



In re Estate of the Late Abdulkadir Musse Farah (Deceased) (Succession Cause 691 of 2019) [2025] KEHC 3323 (KLR) (Family) (20 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3323 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 691 OF 2019
HK CHEMITEI, J
MARCH 20, 2025**

BETWEEN

FADUMA MOHAMED MIRE PETITIONER

AND

ALI MUSSE FARAH 1ST RESPONDENT

SAHRO MAHDI ABDI 2ND RESPONDENT

MARYAN ABDULKADIR MUSSE 3RD RESPONDENT

AYAN ABDULKADIR MUSSE 4TH RESPONDENT

AND

HUSSEIN HASSAN BOOD PROPOSED INTERESTED PARTY

RULING

1. In her chamber summons application dated 28th June 2024 the applicant seeks raft of orders, namely:-
 - (a) That the court be pleased to joint Hussein Hassan Bood, the property manager of the rental business premises on the basement and ground floor of LR No 36/VII/288 Eastlegh aka Homeland Apartments as an interested party in this matter.
 - (b) The court be pleased to set aside the orders issued by this court on 21st November 2023 staying the grant issued in the petition and staying the execution of the decree of this court issued thereof (i.e., set aside order allowing prayer No 3 of the respondent's application dated 30th October 2023).



- (c) This court be pleased to issue an order that this court be furnished with the 1st respondent's bank statements held at Amal Account No 63826 in the name of Ali Musse Farah and all other statements from bank accounts held registered in the name of the 1st respondent.
 - (d) The court be pleased to order the first respondent Ali Musse Farah and the interested party Hussein Hassan Bood to;
 - (i) Furnish the court with complete detailed and true statement of accounts showing the amount of rent collected and or received from the entire basement and ground floor of LR no 36/VII/288 Eastleigh aka Homeland Apartments since 17th November 2016 i.e since the death of the deceased to date.; and
 - (ii) Deposit all the monies (i.e rent and related income collected or equivalent of all monies collected from the entire basement and ground floor of LR no 36/VII/288 Eastleigh aka Homeland apartments either directly in court or in a joint interest earning account held by the petitioner and the 2nd, 3rd and 4th respondent's respective advocates on record herein.
 - (e) This court be pleased to order the 1st respondent to vacate Flat No B3 on LR no 209/73/15 aka Chiromo view apartments matrimonial home with the petitioner within 30 days and failure to which the petitioner/administrator herein to evict him forthwith.
 - (f) This court be pleased to refer this matter to court annexed mediation on the issue of distribution of the estate and the mediation to strictly and directly involve the petitioner / applicant and the 2nd, 3rd and 4th respondents herein in person in the presence of their respective advocates i. e not through third parties.
 - (g) That the court be pleased to find the 1st respondent and the interested party guilty of intermeddling with the estate herein as stipulated under Section 45(1) and imprisoned for one year for intermeddling with the estate herein as stipulated under section 45(2) (a) of the Law of Succession Act Cap 160.
 - (h) That a declaration that Ali Musse Farah the 1st respondent is in contempt of the orders of this court issued on 12th June 2023 and he be jailed for six months for being in contempt of court.
 - (i) That the Inspector General of Police and the Nairobi County commissioner to assist in executing and enforcing the orders and ensuring compliance.
 - (j) Any other order necessary for the protection of the estate.
2. The application is premised on the lengthy affidavit of the applicant sworn on the same date and the grounds thereof.
 3. The application is opposed by the replying affidavit of Sahro Mahdi Abdi sworn on 29th August 2024.
 4. The court directed the parties to file written submissions which they have complied.
 5. The gravamen of the applicant's application is clear and straight forward. The applicant was granted letters of administration on 30th October 2019 and the same confirmed on 22nd June 2021 in her favour.
 6. By an application dated 30th October 2023 the 2nd respondent herein and the widow of the deceased sought to have the above grant revoked by virtue of it being obtained by the applicant fraudulently. The court issued a temporary stay of the said grant pending inter partes hearing. The same is still obtaining to date and is yet to be determined.



7. The applicant's application is therefore to set the above temporary stay aside and direct that the 1st respondent be stopped from intermeddling with the deceased estate.
8. The applicant contents that she is the legitimate widow of the deceased and that the 1st respondent has continued to interfere with the deceased estate by collecting rent from the premises situate at LR No 36/VII/388 also known as Homelands Apartments. She also accused him of renting house the matrimonial home situate at Chiromo view apartments flat no B3.
9. It was also her averment that the said 1st respondent has opened an account No 63826 Amal under the name of Ali Musse Farah and the same ought to be frozen.
10. For the above reasons she prayed that all those accounts be frozen and the 1st respondent be directed to provide accounts for the period since the deceased's death and that he be committed to civil jail for defying the orders of this court dated 12th June 2023.
11. She deponed that she has no problem recognizing the 2nd, 3rd and 4th respondents as beneficiaries of the estate herein and that she was open to negotiating with them and have the matter amicably settled through mediation by the court.
12. In her replying affidavit the 1st respondent who is the widow of the deceased has accused the applicant of being a fraudster who has used the courts process to acquire the deceased assets and intermeddling with the entire estate.
13. She deponed that the applicant has been charged with several criminal offences including forgery of the marriage certificates between her and the deceased. She enumerated this by attaching the charge sheets before the lower court.
14. She stated that the applicant was a Swedish citizen who was in the country on a tourist visa and took advantage of her absence to disinherit her and the children.
15. She went on to state that the purported marriage certificate held by the applicant has been found to be a forgery and she cannot therefore rely on it.
16. She accused the applicant of introducing other third parties in the matter simply to hoodwink the court and a dilatory tactic so that she could benefit from what she had fraudulently done.
17. In respect to the Chiromo house she stated that the same was a family home and therefore was not a subject of leasing out as they would stay there while they were in the country.
18. The applicant vide her further affidavit sworn on 24th October 2024 denied the averments by the 1st respondent and deponed that the respondents have weaponized the criminal justice systems against her and that as far as she was concerned she had not been proved guilty in any of the charges.
19. That she has fought the said allegations through her advocates and she exhibited several correspondences from her advocates to various agencies demanding that the illegal charges be terminated.
20. On the question of her marriage and the deceased she exhibited a Kadhis court judgement indicating that she was his wife contrary to the forgery allegations.
21. She deponed that the 1st respondent and the interested party though served have failed to respondent showing that they were guilty of the allegations.
22. She therefore prayed that her application be allowed as prayed.



Analysis And Determination.

23. I have perused the submissions by both counsels on record. They mirror the issues raised in the lengthy affidavits saved for the cited authorities. In view of the said observations, I need not reproduce the same here.
24. There are several issues well captured in the submissions. Of outmost importance is the issue relating to the first respondent Ali Musse Farah the first respondent. Although several allegations were leveled against him and specifically in relations to the management of the rental collections in the deceased premises, I think his position was long sorted out by this court on 12th June 2023 when it declared him to lack locus in these proceedings. That ruling still stands to date and if in any event he is still meddling in the estate then he must cease.
25. Although served the said first respondent and the proposed interested party chose not to file any responses. I however for now do not see any evidence adduced by the applicant to suggest intermeddling. Nonetheless at the tail end of these proceedings and for the reasons the court shall state it may be apparent to inquire whether they have intermeddled with the estate and therefore the necessary sanctions will apply.
26. I think the main issue which the applicant is raising is the daily management of the deceased estate. Although she has been having the grant mentioned above which for now has been frozen, there is no evidence adduced by the respondents indicating how the estate has been managed least of all the rent collected.
27. The respondents have not denied the fact that there have been tenants occupying the said premises and rent of over Kshs 1.4 million per month have been collected by the 1st respondent or the proposed interested party.
28. Although they have issues with the applicant's relationship with the deceased, they must also render accounts of how they have managed the estate from the time the deceased passed on. I note that none of the respondents had any letters of administration and if it is true, they have been managing the estate then it was illegal.
29. The 2nd respondent in her affidavit has deponed that the amount collected from the tenants have been utilized for her upkeep and the children. There is no evidence of such and if it has been so who has been carrying out the said management and collection of the rent and under whose authority?
30. On the face of it it is the applicant who had the capacity to manage the said estate up to the time this court stayed the grant in her favour. There is no evidence that she has been able to access the estate in any manner despite having the grant before this court issued the temporary stay orders.
31. The request to enjoin the interested party in these proceedings for now is not necessary in my view for the simple reason that he has been accused simply of managing the premises and ensuring the rent is collected albeit without any authority from the court. Once the audit which the court will direct is undertaken then it will be upon him to answer to any charges of intermeddling with the estate if indeed, he did.
32. For now, he is not a beneficiary of the estate or at all just as is the case with the 1st respondent.
33. At it stands now there is no administrator of the estate since the applicant's grant has been stayed. This cannot continue as the estate shall remain wasted and any third party will intermeddle or continue to do so. The applicant for revocation of the grant is still pending. This court will not allow just a situation.



34. It will be prejudicial for the court at this juncture to venture into the application dated 30th October 2024 for the revocation of the grant. At the same time leaving the estate unattended is even worse. There must be someone to manage it in the interim period.
35. I have looked at the response by the applicant and she does not deny the fact that the 2nd respondent is the widow of the deceased and the 3rd and 4th are his children.
36. There are serious allegations that her marriage certificate was fraudulently obtained or simply put a forgery. The paper trail involved from the DCI and the court shows as much. This however unless strictly proved does not make the applicant guilty. It still remains allegations until a final verdict is established by a proper tribunal.
37. At the same time there is unchallenged ruling /decree dated 18th October 2023 indicating the said certificate to be valid. Taking totality of the above evidence on the face of it it appears that there was a relationship between the applicant and the deceased, namely husband and wife which has been vehemently opposed by the 1st respondent. This will be tested further in this court when the objection proceedings are fully determined.
38. So as to fastrack this cause I think it is worthwhile to bring the respondents into the matter. What will remain will be the main question of whether the applicant is a widow or a beneficiary in the estate. This will require cogent evidence through a proper trial.
39. The application dated 30th October 2023 I think is appropriate to take into consideration within this ruling. The same is still pending inter parties hearing but the main issue there is whether the grant issued to the applicant ought to be revoked.
40. Consequently, and in line with the provisions of Section 47 and Rule 73 of the Probate Rules (Cap 160) I shall allow the applicant and the 2nd respondent to be joined administrators of the estate pending the final determination of the rights of the applicant in the estate. I state so because of the history of this matter. There have been countless applications which have bogged down the estate. The grant issued to the applicant has been meaningless since she has not been able to access the estate in any meaningful way.
41. At the same time and by her own admission she recognizes the 2nd 3rd and 4th respondents as legitimate widow and children of the deceased respectively. If that is the case one wonders why she kept them in the dark when she applied for the grant herein. She should have disclosed to the court and I think so much time should not have been wasted. It is imperative therefore that I bring them on board fully and to enjoy their rights in the estate.
42. On the issue of accounts alluded above I think going by the history of this cause there must be accountability by all the parties least of all the 1st respondent and the proposed interested party. They are the once undeniably who have managed the estate to date. The 2nd respondent does not dispute this fact.
43. For this reason, an audit of the estate shall be undertaken from the date of the deceased death, that is ,17th November 2016 to date by a qualified auditor and a report be submitted to this court via the Deputy Registrar. This audit will of course touch on the issue of the Amal Account No 63826 under the name of the 1st respondent which the applicant raised serious allegations about.
44. It should also cover the issue of whether the applicant withdrew and or transferred money from the deceased account to her account at Equity Bank Ltd number 0840195650899 as deponed by the 2nd respondent in her replying affidavit.



45. Once this is done then the other prayers concerning the 1st respondent and the proposed interested party may be considered as earlier stated above.
46. At the same time, it is necessary that an estate agent be appointed to manage this estate in view of the issues raised by the applicant. It appears that they reside in Canada and Sweden most of the time and this allows other parties to take advantage of the estate without much accountability.
47. There was also a prayer that a joint interest earning account be opened by the two law firms on record so that the rent collected from the Eastleigh and Chiromo properties can be deposited therein. I find this request reasonable for the reasons earlier stated and to the advantage of the parties and the estate. The parties of course will be at liberty to apply to access the said account through the court and thus creating a proper accountability.
48. The said account should as well be utilized to settle any liabilities due to the estate. The amount shall be well managed and properly accounted for through the usual audit and report filed in court until the matter is settled.
49. The applicant sought to have the matter referred to the court annexed mediation albeit with some conditions on who should participate. This court will not object to the same save that there must be a consensus from all the parties.
50. In view of the above observations and I think taking into considerations the submissions by the counsels on record I direct as hereunder:-
- (a) The grant issued to the applicant Faduma Mohamed Mire on 30th October 2020 and confirmed on 22nd June 2021 and all the consequential orders are hereby revoked and or set aside.
- (b) A fresh joint grant is issued to Faduma Mohamed Mire and Sahro Mahdi Abdi.
- (c) The application dated 30th October 2023 is compromised and treated as objection proceedings herein.
- (d) The question of whether the applicant Faduma Mohamed Mire was married to the deceased Abdulkadir Musse Farah and therefore a widow shall be determined by way of oral evidence and the parties are granted 30 days from the date herein to file and serve, if any, witness statements or affidavits upon each other.
- (e) Within 14 days from the date herein a joint interest earning account between the counsels on record be opened in a reputable bank and the rent proceeds from Flat No B3 On LR No 209/73/15 (Chiromo View Apartments and LR No 36/VII/288 Homeland Apartments Basement And Ground Floor be deposited therein.
- (f) The beneficiaries be at liberty to apply to access the said account.
- (g) A registered and a reputable estate agent to be agreed upon by the counsels on record and in default to be appointed by the Deputy Registrar of this court within 14 days from the date herein so as to manage the above properties and deposit the monthly rent to the aforesated joint account.
- (h) The counsels on record with consultations with the two administrators should appoint a qualified and reputable auditor to audit the estate from 17th November 2016 till the date of the delivery of this ruling and the report be filed within 90 days from the date herein and in the event of any disagreement the Deputy Registrar of this court be at liberty to appoint one.
- (i) The costs of the above (h) exercise shall be borne by the estate.



- (j) For all intent and purposes Ali Musse Farah and Hussein Hassan Bood are stopped from intermeddling in any way with the affairs of this estate and they must cooperate with the auditors appointed above.
- (k) The parties be at liberty to engage the courts Mediation Registrar if they are interested in engaging in the mediation exercise.
- (l) Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 20TH DAY OF MARCH 2025.

H K CHEMITEI

JUDGE

