



REPUBLIC OF KENYA



**In re Estate of Eliud Timothy Mwamunga (Deceased) (Succession Cause 3 of 2018) [2025] KEHC 5696 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5696 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 3 OF 2018**

**G MUTAI, J  
MAY 5, 2025**

**BETWEEN**

**SAMUEL MAZERAS MWAMUNGA ..... 1<sup>ST</sup> PETITIONER**

**JOSIAH CHOLA MWAMUNGA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**SHEILA MANGA MZUNGU ..... OBJECTOR**

**RULING**

1. Before this court is a Notice of Motion dated 30<sup>th</sup> March 2023 through which the Objector/Applicant seeks the following orders:-
  - a. Spent
  - b. That, the court do issue an order for the administrators to appear in person to show cause why sanctions should not be imposed on them for contempt of court for disregarding the court order dated 6<sup>th</sup> February 2023 by Hon. Justice Onyiego, for failure to provide and produce supporting documents in respect of the accounts, pending hearing and determination of this application;
  - c. That, in the alternative, the administrators do, within 7 days, provide documents, invoices, taxes return, receipts and bank slips in respect of the filed account as ordered by the court on the 6<sup>th</sup> February 2023, pending hearing and determination of this application;
  - d. That the court do issue any other orders it deems fit in the circumstances of this case; and
  - e. That the cost of this application be provided for.
2. The application is premised on the supporting affidavit of Sheila Manga Mzungu, sworn on 30<sup>th</sup> March 2023. Vide the said affidavit, Ms Mzungu stated that this honourable court, in its judgement delivered



on 30<sup>th</sup> September 2022 by Onyiego, J, directed the administrators to prepare and submit the assets and liabilities of the estate within 30 days from the day of judgement. On 31<sup>st</sup> January 2023, the court also ordered administrators to file and serve accounts within 14 days. She deposed that the administrators have never complied with the said orders.

3. The Objector/Applicant averred that the delay was intentional, to frustrate the administration of the estate and the settling of accounts. In the meantime, the administrators enjoyed the fruits of the estate to her detriment and disadvantage. She therefore urged the court to allow the application as prayed.
4. In response, the petitioners filed a replying affidavit sworn by Samuel Mazeras Mwamunga on 2<sup>nd</sup> May 2023. Vide the said affidavit, Mr Mwamunga stated that they filed valuation reports and accounts on 10<sup>th</sup> February 2023, as ordered by the court, and that they had therefore not breached any court order.
5. When the matter came for hearing on 16<sup>th</sup> May 2023, Mr Ambwere, counsel for the Objector/Applicant, reiterated the applicant's position and stated that the purpose of accounts is to determine how the estate had been managed. He submitted that the administrators had spent Kes.17,000,000/- as wages, legal fees of Kes.7,846,968/-, motor vehicle running costs of Kes.3,47,544/-, and fuel expenses Kes.880,379/-. Counsel questioned the expenditure and averred that the supporting documents for the same needed to be provided. He urged the court to allow the application.
6. Mrs Wambugu, learned counsel for the administrators, submitted that the accounts filed were for the period from June 2018 to 31<sup>st</sup> December 2022 and that they were to file additional accounts. She stated that the administrators had complied with the court orders issued by the Hon Mr Justice Onyiego. She urged the court to dismiss the application and allow administrators to proceed with the administration of the estate.
7. In a rejoinder, Mr Ambwere submitted that the accounts should be accurate and verifiable.
8. Section 83 of the Law of Succession Act requires personal representatives to be accountable for their actions and to provide accounts. The court in the case of 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."

9. I have perused the court file and noted the orders issued on 6<sup>th</sup> February 2023. The court ordered as follows:-

"Ms Wambugu to file valuation reports to the estate by 17<sup>th</sup> February 2023. Mr Ambwere shall be at liberty to oppose the application for confirmation by filing a replying affidavit within 7 days."

10. I note that the administrators complied with the court orders by filing a list of valuation reports dated 17<sup>th</sup> February 2023, as well as reports and financial statements for the period from June 2018 to 31<sup>st</sup> December 2023, dated 20<sup>th</sup> February 2023 and filed on 21<sup>st</sup> March 2023.

11. Since there was compliance, I find and hold that the application dated 30<sup>th</sup> March 2023 lacks merit. The application does not advance the interests of justice, which is to complete the administration of the estate by distributing the net estate to the beneficiaries, but will tie the process in knots, at significant cost in terms of time and expenses.

12. As this is a succession cause, I make no orders as to costs.

13. Orders accordingly.

**DATED AND SIGNED IN MOMBASA THIS 5<sup>TH</sup> DAY OF MAY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Mr Mugo for the Administrators/Respondent;

Mr Ambwere for the Objector/Applicant; and

Arthur – Court Assistant.

