



REPUBLIC OF KENYA



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In re Estate of Ahmedali Abdulhussein Mamujee (Deceased) (Succession Cause 234 of 2013) [2025] KEHC 3237 (KLR) (6 February 2025) (Ruling)

Neutral citation: [2025] KEHC 3237 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 234 OF 2013**

G MUTAI, J

FEBRUARY 6, 2025

**IN THE MATTER OF THE ESTATE OF AHMMEDALI
ABDULHUSSEIN MAMUJEE (DECEASED)**

BETWEEN

MURTAZA AHMEDALI ABDULHUSSEIN MAMUJEE PROTESTOR

AND

MURTAZA AHMEDALI ABDULHUSSEIN MAMUJEE APPLICANT

RULING

1. In a ruling delivered on 12th May 2023, this Court (per Onyiego, J) stated as follows in paragraph 26:-

“Taking into consideration the circumstances surrounding this case and the duration it has taken to conclude this matter and in the exercise of this Court’s discretion under section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules, I am persuaded to issue a grant of probate of written will jointly to the respondent and applicant who are co-executors. In the interest of time, the two shall apply for confirmation of the grant within 30 days of the date of delivery of this ruling.”
2. Being aggrieved by the decision of this court, Mazher Ahmedali Abdulhussein Mamujee (who I shall hereafter refer to as either “the Protestor” or “Mazher”) applied for a review of the ruling. Upon hearing the parties, I, on 29th September 2023, denied the application for review but extended the time within which the Protestor could apply for leave to appeal to the Court of Appeal.
3. As there was no stay of proceedings before this Court, the parties hereto were under obligation to file summons of confirmation of grant pursuant to the decision of Onyiego, J.
4. Vide Summon dated 12th October 2023 Murtaza Ahmedali Abdulhussein Mamujee (who I shall hereafter refer to as “the Applicant” or “Murtaza”) sought the following orders:-



1. That the grant of probate of written will issued to Murtaza Ahmedali Abdulhussein Mamujee and Mazher Ahmedali Abdulhussein Mamujee in this matter on 12th May 2023 be confirmed; and
2. That the costs of this application be costs in the cause.
5. Murtaza listed what he reckoned to be the deceased's assets and identified the three beneficiaries named in the last will and testament of the deceased. He averred that the deceased's will provided for how the estate would be distributed. In his reckoning, the estate was worth Kes.1,339,451.05. Furthermore, the estate had no liabilities.
6. Mazher filed an affidavit of protest sworn on 18th June 2024 and filed on 19th June 2024. In his protest, Mazher contested the identification of the assets of the deceased. He stated that rental incomes admitted in the advocate's letters dated 11th and 26th February 2021 had not been included, nor had the said advocate accounted for proceeds of the sale of motor vehicle registration number KAX XXXX, dividends accruing from the deceased's shares in a limited liability company called Saifee Investments Ltd, funds in DTB Bank Account No 018XXX01, contents of a safe deposit buy rented at Jubilee Insurance Exchange and the deceased furniture, crockery, ornaments and memorabilia.
7. Murtaza responded to the affidavit of protest vide an affidavit worn on 3rd July 2024. He denied the averments made in the affidavit of protest and averred that the summons for confirmation of grant gave an accurate picture of the deceased's estate. Consequently, he reiterated that the summons should be confirmed as it was made pursuant to the orders of the Court, which had not been set aside.
8. On his part, Mazher reiterated that the true extent of the estate had not been disclosed.
9. The protest and the summons for Confirmation of Grant were canvassed through written submissions, highlighted on 16th September 2024.
10. The Protestor's submissions are dated 19th August 2024. The Protestor's counsel, Mr Andiwo, submitted that the executors had not worked together to administer the estate, contrary to the expectation that they would.
11. Mr. Andiwo identified the following issues for determination:-
 - i. Do the assets listed in the affidavit of protest exist?
 - ii. If they exist, whether they should be included in the list of the assets of the deceased; and
 - iii. What should be the mode of distribution?
12. Regarding the first issue, it was urged that Murtaza, by his own admission, received a net rental income of Kes.4,690,000.00 on behalf of the estate. It was urged that the sum was an asset of the estate and should have been listed as such. The same also applied to dividends Murtaza received, further rent receipts of Kes.3,660,000.00, dividends from Saifee Investments Ltd, funds held at DTB Bank, and proceeds of the sale of Motor Vehicle KAX XXXXZ.
13. Relying on the case of re Estate of Kamatu Mwanthi Kamatu (deceased) [2020]eKLR and re Estate of Kahiga Mwathi (deceased) [2021]eKLR, it was averred that there was a duty on the part of the administrators to account for rents and other receivables that were given to them.
14. The Protestor's counsel submitted that if any assets were not accounted for, there be adjustment to what was due to the Applicant to take into account what he may have obtained for himself.



15. It was thus urged that the Affidavit of Protest be allowed and that the assets not listed be reckoned as belonging to the estate.
16. The submissions of the Applicant are dated 2nd September 2024. The Applicant, through his counsels on record, averred that before the filing of the Affidavit of Protest, “there had been no contention regarding the list of the assets of the deceased”. It was urged that the inventory or the list of assets and liabilities forwarded to the protestor’s advocates and filed in court, set out the deceased’s wishes and wasn’t challengeable by the Protestor.
17. Regarding motor vehicle registration number KAX XXXXXZ, it was submitted that it was sold so that the medical bills that accrued at Pandya Hospital prior to the demise of the deceased could be settled.
18. Counsel submitted that dividends from the deceased’s shareholding in Saifee Investments Ltd had been properly accounted for.
19. The bank accounts in DTB, on the other hand, were in the names of 2 deceased persons, and the bank had declined to issue a statement without the consent of the joint account holder (who was also deceased). Murtaza’s counsel, however, contended that the said accounts were disclosed in the summons for confirmation of the grant.
20. Regarding mode of distribution, it was urged, relying on the case of *in re Estate of Silvester Kimaru Tororey* [2022]eKLR, that the beneficiaries may not vary, review or substitute the contents of a testamentary instrument.
21. It was thus urged that the Summons of Confirmation of grant be allowed as prayed.
22. I have read the affidavit of protest and summons for confirmation of grant, the respective affidavits, and submissions. I must now determine the application.
23. Section 72 (1) and (2) of the *Law of Succession Act* provides that:-
 - “(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 the distribution of any capital assets.
 - (2) Subject to subsection (2A), the court to which 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 of letters of administration 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.”

24. It is evident from the foregoing that the Court may when a Summons for Confirmation of grant is filed, confirm the grant, issue a confirmed grant to another person who is entitled, order the applicant to deliver up an asset to the holder of a confirmed grant or postpone the confirmation of the grant.
25. The proviso to section 71(2) of the said Act states that a grant may not be confirmed until all persons entitled to the estate have been identified and their shares determined.
26. In my view, the issue in this matter is whether all the deceased's assets, including incomes accruing from his investments, have been listed. From the depositions made in court, the contested assets are the following:-
1. The proceeds of the sale of motor vehicle registration number KAX XXXXZ;
 2. Dividends accruing from the deceased shares in Saifee Investments Ltd;
 3. Rental income from the properties of the deceased owned or had shares/interest in for the period between 2019 to June 2024;
 4. Rental income from the properties of the deceased owned or had shares/interest in for the period between 2011 and 2018;
 5. Further dividends due and payable from Saifee Investments Ltd for the period between 2020 and 2024;
 6. Cash in the DTB bank account number 018XXX01;
 7. Contents of the safe deposit boxes held at Jubilee Insurance Ltd.
27. In *Mpatinga Ole Kamuye vs. Meliyo Tipango & 2 Others* (2017) eKLR, the Judge stated that:
- “This Court's view before distribution of the estate of the deceased under Section 71 of the *Law of Succession Act* Cap 160; the Court must satisfy itself that the beneficiaries of the estate are the legitimate beneficiaries of the estate; that there are assets that comprise of the deceased's estate and are available for distribution after settling all liabilities and having the net estate for distribution.”
28. It may not be possible for the Court to determine each beneficiary's rightful share of the estate unless the issues raised by the Protestor are first ascertained. Division of the estate before it is established whether a party derived excess benefit to the detriment of others would be unjust.
29. My understanding of this matter is that the dispute hinges on accounting for the estate's income. It is clear to me that a forensic audit ought to be done so that the Court can be properly guided.
30. To help the Court unravel the matter, I hereby direct that an auditor acceptable to both parties be appointed within 30 days from the date hereof, with the brief to consider and make a forensic report



on the seven matters I have identified above, to enable the Court to determine if any sums of money due to the estate have not been disclosed and whether the Summons for Confirmation of Grant should therefore be amended.

31. If the parties do not agree on the name of the auditor or audit firm to be appointed, then, in such case, the Court will, on an application by either party, make the appointment itself.
32. Having made the above determination, I do not need to consider what mode of distribution is applicable at this point. That shall await the hearing of the summons for confirmation of grant.
33. I direct that the deceased furniture, crockery, ornaments and memorabilia be included in the list of the assets of the estate in the Amended Summons for Confirmation of Grant to be filed once the forensic audit is concluded and the assets of the estate are agreed upon.
34. Section 71 of the *Law of Succession Act* gives this Court the jurisdiction to postpone the confirmation of grant. I therefore adjourn the hearing of the Summons of Confirmation of Grant sine die, until the same is amended.
35. As this is a matter between close family members, each party will bear his own costs.
36. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 6TH DAY OF DECEMBER 2024. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:

Ms Baraza, for the Applicant;

Mr Andiwo, for the Protestor; and

Arthur – Court Assistant.

