



REPUBLIC OF KENYA



**In re Estate of Mafudh Ahmed Jeizan (Deceased) (Succession Cause
1842 of 2009) [2025] KEHC 6639 (KLR) (Family) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6639 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 1842 OF 2009

PM NYAUNDI, J

MAY 23, 2025

IN THE ESTATE OF MAFUDH AHMED JEIZAN (DECEASED)

RULING

Introduction

1. Vide Summons for revocation dated 13th November 2024, presented under Sections 7,11, 18, 19, 20, 47, 48, 53, 76,83,94 and 95 of the *Law of Succession Act* and Rules 44, 54 (1) and 55 and 56 of the *Probate and Administration rules*, the applicant seeks, inter alia, the revocation of grant and certification of confirmation of grant that was issued on 13th June 2016.
2. He further seeks that the Executors account for the administration of the estate and in particular the dealings of Iqbal Holdings Limited. He also seeks that upon revocation of the grant, the estate be distributed in accordance with the will. The applicant also contends that the executors have not revealed all the assets of the deceased and are not sharing the income derived from the estate equally among the beneficiaries.
3. Both the respondents oppose the application and have sworn affidavits in opposition. It is contended that the Court is *functus officio*, a consent having been recorded on 4th February 2016. That the respondents have complied with the terms of the consent by including the applicant as a shareholder in Iqbal Holdings Limited. It is averred that there is no estate of the deceased as the assets have since been transmitted to the Company in accordance with the certificate of confirmation of grant. It is submitted that in the circumstances the applicant has presented his claim at the wrong forum.
4. At the time of the writing this ruling only the respondents had filed their submissions dated 6th May 2025 in accordance with directions of 19th February 2025.
5. The Applicants submits on 3 limbs, that the estate was not distributed in accordance with the Will, the administrators have failed to account for their administration of the estate, the grant ought to be revoked as not all the beneficiaries gave their consent to the confirmation of the grant.



6. Reference is made to the following authorities; *Julius Mimano (Deceased)* [2019] KEHC 10103 (KLR); *Estate of David Kyuli Kaindi (Deceased)* [2015] KEHC 3310 (KLR); *Estate of Emmanuel Wabwile Olwika (Deceased)* [2024] KEHC 2024 (KLR); *Matheka and Anor v Matheka* [2005] EA 25 and *Re Estate of Peter Kago Mukuba (Deceased)* [2024] KEHC 2511 (KLR).

Analysis and Determination

7. When an individual folds his mat or passes on we are quick to wish that he rests in peace. This signifies a desire to deal with issues pertaining to the deceased that allows the severing of links between the dead and living, so that the living in this case the beneficiaries focus their energies on what lies ahead of them, sometimes with the benefit of an inheritance from the deceased.
8. The probate court contributes to this process by determining the assets of the deceased, the beneficiaries of the estate and the respective shares of the beneficiaries and requiring that the Administrators or executors of the estate transmit the estate in accordance with the certificate of confirmation of grant. The law of succession of act provides that this entire process is deemed as closed and the court will be *functus officio* when in accordance with Section 83 (i) the administrators-
- ... 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.
9. The Respondents herein petitioned for grant of probate with Will annexed vide Petition dated 14th August 2009. The assets of the deceased were enumerated as
- a. LR No. 209/6XXX- Latema Road, Nairobi
 - b. Plot No. 36/XX/XX Eastleigh
 - c. City Park Plot
10. The Beneficiaries were listed as
- a. Mohammed Mahfudh Jeizan
 - b. Ahmed Mahfudh Jeizan
 - c. Fauad Mahfudh Jeizan
 - d. Hussein Mahfudh Jeizan
 - e. Faiz Mahfudh Jeizan
 - f. Fauzia Jeizan
 - g. Zakia Jeizan
 - h. Latifa Jeizan
 - i. Munir Mahfudh Jeizan
11. This Petition and subsequent issuance of grant on 14th December 2009, triggered the filing of a summons of revocation by the applicant herein dated 16th April 2010. In that application he sought to revoke the grant as he challenged the validity of the will and also the exclusion of some of the assets of the deceased. He alleged then that the following assets had been excluded from list of the assets-



- a. Undisclosed investments done through loans taken in the name of the Estate for the Executors and/ or agents own befits
 - b. KAX 8XX (Peugeot 405 saloon)
 - c. KAX 7X0 X (Peugeot 505 Station Wagon)
 - d. KCB Bank Account No. 11XXXXXXXX
 - e. KCB Bank Account No 11XXXXXXXX- Iqbal Holdings
 - f. 15 stalls rented @ 20000 per month
 - g. 23 stalls rented @ 17400 per month
 - h. Investments in Yemen
 - i. Hussein Mahfudh Exporters
 - j. A house in Mombasa Disclosed
 - k. Iqbal Holdings Limited – LR No. 209/ 6XXX
 - l. City Park (Parklands Apartments) LR No 209/1XXXX
 - m. Namanga LR No. Kajiado/ No. Mailua/9XX and investments
 - n. Namanga LR No. Kajiado/ Mailua/ 2XXX
 - o. Al Mansur Hotel along Munyi Road
 - p. KCB Bank Account No. 11XXXXXXXX in the name of Iqbal Holdings Limited.
12. The summons for revocation was compromised by consent recorded in Court on 1st February 2016, wherein the applicant was included in the list of beneficiaries and the application dated 16th April 2010 was marked as withdrawn ‘to give way for an out of court negotiations and there be no order as to costs.’
13. Subsequently, the Executors presented the summons dated 30th May 2016, seeking confirmation of grant, the assets of the Estate were enumerated as-
- a. LR No. 209/ 6XXX Latema road
 - b. LR No. 209/ XXXX/XX
 - c. Plot no. 36/XX/2XX, Eastleigh
14. The surviving beneficiaries were listed as-
- a. Mohammed Mahfudh Jeizan
 - b. Ahmed Mahfudh Jeizan
 - c. Fauad Mahfudh Jeizan
 - d. Hussein Mahfudh Jeizan
 - e. Faiz Mahfudh Jeizan
 - f. Fauzia Jeizan
 - g. Zakia Jeizan



- h. Latifa Jeizan
- i. Munir Mahfudh Jeizan
15. At paragraph 4 of the Supporting affidavit it was proposed to distribute all the assets of the estate to Iqbal Holdings Limited. That summons was accompanied by a 'consent to the mode of distribution' dated 30th May 2016, executed by the beneficiaries including Applicant herein.
16. He challenges the certificate of confirmation of grant herein on the basis that it does not comply with the wishes of the deceased in his Will dated 28th October 2003. He states that it was the deceased's wish that his children divide the property in shares prescribed by the Muslim (Sheria) Law of Succession applicable to Sunni sect of Shafi school.
17. The entire paragraph 3 of the will reads
- I give, devise and bequeath all my estates both real and personal whatsoever not hereby or by any codicil hereto otherwise specifically disposed of unto my trustees Upon Trust to hold the same until my wife (if living) and all my surviving children agree to either sell or dispose of my real or other personal property or to divide it among themselves in shares prescribed by Muslim (Sheria) Law of Succession applicable to Sunni sect of Shafi school. (Emphasis Supplied)
18. It is evident from the Will that to dispose of the property the consent of all the children is required. It is not the Court to direct the sale but rather all the surviving children. For this reason, his request that the Court vary the Certificate of Confirmation of Grant so that distribution of the estate is in accordance with Islamic law must fail.
19. I am unable to consider seriously the plea that not all the assets of the deceased were included as there is no proof of ownership accompanying that allegation. I am fortified in this position as at the time of the confirmation of grant, which was after the consent recorded on 1st February 2016, the applicant herein consented to the enumerated assets as the assets comprising the estate of the deceased. It would be to make a mockery of the court process if we were to reopen this issue absent any documentation in support of ownership of property by the deceased.
20. The same would hold for the move to expand the list of beneficiaries whom it is contended did not sign the consent as required by law. No attempt has been made to demonstrate that the deceased maintained or was the father of the 4 beneficiaries/ or whom it is sought to introduce at this stage of the proceedings. There is not a word from these beneficiaries. I am mindful that the grant herein was confirmed in 2016 and the property has since been transmitted to Iqbal Holdings Limited. The applicant if he wishes for the court to disrupt the status quo which was arrived at on the basis of a consent has to present to the court a case that is unassailable, that he has not done.
21. He urges that the Court should issue directions targeted at Iqbal Holdings. It is well established at law that a company is a separate legal entity and that save for distributing the shares of a deceased person a probate court would not have the mandate to give orders relating to the running of a company or its assets. In *James Mubu Kangari v Mubu Holdings Ltd & Serah Mweru Mubu* [2019] eKLR Hon Justice Musyoka observed that: -

The said Company is not a party to the succession cause. It is in a sense an asset for distribution, to the extent that the deceased's shares in it are distributed in the will the subject of these proceedings. The Company is a separate legal entity from the persons who hold shares in it. The law which governs limited liability Companies is the *Companies Act*,



Cap 486, Laws of Kenya, in terms of the formation, operations and liability of Companies. Any Orders against a limited Company by persons who claim entitlement to shares in and directorship of the Company can only be properly brought within the framework of the Companies Act, in proceedings properly brought before a Commercial Court as opposed to a Probate Court. I need not say more.

22. For this reason, I decline the prayers seeking orders seeking an account on the running of Iqbal Holdings Limited. This Summons is dismissed in its entirety, I find that it does not meet the threshold of Section 76 of the Law of Succession Act.

23. Owing to the relationship between the parties, there shall be no order as to costs.

The file is closed.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 23rd DAY OF MAY, 2025.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Nyang Susan for Applicant/Beneficiary

Abubakar for Respondents

Fardosa Court Assistant

