



REPUBLIC OF KENYA



In re Estate of Peter Kibisu Indimu (Deceased) (Succession Cause E25 of 2021) [2024] KEHC 1149 (KLR) (13 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1149 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E25 OF 2021
RN NYAKUNDI, J
FEBRUARY 13, 2024**

IN THE MATTER OF THE ESTATE OF PETER KIBISU INDIMU (DECEASED)

BETWEEN

FLORENCE KADALI KIBISU GARNISHEE

AND

BRIAN INDIMU KIBISU OBJECTOR

RULING

Representation:

Limo R. K& Co. Advocates

Seneti Oburu & Co. Advocates

Nyekwei & Co. Advocates

1. The applicant approached this court vide an application dated 19th April 2023 under certificate of urgency seeking the following orders;
 - (1) This application be certified urgent and the same be dispensed with in the first instance.
 - (2) That this Honourable Court be pleased to summon petitioner/respondent herein Florence Kadali Kibisu, to show cause why she should not be committed to civil jail for a period of up to 6months for blatantly disrespecting this Honourable Court by disobeying its order issued on 7th March, 2023.
 - (3) The respondent be ordered to pay costs of this application.
2. The application is premised on the grounds set out therein and the contents of the affidavit in support of the application.



3. It is the applicant's case that vide orders issued on 7th March, 2023 ordered the Petitioner/respondent herein to render accounts over the estate of the deceased within 21 days from the date of the order. Further, that the respondent was duly served with the said order on 22nd March 2023 and he has since knowingly and willingly ignored the said orders and refused to act on it. The Applicant stated that the respondent's actions are aimed at defeating the orders of the honourable court. He urged the court to protect the sanctity of the court and grant the application as prayed.

Analysis & Determination

4. Upon considering the application, the only issue that arises for determination is;

Whether the summons for Notice to Show Cause should issue

5. The Application is expressed to have been brought under section 76 of the [Law of Succession Act](#) which refers to revocation of grant. One wonders where the connection between revocation of grant and a notice to show cause arises in this particular cause. That notwithstanding, it is evident that this court issued orders on 7th March 2023 to wit;
 1. That the petitioner be and is hereby directed to render a full and accurate statement of account of her dealings with the estate of the deceased from the date of his demise.
 2. That the petitioner submit all receipts, statements of account, books so far containing details of the proceeds of sale of motor vehicle no. KBW 619D and that of Bethel Junior Academy since the demise of the deceased to a qualified accountant/auditor who shall then conduct a forensic analysis of the estate.
 3. That the accountant/auditor shall be appointed by the Deputy registrar from ICPAK membership of Kenya within 21 days from today's date.
 4. That the professional fees of work done and accomplished by the accountant/auditor so appointed will be payable from the estate account.
 5. That the administrators shall file summons for confirmation of grant with corresponding affidavit and consents on the mode of distribution.
 6. Each party to bear its own costs noting the claim herein is a succession cause involving members of one family.
6. The residual powers of the court, commonly referred to as inherent jurisdiction is clearly provided for under section 3(A) of the [Civil Procedure Act](#) and rule 73 (1) of the [Probate and Administration Rules](#). The learned author Jacob in his treatise Current Legal Problems gave the definition of Inherent jurisdiction as follows;

“...the reserve or fund or powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of the law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them...” This very doctrine was articulated by Jerold in his book the Inherent Jurisdiction of the Supreme Court 1985 that ...this latter jurisdiction should be seen as those (unwritten) powers, ancillary to its common law and statutory powers, without which the court would be unable to act in accordance with justice and good reason. The inherent powers of the court are quite separate



and distinct from its common law and its statutory powers, e.g. in the exercise of its inherent jurisdiction the court may regulate its own procedure independently of the Rules of Court.”

7. In furtherance of this discussion to this end section 83 (1) of the Law of Succession is explicit as to the duties of an administrator. “It isto 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.”
8. It is also evident that the said order was served on the petitioner on 22nd March 2023 as per the contents of the affidavit of service dated 16th April 2023. There is no evidence of compliance with the orders of the court on the part of the respondent.
9. Court orders are not issued in vain and when a party fails to comply with the same it is an affront to justice. The sanctity of the court must be respected and in that regard, I find the application is merited.
10. I hereby order that;
 1. A Notice to Show Cause be issued to the respondent to show cause as to why she should not be committed to civil jail for failure to comply with the orders of this court issued on 7th March 2023.
 2. That the notice to show cause be served through the Area Chief of Kipchamo Location.
 3. The status conference to adjudicate the notice to show cause be and is hereby scheduled for the 11th March, 2024.
 4. That this ruling having been read earlier but misfiled be presumed to be dispatched to the parties on the undersigned date so as to be within the other procedural dictates in the administration of justice.
 5. As this is a succession matter, to prevent further acrimony each party shall bear its own costs.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 13TH DAY OF
FEBRUARY, 2024**

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**R. NYAKUNDI
JUDGE**

