



In re Estate of Salma Soud Mamiry (Deceased) (Succession Cause 530 of 2005) [2025] KEHC 10548 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10548 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 530 OF 2005**

**G MUTAI, J
JULY 10, 2025**

**IN THE MATTER OF THE ESTATE OF SALMA SOUD MAMIRY (DECEASED)
AND IN THE MATTER OF GRANT OF LETTERS OF ADMINISTRATION TO
SHUWEKHA ABDALLA MUHSIN AND SHAMOUN ABDALLA MUSHSIN**

BETWEEN

KHADIIJA ABDALLA MUHSIN 1ST APPLICANT

MUHSIN ABDALLA MUHSIN 2ND APPLICANT

AND

SHAMOUN ABDALLA MUHSIN RESPONDENT

***(IN THE MATTER OF GRANT OF LETTERS OF ADMINISTRATION TO
SHUWEKHA ABDALLA MUHSIN AND SHAMOUN ABDALLA MUSHSIN)***

RULING

1. The Summons before the court is dated 12th August 2024. The same was filed by Khadija Abdalla Muhsin and Muhsin Abdalla Muhsin against Shamoun Abdalla Muhsin, the sole surviving administrator of the estate of the deceased person herein. The applicants seek to have grant of letters of administration issued to Shuwekha Abdalla Muhsin and Shamoun Abdalla Muhsin annulled or revoked, for the said administrator to be compelled to provide complete and accurate inventory of the assets and liabilities of the entire estate and to render the complete and accurate account of the administration of the estate from the date when the grant was issued, to the date when the account shall be rendered.
2. The applicants aver in the grounds in the body of the application, as well as in the supporting affidavit, that the administrator failed to administer the estate properly and that the sole property of the deceased,



- to wit, Title No 211/2/MN Mshomoroni, had been subdivided into several sub-plots, some of which had been sold.
3. They averred that Shuwekha Abdalla Muhsin passed away on 10th July 2024, leaving Shamoun Abdalla Muhsin as the sole administrator. The administrators/administrator collected rent from the estate property, which was not accounted for; they had also not carried out their duties diligently and had transferred some of the estate's assets without the knowledge and consent of the beneficiaries.
 4. It was thus urged that, as the respondent had failed to diligently administer the estate, it was in the interest of justice that the application be allowed.
 5. The application was opposed. The respondent filed a replying affidavit, sworn on 4th February 2025, in which he deposed that the application was an abuse of the court process and that the allegations in the two supporting affidavits were false, misleading, and malicious.
 6. He stated that he was elected as a co-administrator of his grandmother's estate by his father, Abdalla Muhsin, the only child of Salma Soud Mamiry, who survived her, and that the election was without contestation from any of the beneficiaries. At his father's demise, he procured the appointment of Shuwekha Abdalla Muhsin as a co-administrator, a position she held until her own demise.
 7. Mr Shamoun Abdalla Muhsin deposed that they ran the affairs of the estate without any problem from 12th May 2009 to 10th July 2024 when Shuwekha Abdalla Muhsin died. He stated that he could not produce the book of accounts, as Shuwekha kept them, and that he had not been able to retrieve them from her custody upon her demise. Rent was being collected by the firm of Stephen Oddiaga & Co, Advocates, which was usually shared among the beneficiaries during Ramadan. However, a few tenants paid to the administrators, which payments were thereafter shared equally "amongst all administrators".
 8. The administrator/respondents accused the applicants of acting without the support of all the beneficiaries, refusing to take up the offer he made for one of them to be appointed as a co-administrator. He denied having acted unlawfully or committed any fraud. For the said reason, he prayed that the application be dismissed with costs.
 9. The 1st applicant deposed to a supplementary affidavit sworn on 1st April 2025, in which he denied that they had approached the court with unclean hands. She stated that the respondent had not, in his affidavit, detailed any steps he had taken to administer the estate, having been an administrator since 2007. Ms Khadija took issue with the claim that the accounts could not be provided, saying that the respondent had been an administrator since 2007 and could not possibly have excuses. She denied that the firm of Messrs. Stephen Oddiaga & Co. Advocates was appointed to collect rent, nor that the proceeds of any rent collected were distributed during Ramadhan.
 10. To her, the main issue was the provision of accounts, the giving of the full inventory, and the establishment of the current status of Plot No. 211/2 MN Mshomoroni.
 11. The matter was canvassed by way of written submission. The applicants' written submissions are dated 2nd April 2025. Through their counsel, AA Mazrui & Co Advocates, they averred that Salma Soud Mamiry was their grandmother. The grant in respect of her estate was issued on 24th April 2009 to the respondent and Shuwekha Abdalla Muhsin (now deceased). After being appointed, the respondent failed to manage the estate diligently, failed to take any steps towards the distribution of the estate, and ran the day-to-day affairs of the estate without consulting the other heirs. Additionally, the respondent failed to administer the property of the deceased, to wit, Plot No. 21/2/MN, properly. He was also



- accused of not consulting the other beneficiaries regarding the estate's affairs and of not providing them with accounts.
12. Counsel for the applicants, Ramadhan Salim, from the firm of AA Mazrui & Co Advocates, submitted that the respondent had failed to diligently administer the estate as required. For that reason, the grant to him should be revoked.
 13. Mr Salim relied on sections 76 and 83 of the [Law of Succession Act](#) and urged that the administration of the estate ought to have been completed within 6 months of the date the grant was confirmed, that is to say, by 24th October 2009. Despite the passage of 15 years, neither the distribution of the estate nor the provision of the accounts had been made. Counsel stated that if the respondent had any challenges, he could have sought more time from the court under section 83 (g) of the [Law of Succession Act](#).
 14. Counsel relied on the case of *In re Estate of Mwaura Makuro (Deceased)* [2021] KEHC 4736 (KLR).
 15. Counsel thus urged that the application be allowed as prayed, and that the grant be evoked and for the respondent to provide a full and accurate account in respect of the deceased's estate from the time he took up the administration to date.
 16. The submission of the respondent is dated 17th April 2025. Counsel for the respondent, Mr Michael Ngure, urged the court to dismiss the application dated August 12, 2024, with costs.
 17. Mr Ngure submitted that the parties' father, Abdalla Muhsin, was initially the sole administrator of the estate until he appointed the respondent. Upon his father's demise, the respondent, who had been a co-administrator with his father, appointed Shuwekha Abdalla as the co-administrator. Shuwekha passed away on 10th July 2024.
 18. He averred that the administration of the estate was amicable until Shuwekha died, when conflict started. He urged that the application for revocation of the grant was made without a shred of evidence and was merely an abuse of the court process.
 19. It was urged that, as the parties alleging that there was a failure to administer the estate, it was the duty of the applicants to prove their allegation that the administrator had failed. The applicants had not that there had shown that there had been intermeddling.
 20. In support of the said contention, this court was referred to the decision *In re Estate of Mariko Kiptarus A. Kosgei (Deceased)* [2024] KEHC 5368 (KLR).
 21. Counsel denied that there had been intermeddling. The court was urged to dismiss the application.
 22. Under section 76 (d) of the [Law of Succession Act](#), a grant may be revoked if the person to whom the grant was made has failed, after due notice and without reasonable cause, to inter alia, proceed diligently with the administration of the estate. In my view, the law is clear that the aggrieved person must give a notice to the administrators before a grant is revoked or annulled under the said provision.
 23. I have perused the application and the affidavits filed herein. I have not seen any evidence that a notice was sent to the administrator before the filing of this application. The application was thus filed prematurely and is, for that reason, incompetent. The same is for dismissal.
 24. Having stated the above, I note that the grant in respect of this estate was confirmed on 12th May 2009. Plot No. 211/2/MN, Mshomoroni, was supposed to be divided among the heirs according to the Islamic Sharia. That has not happened to date. The administrators did not exercise due diligence. In the circumstances, I direct, in exercise of my powers under section 47 of the [Law of Succession Act](#) and Rule 73 of the Probate and Administration Rules, that the remaining administrator complete the



administration of the estate within 60 days of the date hereof. Upon doing so, he must provide this court with a full and accurate account of the completed administration as required by section 83 of the *Law of Succession Act*.

25. The account stated above must provide the following details:-
- a. Accounts of all incomes received from 12th May 2009 to the date of the statement;
 - b. All expenses incurred by the estate from 12th May 2009 to the date of the statement;
 - c. Schedule of distribution in favour of the beneficiaries; and
 - d. Statement that all the beneficiaries have received their just entitlements under Islamic law.
26. I make no order as to costs, as this is a succession cause between close family members.
27. It is so ordered.

DATED AND SIGNED IN MOMBASA THIS 10TH DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Mr Salim, for the Applicants;

Mr Ngure, for the Administrator/Respondent; and

Ms Kalekye - Court Assistant.

