



REPUBLIC OF KENYA



**In re Estate of Alamin Said Ali (Deceased) (Probate & Administration
225 of 1991) [2024] KEHC 8782 (KLR) (9 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 8782 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
PROBATE & ADMINISTRATION 225 OF 1991**

G MUTAI, J

FEBRUARY 9, 2024

IN THE MATTER OF THE ESTATE OF ALAMIN SAID ALI (DECEASED)

BETWEEN

YAHYA SAID ALAMIN MANDHRY APPLICANT

AND

SAADA ALAMIN MANDHRY (DECEASED) 1ST RESPONDENT

RUKIYA ALAMIN MANDHRY (DECEASED) 2ND RESPONDENT

AND

ALI AL AMIN MANDHRY THIRD PARTY

RULING

1. The Third Party/Applicant petitioned this court for Letters of Administration de bonis non of the estate of the deceased herein, who died on 29th May 1991, limited to the part of the estate of the deceased remaining un-administered vide Petition filed on 30th September 2022.
2. The Petition is supported by the affidavit of the Third Party/Applicant sworn on 27th June 2022, vide which he stated that this Honourable Court vide a Certificate of Confirmation of Grant confirmed Saada Alamin Mandhry and Rukiya Alamin Mandhry as the administrators of the estate of the deceased. Unfortunately, on 6th April 2021 and 21st April 2021, both succumbed to Covid 19, leaving the estate un-administered.
3. The Third Party/Applicant averred that as a brother of the Respondents, a son of the deceased, and an equal beneficiary, he is seeking to be appointed by this Court as an administrator of the un-administered estate so as to proceed with the final distribution.



4. The Applicant/Respondent filed an objection to the making of the grant dated 2nd March 2023 on the grounds that he is a beneficiary of the estate of the deceased and that the Third Party/Applicant had been in collusion with the previous administrators, not to distribute the estate as directed by Hon. Kadhi on 10th July 2018 in Kadhi's Court Case No. 206 of 2006. Thus he could not be entrusted with the administration as he is untrustworthy and unaccountable.
5. The objection is supported by the affidavit of the Applicant/Respondent sworn on 2nd March 2023, vide which he stated that through a Certificate of Confirmation of Grant issued on 23rd December 1992, the Honourable Court confirmed Saada Al Amin Mandhry and Rukiya Alamin Mandhry as administrators of the deceased's estate. However, the estate could not be fully administered as the issue of distribution has been a subject of court proceedings before the Kadhi's Court in Mombasa KCC No. 206 of 2006.
6. He averred that the Third Party/Applicant had been in collusion with the previous administrators to deny him his rightful share as directed in the ruling of 10th July 2018 by the Honourable Kadhi. In his view, the appointment of the Third Party/Applicant as an administrator will cause a delay in the distribution of the deceased's estate, and that he will not be fair in distribution.
7. He further averred that the person to be appointed an administrator should be one who is capable of distributing the estate in accordance with the ruling of 10th July 2018 and proposed the appointment of the Public Trustee as an administrator of the estate of the deceased to administer the unadministered estate of the deceased.
8. In response to the Objection the Third Party/Applicant filed a Replying Affidavit dated 7th July 2023. He stated that the Objector is not a beneficiary of the estate nor a son of the deceased as claimed in the Objection to the Making of Grant. The claim that the estate was unfairly administered by the previous administrators had not been proven. He stated that the issue of unfair administration was dealt with by the Honourable Kadhi and that the orders of 10th July 2018 distributed property that did not belong to the deceased, which brought ambiguity in the distribution of the estate.
9. That the appeal regarding the said ruling could not be prosecuted due to lack of court proceedings. That the estate could not be fully administered due to Appeal No. 31 of 2018 which is yet to be determined.
10. He opposed the proposal by the Applicant/Respondent to have the Public appointed as an administrator of the estate of the deceased and averred that the Applicant/Respondent and the Public Trustee rank below him in order of priority pursuant under Section 66 of the *Law of Succession Act*.
11. He averred that he would administer the estate of the deceased faithfully and urged the court to allow his Petition.
12. The Applicant/Respondent filed an Answer to Petition sworn on 10th July 2023. He reiterated the position he had taken in the objection and its supporting affidavit.
13. The Third Party/Applicant, through his advocates Timamy & Co. Advocates, filed his written submissions dated 20th November 2023. The said counsels identified four issues as coming up for determination.
14. The first issue was the order of priority. Counsel relied on Section 66 of the Act and submitted that the Public Trustee ranks below him and that no good reason was given as to why the court should appoint the Public Trustee as an administrator of the estate of the deceased.



15. The second issue was whether the Applicant/Respondent had proved fraud or collusion, as alleged. Counsel for the Third Party/Applicant submitted that no evidence was tendered on this point.
16. The third issue was whether the Applicant/Respondent had locus standi. Counsel submitted that the Applicant/Respondent is a grandson of the deceased and not a beneficiary or dependant and thus has no legal claim to the estate and or locus standi, and thus, the objection should be struck out.
17. The last issue was whether there was a valid objection. Counsel urged that there was no valid objection. Reliance was placed on Section 69 of the Act. Counsel submitted that there being no cross-application filed, the objection proceedings are not complete, and there is no valid objection on the record. Counsel urged the court to allow the Petition for Grant de bonis non.
18. The Applicant/Respondent, through his advocates Mutanu & Co. Advocates, filed written submissions dated 8th December 2023. Counsel also identified four issues as coming for determination, namely, whether the Public Trustee should be appointed as the administrator of the estate, whether the Applicant/Respondent lacks locus standi, whether there is a valid objection, and who should bear the costs of the application.
19. On the first issue, counsel relied on Section 7 of the Public Trustee Act and submitted that the previous administrators had always colluded with the Third Party Applicant to deny the Applicant/Respondent his rightful share. She further submitted that having the circumstances of this matter in mind it was more suitable to have the estate administered by the Public Trustee as the appointment of the Third Party Applicant will cause delay in the distribution of the estate. Counsel relied on Section 66 of the Law of Succession Act and submitted that this court has discretion to decide on whom to grant the letters of administration. Counsel urged the court to appoint the Public Trustee as the administrator of the estate of the deceased to ensure that the final and fair distribution of the estate of the deceased is made.
20. On the second issue, counsel submitted that a litigant is clothed with locus standi upon obtaining a limited or full grant of letters of administration in cases of intestate succession. Counsel relied on Section 76 of the Law of Succession Act and submitted that any interested party in the deceased's estate may bring an application contemplated under the said Section or Rule 2 as read with Rule 17 (1) of the Probate & Administration Rules. The Applicant/Respondent brought the objection on behalf of his father, Said Alamin Mandhry, who has been unwell and is a beneficiary of the deceased's estate. He was also given power of attorney to file and represent his father in court, and therefore, he has locus standi to present the objection to the making of the grant.
21. On the 3rd issue, counsel relied on Section 69 of the Law of Succession Act and submitted that upon filing the objection to the making of the grant, he proceeded to file an answer to the petition dated 10th July 2023 in accordance with Section 68(1) of the Law of Succession Act and therefore the objection was validly filed and complete. The court should proceed to determine the issue of who should be granted the letters of administration de bonis non of the estate of the deceased.
22. On the fourth issue, counsel submitted that costs follow the event and should be awarded to the Applicant/Respondent.
23. In conclusion, counsel urged the court to allow the objection to the making of a grant and appoint the Public Trustee as an administrator of the estate of the deceased to administer the un-administered estate.
24. The Third Party/Applicant filed further written submissions vide which he reiterated the position in his previous submissions.



25. I have read the Petition filed by the Third Party/Applicant, the Objection filed by the Applicant/ Respondent, and the respective submissions of the parties. In my view, this matter largely turns on the question of the Applicant/Respondent's standing; can he represent his father's interests while his father remains alive?

26. On whether the Applicant/Respondent has locus standi, the court in the case of *Ibrahim vs Hassan & Charles Kimenyi Macharia, Interested Party [2019]* eKLR stated:-

“Locus standi is basically the right to appear or be heard in court or other proceedings. That means if one alleges the lack of the same in certain court proceedings, he means that party cannot be heard, despite whether or not he has a case worth listening. The issue herein is whether the Applicant lacks the requisite locus standi to seek relief from the court to revoke the grant in question issued to the Respondent. In my view, issues as regards locus standi are critical preliminary issues which must be dealt with and settled before dwelling into other substantive issues.

The position in law as regards locus standi in succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession. In *Otieno v Ougo [1986-1989]* EALR 468, the Court rendered itself thus:

“... An administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception.”

27. On the issue of the petitioner being a grandchild, the court in the case of In *the Matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013]* eKLR stated,

“Under Part V, grandchildren have not right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

28. On who is qualified to be an administrator of the estate of the deceased, Section 66 provides: -

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

- a. surviving spouse or spouses, with or without association of other beneficiaries;
- b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- c. the Public Trustee; and



d. creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

29. My understanding of the above decisions is that so long as the father of the Applicant/Respondent is alive, he (Applicant/Respondent) cannot purport to make a claim regarding the estate of the deceased. Put simply, he lacks standing. Without standing, the other grounds raised by him are moot.

Disposition

30. The Applicant/Respondent is the son of a beneficiary who is alive. As long as his father lives he has no locus standi to bring objection proceedings. Consequently, his objection to the making of the grant is dismissed forthwith.
31. In my view, it is necessary to complete the administration of the estate of the deceased without further delay. As the previous administrators of the estate are deceased, this Court must appoint another family member to administer the estate in their stead.
32. For the foregoing reasons, the letters of administration de bonis non of the estate of Alamin Said Ali (deceased) are hereby issued to Ali Amin Mandhry.
33. This being a family matter I make no orders as to costs.
34. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 9TH DAY OF FEBRUARY 2024. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

Gregory Mutai

JUDGE

In the presence of: -

Mr Timamy for the Applicant;

Ms Musyoki for the Respondent;

Arthur – Court Assistant.

