



**In re Estate of Mehmuda Husseinbhai Anjarwalla (Deceased) (Succession Cause 66 of 2017) [2025] KEHC 10679 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10679 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 66 OF 2017**

**G MUTAI, J**

**JULY 3, 2025**

**IN THE MATTER OF THE ESTATE OF MEHMUDA  
HUSSEINBHAI ANJARWALLA (DECEASED)**

**BETWEEN**

**SALMA ANJARWALLA ..... APPLICANT**

**AND**

**SALIM ANJARWALLA ..... 1<sup>ST</sup> ADMINISTRATOR**

**TEHZEEN ANJARWALLA ..... 2<sup>ND</sup> ADMINISTRATOR**

**RULING**

1. Before this court is a Notice of Motion application dated 17<sup>th</sup> January 2025, vide which the applicant herein seeks the following orders: -
  - a. Spent;
  - b. The administrators shall furnish the court and the beneficiaries of the estate within 21 days of this order, confirmation that the administration and distribution of the estate is being carried out in accordance with the Muslim law that is applicable to it and in compliance with the terms of the will, all applicable orders, laws, regulations and company articles of association, and that all distributions and transfers carried out are valid according to the applicable Muslim law, and all applicable orders, laws, regulations and company articles of association. Such confirmation shall be provided by independent, duly qualified persons with knowledge and experience in the respective field;
  - c. The administrators shall take all necessary steps to ensure that any errors relating to the administration and distribution of the estate that have taken place are rectified, including errors made in amending the certificate of confirmation of grant for the purpose of ease of



implementation on 27<sup>th</sup> May 2022, whether by means of the necessary applications to this honourable court or by written consent of all beneficiaries; and

- d. Such further orders as the court shall deem necessary.
2. The application is premised on the grounds therein and the supporting affidavit of Ms Salma Anjarwalla, sworn on 22<sup>nd</sup> January 2025 before a notary public in England. She stated that the deceased was a Shia Muslim of the Dawoodi Bohra Sect, and therefore her estate is to be dealt with under the Islamic laws of the Dawoodi Bohra Sect, which she belonged to as provided in her will. She contended that if the estate is not distributed correctly, it will have a religious effect on them.
3. Ms Salma Anjarwalla deposed that she had never consented to the to the distribution of Kes.29,400,000/- to Salim's grandchild as the same was not mentioned to her or Tehzeen by the deceased. She suggested that the same ought to be corrected by removing 2 (a) in the certificate of confirmation issued on 5<sup>th</sup> March 2021, and rectification of the certificate of confirmation dated 24<sup>th</sup> May 2021, which lists bequests and to distribute the same to the beneficiaries according to the correct percentages.
4. She contended that the transfer of the estate shares in African Cotton Industries (ACI) and Mirak (the holding company of ACI) into joint names in the given percentages was in breach of the company's articles of association. The transfer in respect of the Mirak was not feasible as the company has only one director.
5. She averred that the correction/rectification of mistakes ought not delay the completion of the administration of the estate. In conclusion, she urged the court to allow the application as prayed.
6. In response, Salim Anjarwalla, a co-administrator of the estate, filed grounds of opposition dated 2nd February 2025, opposing the application. Mr Salim Anjarwalla contended that the court, having duly confirmed the grant, was functus officio in relation to any matter relating to shares, percentages and distribution of assets. He stated that the application is a veiled attempt to review the order of the court confirming the grant issued herein and that the applicant seeks to transplant the "opinion" of an alleged Chief Kadhi into proceedings heard and determined at the High Court. He deposed that the role of the administrators is aptly set out in section 83(g) of the [Law of Succession Act](#) and argued that no basis had been presented showing that the said responsibility is being carried out in a manner inconsistent with the confirmed grant. Mr Anjarwalla stated that the administrators of the estate note no errors and/or mistakes to warrant the grant of prayer 3 of the application.
7. Tehzeen filed a replying affidavit sworn on 10<sup>th</sup> March 2025 before a notary public in Cape Town. She stated that the ruling of 2<sup>nd</sup> February 2021 by Thande, J, addressed the distribution of the estate and upheld the wishes of the deceased in the will. She urged that both Onyiego, J and I, in the rulings of 27<sup>th</sup> May 2022 and 15<sup>th</sup> April 2024, respectively, found Thande, J's ruling to be unambiguous, yet Salma (the applicant) insists it isn't.
8. She further stated that the issues raised in the application herein are not only repetitive but also an attempt to invite this court to sit on appeal over its previous decisions. Since the applicant has complied with various directions given in the matter towards distribution of the assets of the estate, she is barred by the doctrine of estoppel from challenging the distribution of the estate.
9. She averred that the applicant's actions undermine the administration of the estate and revisiting matters that the court has already dealt with amounts to an abuse of court process. She urged the court to dismiss the application with costs.



10. Ms Tehzeen Anjarwalla filed a rejoinder affidavit sworn on 16<sup>th</sup> April 2025 in response to the further submissions by Salma dated 1<sup>st</sup> April 2025 and the replying affidavit. She reiterated her position in her affidavits and stated that the application herein is repetitive and intended to hinder the completion of the estate's administration.
11. It was contended that constant in and out of court prosecution/litigation is affecting her mental health, wellbeing, time and finances, which she is unable to afford. She urged the court to dismiss the application with costs.
12. The applicant filed a replying affidavit in which she stated that the deceased's estate is entitled to inherit 42% of the estate of her husband, Husseinbhai Karimbhai Anjarwalla, in *Mombasa High Court Succession Cause No.118 of 1998*. She stated that this honourable court, in its ruling of 2<sup>nd</sup> February 2021, delivered on 5<sup>th</sup> March 2021, confirmed the grant of letters of administration with will annexed made to herself, Salim Anjarwalla and Tehzeen Anjarwalla in respect of both estates and ordered that the estate of Husseinbhai be distributed under his will dated 19<sup>th</sup> August 1969.
13. On Plot No. 858 of Section I, Shanzu M.N. (C.R.8909/1), she stated that there was a misunderstanding of the orders of the court. She contended that the two administrators, Salim and Tehzeen, were seeking to distribute the said property while litigation was still ongoing. The transfer of the said property was in direct contravention of the court order and, therefore, null and void.
14. She averred that almost all court orders are tainted with misrepresentations, inaccuracies or deceptive information. This includes orders issued on 27<sup>th</sup> May 2022, permitting Tehzeen to amend the certificate of confirmation of grant to reflect the distribution as captured in the ruling for ease of implementation, as well as the orders for her removal.
15. She stated that Salim acquired the shares of the Savani family in African Cotton Industries (ACI) through a constructive trust for Mirak, of which the estate of the deceased owns 25% of the shares. She further stated that Tehzeen transferred the shares of the estate in the companies in breach of the provisions of the company's articles of association.
16. Salma stated that requiring the administrators to provide confirmation from duly qualified persons would help them in dealing with the estate and assist in ensuring that there was compliance with court orders. She urged that it would also ensure that the administrators seek the right expertise to assist in finding the best way to distribute the estate shares in Mirak and ACI, as well as the overall estate distribution.
17. Further, the same would also help resolve the issues arising from the fact that Salim has provided his personal guarantee for the business loans of ACI, making her and Tehzeen vulnerable co-owners in case of default.
18. Salma Anjarwalla deposed that it would be in the interest of justice that the valuation of the estate property be done to establish the rightful dues of each beneficiary and that it would be easier to rectify the matters now, rather than later.
19. She stated that the errors in question are the breach of the articles of association of the companies and amounted to errors in the interpretation of the ruling of Lady Justice Thande with respect to the specie distribution of the estate. She urged the court to allow the application.
20. The application was canvassed through written and oral submissions. I shall set out the precis of each party's submissions below.



21. The applicant filed written submissions dated 3<sup>rd</sup> March 2025. Regarding the rectification of the certificate of confirmation of grant, she submitted that the certificate was amended via this honourable court's ruling of 27<sup>th</sup> May 2022, and that the table was not correctly done, and that it was done without her involvement and was not in accordance with the will nor in line with the court's directions. Salma contended that the administrators must comply with the directions of the court. She urged that there was a contradiction and incompatibility in the certificate of confirmation of grant, the table and the will.
22. She urged the court to allow the application as prayed.
23. Tehzeen, through her advocates, Njoroge Regeu & Company Advocates, filed written submissions dated 11<sup>th</sup> March 2025. Counsel for Tehzeen reiterated the positions she took in her affidavits and submitted that the applicant's objective is to have the estate of the deceased distributed differently from the orders of Thande, J, in her ruling of 2<sup>nd</sup> February 2021. It was urged that the application is an abuse of the court process and an attempt to frustrate the conclusion of the distribution of the estate.
24. Salim Anjarwalla, through his advocates, Echessa & Bwire Advocates LLP, also filed written submissions dated 11<sup>th</sup> March 2025. Counsel submitted that this court, in a ruling by Thande, J, determined the issue of confirmation of grant with finality; thus, it is functus officio and cannot sit on an appeal of its own decision. That Thande, J, in her decision, was cognizant of the fact that the deceased was a Muslim and that nothing bars the High Court from determining succession matters before it. Furthermore, if the applicant were dissatisfied with the court's decision, the proper procedure would be to appeal.
25. On the involvement of duly qualified persons with knowledge and experience of the respective fields, counsel submitted that the responsibility of administering an estate is vested in the administrators of the estate appointed by the Court. By dint of Section 83(g), the administrators are answerable to the court. It would be contrary to statute for an order to be issued for third parties to supervise and oversee the distribution /administration of the estate to confirm compliance with the orders of the court.
26. On prayer, 3 of the application counsel submitted that the tenor and purport of the same is not clear, as no specific errors have been pointed out.
27. In conclusion, counsel urged the court to dismiss the application.
28. Salma filed further submissions dated 1<sup>st</sup> April 2025. On the ruling of 2<sup>nd</sup> February 2021, she submitted that she was not disagreeing with the ruling and therefore there was no need for appeal, and that the Notice of Appeal filed was to protect her rights while giving her time to consider the ruling.
29. On the transfer of the Shanzu property, she submitted that the same was in contravention of the court order, and any act in contravention of a court order is null and void.
30. She further submitted that she was not seeking supervision of administrators. That an administrator lacks the discretion to distribute the residue of an estate in specie unless all the beneficiaries agree. She urged that the valuation of the deceased's estate be conducted to determine the exact percentage of each beneficiary.
31. Salma submitted that the errors, in her view, include breach of the articles of the companies rendering transfers invalid, errors in the interpretation of the ruling of Thande, J with respect to in specie distribution of the estate.
32. Ms Salma Anjarwalla thus urged the court to allow the application as prayed.



33. I have considered the application, the responses thereto and the rival submissions by parties. It is my duty to determine whether the orders sought should be issued.

34. The applicant herein has raised issues regarding the law applied in determining the distribution of the estate of the deceased herein and the interpretation to be made in regard to the rulings by Thande, J and Onyiego, J.

35. Thande, J in her ruling of 2<sup>nd</sup> February 2021, and dated 5<sup>th</sup> March 2021, stated that: -

The shares in ACI belong to the estate of HKA. As such, any question relating to the said shares must be determined in the succession proceedings relating to that estate.

...on the considerable amount of money that Salim allegedly owes, the court notes that the same relates to the estate of HKA. As such the issue can only be dealt with in Succession Cause No.118 of 1989.”

36. In the ruling of 27<sup>th</sup> May 2022, made in respect of an application wherein Salma had raised similar issues, Onyiego, J stated as follows: -

“In the instant case, Tehzeen and Salim are alleging that Salma has refused to cooperate by refusing to sign necessary transfer documents to facilitate the distribution of the estate to individual beneficiaries. Salma on the other hand denied refusing to cooperate but made certain demands among them; the court did not properly handle the issue of distribution, the court applied common law instead of the law applicable to the Shia Dawoodi Bohra community; property valuation was not done; Tehzeen cannot effectively handle her share before valuation issues are resolved among them clearance of debts and liabilities owed to or against the estate; there is a pending appeal and; that the estate be sold and proceeds shared out.

It is apparent from the averments of Salma that she is not ready to facilitate the distribution of the estate. The issues she is raising cannot be addressed through the route she has taken. She cannot question the court’s decision through an affidavit or disobeying its implementation. What she should know is that she an agent of the court as a trustee of the estate and that the court can on its own motion under Section 66 of the *Law of Succession Act* remove her from the role of an administrator if confirmed she has failed to play her role as such.

In the absence of any appeal or stay of execution, the administrators, Salma included have no choice but to honour the court order by distributing the estate as per the confirmed grant which is self-explanatory. Shares that are specifically awarded to an individual solely do not need valuation. They should automatically be transferred to the beneficiary.

Valuation will only be necessary where there is joint property and parties are not agreeable on its value in which case they can engage a mutually agreed valuer to do the valuation and each beneficiary gets his share as stated in the ruling. This can be done even after parties have assumed ownership depending on the nature of the property which in my view is not applicable here as the court had exhaustively dealt with the same issue.

...having found as above, I am inclined to find that Salma is obligated to execute all necessary transfer forms or any other documents relevant to facilitate full and complete administration and distribution of the estate within 45 days in



default she shall cease to be an administrator and a fresh grant issued to the two remaining administrators.

...Regarding the reflection of the schedule of assets in the certificate of confirmation as per the ruling of 2<sup>nd</sup> February 2021, the same is allowed and the certificate be amended to reflect distribution as captured in the ruling for ease of implementation.”

37. Salma moved this honourable court vide notice of motion application dated 8<sup>th</sup> July 2022 seeking to have the order 1 of the orders of 27<sup>th</sup> May 2022 discharged. This honourable court pronounced itself in its ruling of 15<sup>th</sup> April 2024 and stated,

“The orders made by Thande, J and Onyiego, J are, in my view, clear enough and need no elucidation. The latter ruling directed Salma to execute all the requisite documents within 45 days, failing which she would be removed automatically without further orders from the court. The said orders, as the counsels for the respondents have submitted, were self-executing.

I do not agree with the premise upon which Mr. Gachuhi’s submissions are based. My understanding of the ruling delivered by Onyiego, J is that he found Salma to have failed in her duties as an administrator. The court, rather than remove her immediately, gave her time to remedy her conduct.

Has Salma complied with the order issued by Onyiego, J? In this court’s view, she failed to do all that she was required to do so that there could be “full and complete administration and distribution of the estate.” I say so as the following matters are pending conclusion due to what any disinterested person would see as her foot-dragging: - transfer of the estate interest in Habib Bank PLC, United Kingdom; transfer of the Shanzu property; preparation of the estate accounts.”

Although she has given reasons for her refusal to complete the transfers, this court is unconvinced by them. She did not demonstrate how or why the transfer of the estate interest in Habib Bank could not be done. Regarding the Shanzu property, she did not furnish the court with an order staying the transfer of the same to the beneficiaries.

...in view of Salma Anjarwalla ‘s acknowledgement that there are transfers that could not be completed due to her inaction, I am not convinced that her continued role as an administrator is tenable.

...in any event, given the arguments that she has raised, her continued status as an administrator merely creates a stalemate that impedes the distribution of the estate to the beneficiaries. Litigation should end. In a similar vein, the distribution of the deceased’s estate cannot be delayed forever...

Salma neither appealed against the said decision nor sought to have it reviewed. In the circumstances, I order that a new grant be issued to Tehzeen Anjarwalla and Salim Anjarwalla forthwith.”

38. The application that Salma has filed, and which is the subject of this ruling, is a modified version of those that she has filed before. It rehashes the same grounds as those she has stated before and gives them



a fresh coat of paint to disguise them. Further, three judges have already pronounced themselves on the matters raised herein. If Salma was aggrieved, she ought to have appealed against the said decisions.

39. Based on the fact that there have been previous adjudications, is this Court functus officio? The Court of Appeal in the case of *Telkom Kenya Limited v John Ochanda (Suing On His Own Behalf and on Behalf Of 996 Former Employees of Telkom Kenya Limited)* [2014] KECA 600 (KLR) stated that: -

“Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon. It is a doctrine that has been recognized in the common law tradition from as long ago as the latter part of the 19<sup>th</sup> Century. In the Canadian case of *Chandler v Alberta Association of Architects* [1989] 2 SCR 848, Sopinka J. traced the origins of the doctrines as follows (at p. 860);

“The general rule that a final decision of a court cannot be re-opened derives from the decision of the English Court of Appeal *In re St. Nazaire Co.*, (1879), 12 Ch. D. 88. The basis for it was that the power to rehear was transferred by the Judicature Acts to the appellate division. The rule applied only after the formal judgment had been drawn up, issued and entered, and was subject to two exceptions:

1. Where there had been a slip in drawing it up, and,
2. Where there was an error in expressing the manifest intention of the court. See *Paper Machinery Ltd. v J.O. Rose Engineering Corp.*, [1934] S.C.R. 186”

...The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar is a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued.”

40. Having previously pronounced myself in this matter, and noting that the grant herein has been confirmed and that all that is pending herein is the distribution of the estate, I find and hold that this Court is functus officio. This Court cannot engage in merit-based decisional reengagement with this matter. It must down its tools. If the applicant is still aggrieved, she should appeal.
41. I hold the view that the administrators are, under section 83 of the *Law of Succession Act*, answerable to this court and must account to it. It is this Court, rather than the third parties proposed by Salma, who will assess compliance. The High Court has the necessary jurisdiction under section 47 of the Act and Rule 73 of the *Probate and Administration Rules* to issue any orders as may be just.
42. Given the conduct of the applicant, has she abused the court process? In the case of *Satya Bhama Gandhi v Director of Public Prosecutions & 3 others* [2018] KEHC 6100 (KLR), the Court stated that: -

“The black law dictionary defines abuse as, “everything which is contrary to good order established by usage that is a complete departure from reasonable use “An abuse is done when one makes an excessive or improper use of a thing or to employ such thing in a manner contrary to the natural legal rules for its use”.

The concept of abuse of court/judicial process is imprecise. It involves circumstances and situation of infinite variety and conditions. It is recognized that the abuse of process



may lie in either proper or improper use of the judicial process in litigation. However, the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponents.

The situation that may give rise to an abuse of court process are indeed in exhaustive, it involves situations where the process of court has not been or resorted to fairly, properly, honestly to the detriment of the other party. However, abuse of court process in addition to the above arises in the following situations: -

- a. Instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action;
- b. Instituting different actions between the same parties simultaneously in different court even though on different grounds;
- c. Where two similar processes are used in respect of the exercise of the same right for example a cross appeal and respondent notice;
- d. Where an application for adjournment is sought by a party to an action to bring another application to court for leave to raise issue of fact already decided by court below;
- e. Where there no iota of law supporting a court process or where it is premised on recklessness. The abuse in this instance lies in the inconvenience and inequalities involved in the aims and purposes of the action;
- f. Where a party has adopted the system of forum-shopping in the enforcement of a conceived right;
- g. Where an appellant files an application at the trial court in respect of a matter which is already subject of an earlier application by the respondent at the Court of Appeal; and
- h. Where two actions are commenced, the second asking for a relief which may have been obtained in the first. An abuse may also involve some bias, malice or desire to misuse or pervert the course of justice or judicial process to the irritation or annoyance of an opponent.

43. From the foregoing, it is evident that I have not found merit in the application before the Court. I find and hold that the Notice of Motion application dated 17<sup>th</sup> January 2025 lacks merit. The same is hereby dismissed.

44. I make no orders as to costs, as I do not believe that doing so will promote reconciliation that is so clearly needed among these three siblings.

45. It is so ordered.

**DATED AND SIGNED AT MOMBASA THIS 3<sup>RD</sup> DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**



## **JUDGE**

In the presence of: -

Mr Otieno, holding brief for Mr Echesa, for Salim Anjarwalla;

Ms Ng'onde, holding brief for Mr Njoroge Regeru, for Tehzeen Anjarwalla;

Ms Salma Anjarwalla (pro se litigant); and

Arthur - Court Assistant.

