



REPUBLIC OF KENYA



**In re Estate of Daudi Mbogori (Deceased) (Succession Cause
206 of 1994) [2025] KEHC 1229 (KLR) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1229 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 206 OF 1994**

G MUTAI, J

FEBRUARY 24, 2025

IN THE MATTER OF THE ESTATE OF DAUDI MBOGORI (DECEASED)

BETWEEN

DORINE CERIA MAKENA MUTHINJA APPLICANT

AND

LEMMY K MBOGORI RESPONDENT

AND

PURITY NJERI MBOGORI OBJECTOR

AGNES NKIROTE MBOGORI OBJECTOR

EMILY KANINI MBOGORI OBJECTOR

RULING

1. Before this court are three applications dated 30th January, 22nd August and 13th September 2024.
2. The application dated 30th January 2024 is a summons for confirmation of grant by the applicant. It seeks to have the grant of letters of administration intestate of the deceased's estate herein be made and confirmed to the applicant Dorine Ceria Makena Muthinja. It also seeks the costs of the suit.
3. The summons is supported by the affidavit of the applicant sworn on 30th January 2024, vide which she stated that since the revocation of the grant by this court on 23rd October 2023, the estate has been without an administrator. There is an application pending on the same. She urged the court to allow the application.
4. In response, the 1st respondent filed a replying affidavit sworn on 15th October 2024. He stated that the deceased was polygamous, and there is a need for the representation of all households in the appointment of administrators. He averred that the applicant lives in Germany and, therefore, that



- would be difficult for him to administer the estate. It was the 1st respondent's view that appointing the applicant as the only administrator should not be allowed as it would stir disunity in the family.
5. The 2nd, 3rd and 4th respondents filed replying affidavits sworn on 6th November 2024. They stated the applicant and her sibling have already benefitted from the estate, specifically Plot No Meru Town/Block 11/110, and therefore, her claim that they never got any share is unfounded. They urged the court to dismiss the application.
 6. Raphael Kithinji Edward filed a replying affidavit sworn on 23rd September 2024. He stated that the deceased was survived by the following; Peter Mbogori (Deceased), Edward Mbogori (Deceased), Dickson Mbogori (Deceased), Safari Mbogori (Deceased), Muthinja Mbogori (Deceased), Peterson Mbogori (Deceased), Lemmy Kaburi Mbogori, Doris Kagendo Mbogori, Lucy Mpinda Lobo (Deceased), Purity Njeri, Jane Karimi, Charity Kendi, John Kithure Mbogori, Thiuru Mbogori and Emily Kanini.
 7. He further listed the following as the assets of the estate of the deceased; Mombasa/Block XII/63, Mombasa/Block XII/62, Mombasa/Block XII/76, Mombasa/Block II/64, Mombasa/Block XII/73, Mombasa/Block XII/75, Meru Town/Block II/110, Meru Town/Block II/64, Ntima/Igoki/2219, JD Mbogori Gakomorone Plot, JD Mbogori Mwendatu Plot, Giaki shamba, Gitugu shamba, Mitunguu shamba, Mvita shares, Kenya Breweries shares, Mombasa/Block MN/2232, Mombasa/Block MN/2242, Mombasa/Block MN/2249, Nyagi/Giaki/172 and Nyagi/Giaki/145.
 8. He stated that confirmation of the grant can only happen after administrators have been appointed as ordered by the court on 23rd October 2023 and after the estate reverts to its original state to enable the court to identify the shares of all the beneficiaries.
 9. The second application is an ex-parte summons for the preservation of the estate dated 22nd August 2024 seeking the following orders:-
 - a. Spent;
 - b. Spent;
 - c. Spent;
 - d. That this honourable court be pleased to grant a temporary injunction restraining all of the beneficiaries, either by themselves, their servants, agents, representatives, and or employees or anyone claiming an interest in the properties howsoever, from transferring, interfering in any matter, alienating, charging, collecting rent, offering for sale or disposing of the properties listed in number 3 or any part thereof pending issuance and confirmation of the grant;
 - e. That the court issues a limited grant in the 1st objector's name for the purposes of collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the same and, in particular, of collecting incomes thereof and, until further representation be granted;
 - f. That in the alternative, the court hereby directs that all incomes collectable from the estate properties listed at number 3 above be deposited in court pending issuance of the confirmed grant over the estate;
 - g. That this honourable court be pleased to make such further orders as the interest of justice may require; and
 - h. That the costs of this application be provided for.



10. The application is premised on the grounds therein and the supporting affidavit of Dorine Ceria Makena Muthinja, sworn on 22nd August 2024. She stated that the orders of the court of 19th July 2023 invalidated all previous dealings with the estate and also revoked the grant and since then, the matter has not been settled. She deposed that petitioners frustrated negotiations as they continued to enjoy the resources and incomes of the estate. They also continued to collect rent from the estate and misappropriate and squandered the same.
11. She further stated that it is the duty of this court to preserve and protect the estate pending its distribution to the beneficiaries. She urged the court to allow the application as prayed.
12. The 1st respondent, in his affidavit sworn on 15 October 2024, stated they agreed to sell two plots, namely Mombasa/Block XII/62 and Mombasa/Block XII/63, whose proceeds would be used to clear the income tax obligation. That the estate was divided among the surviving wives and sons of the deceased herein as per the customary laws. The applicant then was a minor under the care of her grandmother Cecilia Karoki Mbogori, and during the division of the estate, their father's household, together with that of Dickson Nteere Mbogori, Patterson Kaura Mbogori, was represented by their grandmother.
13. He stated that Property No Meru/Block 1/110 was allocated to the sons of the late Edward, the late Dickson Nteere Mbogori, the late Patterson Kaura Mbogori and the late Joseph Muthinja Mbogori. The late Edward's sons were to take half of the building as he had more sons, while the rest had one son each. That the four families continue to receive rent from the said building and that the applicant is the one currently collecting rent.
14. He stated that they sold Mitunguu Farm and Junda Farm and shared the money among all the beneficiaries, including the applicant's family. That Kibuurine Shamba was given to his brother John Mbogori by their mother, Lydia K Mbogori, was taken up by squatters after a successful adverse possession claim that went up to the Court of Appeal.
15. He stated that the action by the applicants 30 years later was meant to cause disunity within the family and urged the court to dismiss the application with costs.
16. The 2nd, 3rd and 4th respondents, in their replying affidavit mentioned above, respond to this application by stating that the applicant resides in Germany and cannot be in a position to collect and properly account for the rent of the entire estate. There was no need to identify beneficiaries and assets since the same was legally done by their late mothers with the supervision of the clan, as was the requirement then. They stated that parties be allowed to appoint an administrator of the estate by consent. They urged the court to dismiss the application.
17. The applicant filed a supplementary affidavit sworn on 29th October 2024 to the 1st respondent's replying affidavit and stated that the same is devoid of substantive reply and urged the court to treat her application as unopposed. She stated that she works with an airline and frequently comes to Kenya, and therefore, her work cannot hinder her from managing the estate. No beneficiary has proposed to be an administrator, and therefore, her prayer is unopposed.
18. She urged the court to disregard the 1st respondent's affidavit and allow her application with costs.
19. In response, Raphael Kithinji Edward filed a replying affidavit sworn on 17th September 2024 in which he stated that Plot No Meru Town Block II/110 belongs to three families, to wit, Peterson Mbogori (Deceased), Muthinja Mbogori (Deceased) and Nteere Mbogori. In the interest of justice, all beneficiaries and assets of the estate should be identified. He urged that the application is premature and should, therefore, be dismissed.



20. Doris Kagendo Mbogori filed a replying affidavit sworn on 5th November 2024. She stated that her application is not similar to the application herein as it seeks accounts, preservation, and to be joined in the suit as an interested party to protect her interest. That no petition for letters of administration had been filed or consents to the same obtained. She stated that the applicant does not reside in Kenya, and it wouldn't be prudent to appoint her as the administrator of the estate of the deceased.
21. The third application is a chamber summons dated 13th September 2024 by Doris Kagendo Mbogori, a daughter of the deceased, seeking the following orders;
- a. Spent;
 - b. Doris Kagendo Mbogori, a daughter and beneficiary of the estate of Daudi Mbogori (Deceased), be granted leave to be joined into the suit as an interested party to these proceedings;
 - c. This honourable court be pleased to compel the surviving respondent and former administrators to produce to court within 14 days a full and accurate inventory of all assets and liabilities of the deceased including the deceased's parcels of land (sold or not) and their location, bank accounts, shares and businesses;
 - d. This honourable court be pleased to compel the surviving respondent and former administrator to deposit into court all rent remittances received in respect of property forming part of the subject estate;
 - e. This honourable court appoints a registered estate agent who is mutually agreeable to the parties to handle the management of the deceased's rental properties till an administrator to the estate is appointed;
 - f. This honourable court be pleased to compel the surviving respondent and former administrator to deliver all title documents and log books [if any] in his possession in court with days or in the alternative, order the beneficiaries to jointly open a safety deposit box with a bank of their choice and deposit the documents therein;
 - g. This honourable court be pleased to compel the surviving respondent and former administrator to render a true, proper and comprehensive account of their administration of the estate, including funds received by themselves from the date of their appointment up to date;
 - h. This honourable court be pleased to order the surviving respondent and former administrator to produce in court bank statements in respect of all the deceased's bank accounts from the date of appointment to date;
 - i. This honourable court be pleased to compel the surviving respondent and former administrator to disclose to this honourable court all discoveries of the deceased's assets and their current status;
 - j. Should there be a finding of misappropriation of the accounts mentioned above, the surviving respondent be ordered to reimburse the same to the estate of the deceased; and
 - k. Costs of this application be met by the respondent.
22. The application is supported by the affidavit of Doris Kagendo Mbogori, sworn on 13th September 2024. She stated that the outcome of this matter will affect her, and thus, enjoining her will serve to protect her interest and that no party will be affected if she is joined into the proceedings.



23. Dorine Ceria Makena Muthinja filed a replying affidavit. She stated that the applicant does not need to seek leave to be enjoined in this matter as she is already a party by the operation of the law. The application herein is similar to her application of 22nd August 2024 and should be allowed with no orders to costs.
24. She stated that the 1st respondent is the only remaining former administrator who can give a clear, proper and elaborate inventory of the estate of the deceased herein. He is the one who has been collecting rent from the estate. She urged that the income accruing to the estate be deposited in court to avoid any further dealings with the estate now that it is without an administrator. She also urged the court to order the title documents of the estate's property to be deposited in court or in a jointly opened safety box with a bank to avoid further interference.
25. She stated that the 1st respondent failed to account for the income due to the estate, to proceed diligently with the administration of the estate, and to provide the accounts of the estate from the date they were appointed up to now.
26. She stated that she was unfairly disinherited as she was apportioned 10 acres of 56 of Plot No Nyaki/Giaki/172, and the rest was given to her brother. She stated that she has suffered injustice for long and sought the intervention of the court.
27. In response, the 1st respondent, in his replying affidavit above, responded to this application and stated that the applicant herein was at the age of majority at the time of the deceased's demise and played a huge role in the early stages of administration of the estate which included collecting rent and managing other businesses within the estate and was thus privy to any bank account details of the estate. He reiterated that the estate was distributed per customary laws, which did not recognize women as beneficiaries.
28. He stated that the applicant herein subdivided the plot allocated to her and sold the same and, therefore, cannot claim for more. He urged the court to dismiss the application.
29. The 2nd, 3rd and 4th respondents, in their replying affidavit, stated that the applicant's allegation that she was disinherited is false and misleading since she was given 10 acres by her late brother Julius Kibanga Mbogori out of the 56 acres given to him by his late mother. They urged the court to dismiss the application with costs.
30. The applicant herein filed a further affidavit sworn on 5th November 2024 in response to the 1st respondent's replying affidavit and stated she was not the administrator of the estate of the deceased and thus cannot give account of any administration of the estate. At the time of her father's demise, she was only 22 and not involved in the running of the business. She stated that The allocation of the 10 acres to her was not a favour and that the distribution was unfair. She urged the court to allow the application.
31. The matter was disposed of by way of written submissions.
32. The respondents, through their advocates Gitau & Kaburu Advocates LLP, filed written submissions dated 6th November 2024.
33. On the 1st application counsel submitted that the proposed administrator will not be able to administer the estate as she resides in Germany and urged the court to dismiss the application and allow the administrator to be appointed by consent of all parties.
34. On the 2nd application, counsel submitted that there is no need to call for identification of beneficiaries and assets of the estate since the same was done legally by their late mothers with the supervision of



- the clan as was the requirement then, and a repeat will be tedious, traumatizing, divisive and expensive to the family.
35. On the 3rd application, counsel submitted that the allegations therein are not true and urged the court to allow the application as prayed.
 36. Doris, the 2nd applicant/interested party, through her advocate Stephen (aka Suleiman) Macharia Kimani, filed written submissions dated 5th November 2024. Counsel submitted on two issues, namely, whether the applicant can be joined as an interested party and whether the former surviving administrator should render accounts and give a proper inventory of the assets of the estate.
 37. On the 1st issue, counsel submitted that the applicant herein is a daughter of the deceased and a beneficiary of the deceased's estate, and therefore, any action taken in this matter will affect her and, if not joined, will continue to suffer prejudice.
 38. On the 2nd issue, counsel submitted the administrators have administered the estate for 30 years, and at no point have they filed an inventory of the assets of the estate or provided an account of the continued administration. The duty to provide an account is statutory, and thus, the surviving administrator is obligated to render the same.
 39. In conclusion, counsel urged the court to allow the application as prayed.
 40. The respondents, through their advocates, Mwenda Miriti & Co. Advocates, filed written submissions dated 5th July 2024.
 41. On the first application, counsel submitted that the same should not be allowed; instead, each family ought to be allowed to nominate the person to represent them like before.
 42. On the 2nd application, counsel submitted that it is extremely difficult to trace properties distributed over 30 years ago. Some properties have already been sold to third parties. Counsel relied on Section 93 of the [Law of Succession Act](#) and urged the court to dismiss the application.
 43. On the 3rd application, counsel submitted that the applicant has already squandered what was distributed to her and, therefore, cannot claim more from the estate. That she is aware of what entails the estate and the true position and urged the court to dismiss the application.
 44. Do the three applications have merit? What orders should be issued? I will look at each of the applications in turn.
 45. This court revoked the grant issued to the 1st respondent, the late Peter Mbogori M'Mbui and the late Julius Kibanga Mbogori, on 23rd October 2023, directed the applicant Dorine Ceria Makena Muthinja and the petitioners/administrators then to apply for a fresh grant of letters of administration intestate of the estate of the deceased herein within 60 days from the date of the ruling. The same has not been complied with one year 3 months later; instead, the parties have been filing application after application.
 46. It was evident to this Court every time the matter came up for hearing that there wasn't a genuine desire by the parties to engage each other with candour.
 47. I note that no grant has been issued so far, and therefore, there is no grant to be confirmed; thus, the application dated 30th January 2024 lacks merit and, for that reason, is hereby dismissed.
 48. In my view, allowing the application dated 22nd August 2024 will not be helpful at this point. It will exacerbate the divisions within the family. It may be seen by the parties as amounting to giving the



applicant a leg up in her fight with the other beneficiaries of the estate. The court must be neutral and be seen to be so.

49. This being a highly contested matter, and in consideration of the fact that since the revocation of the previous grant, the estate is without an administrator, I allow only prayer 6 of the application dated 22nd August 2024.
50. The duties of a personal representative are listed in section 83 of the *Law of Succession Act*. Among the duties of a personal representative are the duty to account and to provide an inventory to the court and to distribute the estate of the deceased to the entitled beneficiaries.
51. The court in the case *In re Estate of Julius Mimano (Deceased)* [2019] KEHC 10103 (KLR) stated:-

“Section 83 of the Act imposes duties on personal representatives to pay for the expense of the disposal of the remains of the deceased, to get in or gather or collect the assets of the estate, to pay for the expenses of the administration of the estate, to ascertain and pay out all debts and liabilities, and eventually to distribute the assets amongst the persons beneficially entitled. The discharge of these duties would naturally attract an account, in terms of the personal representative stating whether they discharged the said duties and disclosing the expenses that they incurred in the process of discharge. In addition, section 83 of the Act has imposed a positive duty on personal representatives to specifically render accounts at two stages. The first instance is in the first six months of the administration. It is at this stage that they ought to account as to whether they spent any funds from the estate for the purpose of disposing the remains of the deceased and, if so, how much. State whether they got in or gathered or collected or brought together all the assets that make up the estate. The getting in of the estate is critical, it should precede settlement of debts and liabilities and distribution of the assets. Indeed, these duties can only be discharged if there are assets sufficient to settle debts leaving a surplus for distribution. It would also be from the assets collected that the estate would have a pool of resources for administration expenses. Section 83(e) commands the personal representatives to produce in court a full and accurate inventory of the assets and liabilities, no doubt generated from the exercise of getting in the assets and ascertaining the debts of the estate. There is also an obligation to render an account of all their dealings with the assets and liabilities up to the point of the account. The second occasion for rendering accounts is at the completion of administration. The duty is stated in section 83(g) of the Act. The object of the second and final account is to give opportunity to the personal representative to demonstrate that they have complied with the duty in section 83(f) of distribution of the estate to the beneficiaries. The duty to account on those two occasions is imposed by statute. It envisages an account to the court, not even to the beneficiaries. The powers exercised by the personal representative’s flow from a court instrument, the court is entitled to know whether those powers have been properly exercised, and whether the duties imposed have been properly discharged. Being a statutory duty to account to the court, the personal representative does not have to wait for a court order directing them to render account, they must render the accounts as a matter of course. The matter of the duty to render accounts is so critical that default to do so is listed in section 76(d) (iii) of the Act as one of the grounds upon which the court may consider revoking a grant.”

52. It is evident that the duty to account is a statutory obligation that personal representatives/administrators bear to render a full, accurate account of their administration of the estate.
53. In this case, only one administrator is alive. The application, as couched, uses the conjunctive “and” and seeks to have the surviving administrator and the deceased jointly, as it would seem, provide the



accounts and the inventory of the estate. This is impossible, or at the very least, not ideal, for a number of reasons. Firstly, the duty to account is personal to an administrator. It is an obligation in personam. Upon the demise of an administrator, the obligation to account, in respect of the said administrator, ceases. Secondly, this is not an opportune time to conduct the said exercise. Rather, the focus should be on the appointment of new administrators. An order for the provision of accounts at this point will misdirect energy and resources. It is, therefore, my view the application dated 13th September 2024 lacks merit. Regarding the joinder, the court is of the view that no leave is necessary for the said party to join these proceedings. The application by Ms Doris Kagendo Mbogori is therefore misplaced.

54. This court is of the view that rather than file further applications that do not help in resolving the disputes between family members focus should be on compliance with the orders of 23rd October 2023.
55. The upshot of the foregoing is that:-
1. The application dated 30th January 2024 is hereby dismissed for lacking merit;
 2. The application dated 22nd August 2024, save for prayer 6, which seeks the deposit of the income of the estate in court, is dismissed. The order on deposit to take effect immediately;
 3. The application dated 13th September 2024 is dismissed.
56. This is a very unfortunate tussle between close family members. Awarding costs will not help in bringing about reconciliation and healing. In the circumstances parties will bear their own costs.
57. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 24TH DAY OF FEBRUARY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Mr Thangicia, for the 1st, 2nd & 3rd Objectors;

Ms Kahariri, holding brief for Mr S M Kimani for Doris Mbogori;

Mr Mwenda Miriti, for Mr Lenny Mbogori; +

Mr Mwenda Miriti, holding brief for Mr Ken Muriuki for John and Edwin Thurania;

Mr D J Mbaya, for the 4th to 8th Objectors;

Arthur – Court Assistant.

