



REPUBLIC OF KENYA



In re Estate of Hezekiah Omae Araka (Deceased) (Probate & Administration E996 of 2024) [2025] KEHC 262 (KLR) (Family) (23 January 2025) (Ruling)

Neutral citation: [2025] KEHC 262 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
PROBATE & ADMINISTRATION E996 OF 2024
H NAMISI, J
JANUARY 23, 2025
IN THE MATTER OF THE ESTATE OF HEZEKIAH OMAE ARAKA (DECEASED)
IN THE MATTER OF
GEORGE NYANDUSI OMAE PETITIONER

RULING

1. The Deceased herein passed away on 4 April 2024 in Minnesota, USA. He died testate. In his Will, the Deceased bequeathed all his property to his wife, Yunika Kemuma Omae, who is resides in Minnesota, USA. A Grant of Probate has been filed at the District Court, State of Minnesota, USA and the Petitioner herein has been appointed as the Personal Representative of the Estate.
2. The Petitioner is also the named Executor of the Will dated 13 August 2020 and a son to the Deceased. The Petitioner has presented a Petition for Special Limited Grant dated 27 November 2024 limited to
 - i. accessing and operating the Deceased's Bank account held at National Bank of Kenya, Kisii Branch;
 - ii. facilitating the sale of property LR NO. 209/11864 situate in Nairobi measuring 0.0043 Ha;
3. The Petition is supported by an Affidavit sworn by the Petitioner. The Petitioner avers that at the time of his death, the Deceased was undergoing treatment at M Health Fairview Hospital. The Petitioner informed the Court that there is an outstanding hospital bill of USD 10,677/=. Additionally, there is a pending bill for legal fees for the US Attorney pegged at USD 5,000/=. The Petitioner averred that the widow has no source of income as she is retired, and is currently running into debt. She, too, needs some money for her upkeep. It is, therefore, necessary, for the Estate to sell one property in order to settle the pending bills.
4. In the premise, the Petitioner prays to access the Deceased's bank account with a view to obtaining the pensions funds therein, as well as the authority to sell one asset to settle the outstanding bills. The



Petitioner averred that this Application is necessary, pending the Grant of Probate by the District Court in Minnesota and consequent resealing of the Grant of Probate in Kenya.

5. Attached to the Petition are copies of the Death Certificate, the Will dated 13 August 2020, copy of Title for LR No. 209/11864, Statements of Accounts from the US based Attorney (Engelmeier & Umanah, P.A). I note that in the Will, the Deceased left his entire Estate to Yunika Kemuma Omae. The estate includes the House constructed on LR No. 209/11864 and Account number 0103XXXXXXXX4200 held at National Bank of Kenya, Kisii Branch.
6. Sections 54 and 67 (1) of the *Law of Succession Act*, Cap 160 of the Laws of Kenya and Rule 36 of the Probate and Administration Rules provide the circumstances under which a Special Limited Grant may be issued by the Court.
 - (54) A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.
 - (67)
 - (1) No grant of representation, other than a Limited Grant for Collection and Preservation of Assets, shall be made until there has been published notice of the application of such grant, inviting objections thereto to me made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.
 - (36)
 - (1) Where, owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defuncti of the estate.
7. I have considered the Application and attachments. The size of the Estate has been established and its distribution is known by virtue of the Will.
8. In order to preserve the assets of the estate, the access granted to the Petitioner shall be limited to National Bank of Kenya, Kisii Branch Account number 0103XXXXXXXX4200, and to the sale of LR NO. 209/11864 situated in Nairobi County. The funds from the sale of the property and the bank account shall be utilised to settle outstanding hospital and legal fees, as well as the upkeep of the widow, Yunika Kemuma Omae.
9. Any further dealing with the estate of the Deceased must be with the authority of the Court or upon full grant of representation.
10. In summary, I invoke the powers vested in this Court by Rule 73 of the Probate and Administration Rules and make the following orders:-
 - i. A Special Limited Grant be and is hereby issued to the Petitioner only for purposes of facilitating the sale of parcel of land LR No. 209/11864 situated in Nairobi County;
 - ii. Access to and operation of Account no. 0103XXXXXXXX4200 held at National Bank of Kenya, Kisii Branch for purposes of settlement of outstanding hospital and legal fees and for the upkeep of the widow;



- iii. The Petitioner will be required to present a full account of the funds at the time of resealing the Grant of Probate.
 - iv. This being a family matter I make no orders on costs.
11. The Manager of National Bank of Kenya Ltd, Kisii Branch shall be served with this Order for compliance.

DATED AND DELIVERED AT NAIROBI THIS 23 DAY OF JANUARY 2025

HELENE R. NAMISI

JUDGE

Delivered on virtual platform in the presence of:

..Mr. Were..... for the Petitioner

Libertine Achieng Court Assistant

