



In re Estate of Sharif Gafar Ahmed Mohamed (Deceased) (Succession Cause 222 of 2002) [2025] KEHC 2356 (KLR) (17 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2356 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 222 OF 2002
G MUTAI, J
FEBRUARY 17, 2025**

IN THE MATTER OF THE ESTATE OF SHARIF GAFAR AHMED MOHAMED (DECEASED)

BETWEEN

AHMED MUHAMED JAFFER 1ST APPLICANT

FATIMA MOHAMED 2ND APPLICANT

AND

ALI JAFFER AHMED (DECEASED) 1ST RESPONDENT

AHMED JAFFER 2ND RESPONDENT

RULING

1. Before the court is a chamber summons application dated 19th August 2024, vide which the applicants seek the following:-
 - a. At first instance, service of this motion is hereby dispensed with to obviate mischief which may be unsure due to delay;
 - b. That Ahmed Muhamed Jaffer and Fatima Mohamed, beneficiaries of the estate of Sharif Gafar Ahmed Mohamed (deceased), be granted leave to be joined into the suit as interested parties to these proceedings;
 - c. This honourable court to be pleased to compel the surviving respondent 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 and location, bank accounts and businesses;
 - d. This honourable court be pleased to compel the surviving respondent to deposit into court all rent remittances received in respect of property forming part of the subject estate;



- e. This honourable court be pleased to compel the surviving respondent 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;
 - f. This honourable court be pleased to order the surviving respondent to produce or avail in court bank statements in respect of all the deceased's bank accounts from the date of appointment to date;
 - g. This honourable court be pleased to compel the surviving respondent to disclose to this honourable court all discoveries of the deceased's assets and their current status;
 - h. 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
 - i. Costs of this application be met by the surviving respondent.
2. The summons is supported by the affidavit of Ahmed Muhamed Jaffer, who I shall hereafter refer to as "the applicant". The applicant is a grandson of the deceased and an administrator together with his mother of his father's estate.
 3. The applicants accused the 1st respondent, the sole surviving administrator of the estate, who is the 1st applicant's uncle, of receiving the income accruing to the estate and of not completing the administration of the estate. He further accused him of not being accountable to the other beneficiaries of the estate and thus rendering them destitute.
 4. The application was opposed. Ahmed Jaffer, the surviving administrator, filed, through his advocates, a replying affidavit he swore on 22nd October 2024 in which he averred that the deceased, Sharif Gafar Ahmed Mohamed, in his will and codicil, left properties in Kenya, Uganda and Yemen and allotted each of his heirs a specific share of the estate. He deposed that the applicant's father, Mohamed Jaffer Ahmed, now deceased, was an administrator of the estate of the deceased from 2004 to 2009 but that he never accounted for the income of the estate and nor did he distribute the same.
 5. The respondent accused the applicant of being in control of several properties and of not accounting for the proceeds accruing therefrom. He stated, in particular, that "the 1st applicant has been collecting rent since 2010 from all the Uganda properties after the death of his father, and it was agreed that he would remit the same to the beneficiaries according to their respective shares, but he has never done so."
 6. The applicant was further accused of not accounting for the income he received on behalf of the estate, frustrating the administration of the estate and being a fugitive from justice in Uganda.
 7. The respondent expressed a readiness to give accurate accounts of the estate from the date he was appointed and prayed that in the same spirit, the 1st applicant should also provide accurate accounts regarding the estate under his control, inclusive of when his late father was the administrator of the estate up to date.
 8. The applicant filed a further affidavit vide which he denied the contents of the replying affidavit. He averred that this court should not delve into matters not within its jurisdiction.
 9. He deposed that he had refused to sign for the withdrawal of money from the estate accounts as such action would be detrimental to the interests of other beneficiaries. Regarding the release of title documents, he denied refusing to release them, saying however that he would not be bulldozed into doing something detrimental to the estate. In his view, "all the beneficiaries have a say in the estate property, and thus all must consent before any action is done." He deposed that he could not be



- required to account for his father's deeds. He prayed that the respondent must, however, account for the income of the estate and should also state what he had done to distribute the same.
10. The application was canvassed by way of written submissions. The submissions of the applicant are dated 18th November 2024. In the said submissions, counsel for the applicant identified one issue as coming up for determination, to wit, whether the surviving administrator should render accounts and give a full and accurate inventory of the assets of the estate.
 11. Counsel for the applicant submitted that sections 83 (g), (h) and (i) and 94 of the *Law of Succession Act*, inter alia, list down the duties of a personal representative as including rendering of accounts, giving a full and accurate inventory of assets and liabilities of the deceased and a full and accurate account of all the dealings of the estate up to the date of accounts
 12. It was submitted that rendering of accounts is a statutory duty. In support of his submissions, counsel relied on the decisions of the court in re Estate of David Kyuli Kaindi (deceased) [2016]eKLR and re Estate of Julius Mimano (deceased) [2019] eKLR.
 13. On the basis of the foregoing, it was urged that the application be allowed.
 14. The respondent opposed the application. The respondent's submissions are dated 6th December 2024. In the said submissions, it was urged that the applicant, by dint of his actions, frustrated the administration of the estate. That notwithstanding, the 1st respondent expressed a willingness to provide accurate accounts of the estate from the date he was appointed, provided that the 1st applicant could also provide accurate accounts regarding the estate, including when his father was an administrator of the estate to date.
 15. The respondent urged that the applicant was in control of some assets of the estate in Kenya and Uganda, from which he collected rent that was never remitted. This action was termed as an abuse of the court process. In support of the assertion that the said action was an abuse of the court process, reliance was placed on the decision of the court in Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd and 2 others (2018) eKLR and Satya Bhama Gandhi vs Director of Public Prosecution & 3 others [2018] eKLR. Counsel submitted that the 1st applicant's conduct in filing this application in Kenya while singularly benefiting from the properties in Uganda was dishonest and amounted to an abuse of the court process. It was urged that the 1st applicant filed the instant application unlawfully, improperly and dishonestly to the detriment of not only the 1st respondent and the estate of the deceased but also the rule of law.
 16. The counsel for the respondent submitted that the applicant was guilty of intermeddling to the extent that he refused to release the title deeds to the administrators of the estate and by declining, when requested by the administrators of the estate, to release money held in the estate bank accounts. This court was referred to section 45 (1) of the *Law of Succession Act*. It was urged that the applicant had categorically admitted to withholding the title deeds of the estate in Kenya when he isn't an administrator of the estate.
 17. The counsel for the respondent urged that it would be unfair for him to account for the estate under his control when no corollary obligation was vested in the applicant, who, just like him, had possession and control of some of the assets of the estate of the deceased. It was, therefore, urged that the same obligation to account be placed on the applicant.
 18. I have read the application and the supporting affidavit thereto, the annexures thereto and the response as well as the submissions of the parties. In my view, the sole issue is whether this court should order the respondent to account for the estate under his control.



19. There are also subsidiary issues which this court should determine, such as whether the applicant can, in good conscience, decline to give the respondent custody of the title documents in his possession, demand accounting by the respondent when he isn't doing the same thing in respect of the properties in his possession, or to decline to sign bank withdrawals, when requested to do so.
20. To answer these questions, I must begin by setting out the duties of a personal representative. These are set out in Section 83 of the [Law of Succession Act](#) which provides as follows:-
- ” Personal representatives shall have the following duties—
- a. to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;
 - b. to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
 - c. to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation and all other reasonable expenses of administration (including estate duty, if any);
 - d. to ascertain and pay, out of the estate of the deceased, all his debts;
 - 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;
 - f. subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
 - 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”.
21. What emerges from the foregoing provisions of the law is that the duty to account is a statutory obligation that the personal representative must discharge. This has been stated by courts in various decisions including re Estate of David Kyuli Kaindi (deceased) [2019]eKLR where the court expressed itself as follows:-
- “ ...The obligation to render accounts would require the personal representative to approach the matter with the three broad duties in mind. The nature of the account to be rendered should depend on when the account is sought to be rendered. Where it is sought before confirmation of grant, the account should cover collection and preservation of the estate



and payment of debts and settlement of liabilities of the estate. The personal representative must give an account of the assets and liabilities that he has ascertained, and the assets that he has collected, gotten in, recovered or gathered and the titles that he has perfected, and the steps taken to preserve the estate. He should also state the debts and liabilities that he has paid or settled before moving the court for confirmation of the grant, and if he has not yet settled the debts, state how he proposes to have them settled. The account at this stage should also state the assets that generate income, stating how much has been collected and how it has been utilized. Where the account is being rendered after confirmation of grant, and where no previous account had been given, the personal representative is obliged to cover what I have stated above, and in addition indicate whether he has distributed any of the assets set out in the will or in the certificate of confirmation of grant, in case of intestacy. If not, he must state what he has done, or is in the process of doing, in the effort to complete the distribution...”

22. In the re Estate of Julius Mimano (deceased) (2019) e KLR the court stated as follows:-

“The personal representative of a deceased person holds a unique position in law. The property of the dead person is vested in them by virtue of section 79 of the Law of Succession Act. The effect of section 79, read together with section 82 of the Act, is that the same puts the personal representative on the same footing with an owner of the property, in the sense that he exercises the powers that the legal owner of the property would have exercised were they alive, and suffered the same burden of duties and obligations over the property as the legal owner would have been under were they to be alive. Yet, the property, although vested in them by law, would not be theirs. Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the Trustee Act, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.”

23. The duty to account flows from the fact that a personal representative holds the estate property in trust for the beneficiaries, that is to say, that he is in a fiduciary position qua the property. Being a trustee of the properties he must account to those who are entitled to the same for the assets or the income thereof.
24. The law imposes a duty on a personal representative to complete the administration of the estate within 6 months. This has not been done in respect of this estate. The failure to do so is, in my view, the cause of the current tussle.
25. Although there doesn't seem to be too much contestation as to what assets comprise the estate of the deceased, it would appear to me that the estate may not have been distributed for reasons attributable, at least in part, to the conduct of the applicant and his father. For example, notwithstanding the fact that he isn't an administrator of the Kenyan estate, the applicant collects rent, is a signatory to the



- accounts of the estate and has granted himself effective veto power over the decisions that the duly appointed administrator of the estate makes.
26. Section 79 of the *Law of Succession Act* provides that “The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”
 27. Since the property of the deceased vests in the personal representative, one must ask where the applicant gets the power to collect rent or to veto the decisions of the administrator. The said conduct may amount to intermeddling under section 45 of the *Law of Succession Act*. By collecting rent, he has created a parallel administration of the estate outside the control or direction of the court, without basis in law, and that is wholly unaccountable.
 28. Turning on the respondent’s demand for accounting by the applicant, I note that the duty to account is personal that is to say, that may not be genetically transmitted. It would be oppressive for the court to ask the applicant to account for his father’s omissions and commissions.
 29. The court also notes that there are parallel succession proceedings in Uganda regarding the Ugandan estate. For that reason, this Court will not consider the Ugandan estate as it lacks jurisdiction.
 30. Taking into account all the issues in this matter, it is my view that the respondent ought to account for the incomes of the estate and its liabilities and also ought to provide a full and accurate inventory of the same.
 31. In order that he may do so, I order that the applicant surrenders all the title deeds for the Kenyan properties that are in the applicant’s possession to the respondent for safekeeping since it is the latter who has the grant.
 32. In my view the applicant has no justification to hold the titles. He also has no justification for imposing conditions on the release of funds from the Kenyan accounts of the estate in which he is somehow a signatory. For as long as he is not an administrator he may not purport to speak for the estate.
 33. In the circumstance of his matter I find and hold as follows: -
 - a. I order that the respondent provides an account of the income of the estate and its liabilities from the date of his appointment up to date and also to give an inventory of the Kenyan assets of the deceased. This is to be done within 30 days of the date hereof;
 - b. I order the applicant, in the exercise of my power under Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules, to surrender all the titles of the estate in his possession to the respondent within 30 days of the date hereof;
 - c. I order the respondent to fully distribute the estate of the deceased situated within Kenya, to the beneficiaries within 6 months of the date hereof; and
 - d. Mention on 27th March 2024 to confirm compliance and for further directions.
 34. As this is a succession matter between close family members, I order that parties bear their own costs.
 35. Order accordingly

DATED AND SIGNED AT MOMBASA THIS 17TH DAY OF FEBRUARY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI



JUDGE

In the presence of: -

Ms Kahariri, for the Applicant;

No appearance for the Respondent; and

Arthur – Court Assistant.

