



REPUBLIC OF KENYA



In re Estate of Erach Jehangir Austin (Deceased) (Succession Cause 41 of 2019) [2025] KEHC 10085 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEHC 10085 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

SUCCESSION CAUSE 41 OF 2019

G MUTAI, J

JUNE 19, 2025

IN THE MATTER OF THE ESTATE OF ERACH JEHangIR AUSTIN (DECEASED)

RULING

1. The Chamber Summons application dated 28th November 2023 seeks the following orders: -
 1. That the 6th respondent's name be struck out of this suit and the proceedings herein;
 2. That the cost of this application be provided for.
2. The grounds upon which the application is brought is that the application dated 21st October 2022 is frivolous vexatious scandalous, and an abuse of the court process as it discloses no reasonable cause of action against the 6th respondent thus rendering it defective and that the 6th respondent cannot be made a party to the proceedings herein simply because he had acted as a counsel for a party.
3. In the affidavit sworn on 28th November 2023, Mr Vincent Omollo solemnly averred that he acted for Vistasp Nariman Vatchha, the executor of the will of the deceased, as counsel. Vistasp Nariman Vatchha is the first respondent herein and was issued with a grant on 18th November 2020.
4. He deposed that the objector filed a succession cause, to wit P&A No 12 of 2018, which the Court dismissed for want of prosecution. He averred that the application dated 21st October 2022 was frivolous, vexatious, scandalous, and an abuse of the process of the Court and did not disclose a reasonable cause of action against him.
5. Mr Omollo averred that no reasonable cause of action against him could be maintained merely because he acted for Marzban Jehangir Austin in P&A No. 12 of 2018.
6. Although the Objector/Respondent was served with the application. He did not file a replying affidavit in the eFiling/CTS platform. However, Mr Omollo was cross-examined on his affidavit on 15th July 2024.
7. During his cross-examination, Mr. Omollo stated that he didn't know why he had been added as a party to these proceedings. He stated that he acted for the executor in these proceedings. The Court,



upon considering the matter, issued a grant of probate of a written will. He stated a grant of probate could not be issued unless there was a will.

8. Mr. Omollo testified that the Objector filed P&A No. 12 of 2018. In the said proceedings, he represented Marzban Jehangir Austin, the father of Navroze Marzban Austin (the 5th Respondent). It was his evidence that he represented Marzban as an application had been filed against him (Marzban).
9. He averred that he didn't know if P&A No. 12 of 2018 was still active when the instant petition was filed. Both P&A No 12 of 2018 and this petition (P&A No 41/2019) are in respect of the same estate. The latter was filed through the firm of Kamoti Omollo & Co. Advocates.
10. The application was canvassed through oral and Written Submissions. I note that only the firm of Messrs. Kamoti Omollo & Co Advocates filed written submissions in the eFiling/CTS platform.
11. In the oral submissions made on 17th December 2024 and written Submissions dated 24th September 2024, Mr Omollo, learned counsel for the applicant, averred that there was no substantive order being sought against him and that he was made a party to those proceedings merely because he represented Marzban. He prayed that he be struck out so that he could maintain his rightful status as counsel for a party. He further submitted that no explanation was given for his joinder.
12. Mr. Ngonze, learned counsel for the objector, submitted that the objector was the petitioner in P&A No. 12 of 2018. He urged that Mr Omollo also conceded that this petition was filed when P&A No. 12 of 2018 was still pending. In his view, Mr Omollo also conceded that he represented the 5th Respondent. He submitted that the parties named as respondents were cited for costs, as they had willfully misled the Court and had intermeddled. Mr. Ngonze submitted that Mr. Omollo and the Co-respondents attempted to have the Court rubber-stamp an illegality.
13. Mr. Ngonze stated that if the application were allowed, the Court would have sent a message that misleading the Court attracts no sanctions.
14. I have perused the application, the response thereto, as well as the submissions of the parties.
15. I note that it is indeed true that Mr. Omollo represented Mr Marzban Jehangir Austin, now deceased, in P&A No 12 of 2018 in an application that had been filed against his client by the Objector.
16. The petition for the grant of Probate in respect of the estate of Erugh Jehangir Austin was filed on 15th August 2019. At the time the said petition was filed, P&A No. 12 of 2018 was pending. The latter case, according to eFiling/CTS, was dismissed on 1st October 2021. The pendency of P&A No. 12 of 2018 was therefore within Mr. Omollo's personal knowledge and should have been disclosed, as there were two separate succession proceedings concerning the same estate. Counsel cannot disavow personal knowledge of proceedings he was aware of. The possibility that counsel may become liable for costs as a result of the said conduct cannot be discounted.
17. Based on the foregoing, I am unable to agree with Mr. Omollo that his application is merited. I dismiss the same. I make no orders as to costs due to the nature of the matter.
18. It is so ordered.

DATED AND SIGNED AT MOMBASA THIS 19TH DAY OF JUNE 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-



Ms Manyara, holding brief for Mr Omollo, for the 6th Respondent/Applicant;
Mr Ngonze, for the Objector/Respondent; and
Arthur – Court Assistant.

