointed to address the dispute with the Kenya Revenue Authority. Let the said matter be handled *vide* the legal framework governing tax matters in Kenya.
11. Peter Kuria invites me to order the appointment of an auditor by the Institute of Certified Public Accounts of Kenya to prepare the accounts of the estate. This is surprising coming from him. He is an administrator. He is one among those who ought to account for the administration of the estate from the date when he was appointed to date. That responsibility does not lie elsewhere. There is no need for the court to get an outsider to prepare estate accounts, that is the business of the administrators. They hold a position of trust and they are obliged to account to both the court and the survivors or heirs of the deceased.
12. Allegations were made against SM, an administrator, about channeling estate funds to a private account. There has been no response to that allegation. He did not swear and file an affidavit to

controvert that claim; neither did BN, who swore the affidavits in reply to the application. The allegations by PK therefore remain uncontroverted.

13. There is a prayer for the valuation of the assets of the estate. The necessity of this was not clearly laid out. In other words there is no proper justification. Valuations are costly and they are often a needless expense.
14. On the Deputy Registrar being mandated to operate estate accounts, I reiterate what I have stated above at paragraph 11. It is the business of the administrators to run the affairs of the estate. There is no place for the court's Deputy Registrar in that scheme of these. Bringing in the Deputy Registrar is admission that the administrators have failed in their duties. If then that is the case, the remedy does not lie in bringing in the Deputy Registrar to do what the administrators ought to do, rather it lies with revoking the grant made to the administrators and appointing the Public Trustee in their place to complete the administration of the estate.
15. On the question of partial distribution, I do note that some of the administrators filed an application dated 30th June 2014, on 1st July 2014, for the confirmation of the grant. That application is still pending. Rather than distribute the estate piece-meal, the parties should be looking at the full and final distribution of the estate. Furthermore, it is not even clear whether there are funds available to satisfy the order sought in the partial distribution.
16. Legal fees is a matter between lawyers and the persons who appointed them. How the lawyer's fees are to be settled is not a matter for the court. Lawyers go for taxation after the completion of the matter. It is something I do not have to tax my mind on at the moment.
17. In the end I do hereby make the following orders:-
 - a. **That the Family Bank is hereby ordered to furnish the administrators of the estate of the deceased with details of the balances outstanding on the following accounts todate – Nos. 003xxxxxxxxxx, 035xxxxxxxxxx, 059xxxxxxxxxx and 003xxxxxxxxxx – within fourteen (14) days;**
 - b. **That Muigai Commercial Agencies and Genera Agencies are hereby ordered to prepare and file within fourteen (14) days true and accurate accounts of the rental income collected from the assets of the estate that they were mandated to collect by the deceased or by administrators;**
 - c. **That SM is hereby ordered to account for all the income he received in respect of the proceeds from the sale of coffee from the farm on Block 1/1824-29; account to be rendered in court within fourteen (14) days;**
 - d. **That the administrators of the estate – that is to say PK, BN, SM and PWN are hereby directed to prepare and file, whether jointly or severally, within thirty (30) days of this order a true and accurate account of their administration of the estate of the deceased from 10th June 2011 todate;**
 - e. **That Peter Kuria is hereby directed to file his response to the summons for confirmation of grant dated 30th June 2014 within fourteen (14) days of the date hereof;**
 - f. **That the matter shall be mentioned after thirty (30) days for compliance and for directions on the hearing of the summons for confirmation of grant on a date to be given at the delivery of this ruling; and**
 - g. **That there shall be no order for costs.**

DATED, SIGNED and DELIVERED at NAIROBI this 25TH DAY OF SEPTEMBER, 2015.

W. MUSYOKA

JUDGE