



REPUBLIC OF KENYA



**In re Estate of Adam Haji Ali Talib (Deceased) (Succession Cause 7 of 1987) [2024] KEHC 3532 (KLR) (1 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3532 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 7 OF 1987**

**G MUTAI, J**

**MARCH 1, 2024**

**IN THE MATTER OF THE ESTATE OF ADAM HAJI ALI TALIB (DECEASED)**

**BETWEEN**

**MOHAMED ALI ADAM HAJI ..... BENEFICIARY**

**AND**

**BILKISH ADAM HAJI ..... ADMINISTRATRIX**

**RULING**

1. Before me is the Summons dated 15<sup>th</sup> September 2023. Vide the said Summons, the Beneficiary/Applicant seeks the following orders:-
  1. “That the grant of Letters of Administration made to Bilkish Adam Haji in the estate of Adam Haji Ali Talib by this honourable Court on 5<sup>th</sup> October 2021 be revoked;
  2. That the honourable Court be pleased to order the appointment of Mohamed Ali Adam Haji as an administrator of the estate of Adam Haji Ali Talib (deceased) in place of Bilkish Adam Haji;
  3. That the honourable Court be pleased to issue an order prohibiting Bilkish Adam Haji from handling any proceeds, selling, leasing offering for sale, or letting out estate property, specifically Plot No 815/I/MN; and
  4. Costs of the application.”
2. The application is based on the grounds that the Administratrix/Respondent herein failed deliberately to observe and comply with the Court orders issued on 5<sup>th</sup> October 2021 to the detriment of the estate. Further, she embezzled the proceeds of the estate by failing to deposit all rental proceeds collected from Plot No 815/I/MN contrary to the said order, and she deliberately failed to administer the estate



faithfully and stood in contempt of Court orders. Finally, it was averred that she is hindering the disposition of the property pursuant to the Court order issued on 5th October 2021.

3. The application was supported by that annexed affidavit of the Applicant sworn on 15<sup>th</sup> September 2023 and the annexures attached thereto. In his affidavit, the Beneficiary/Applicant, Mohamed Ali Adam Haji (hereafter “the Applicant”), deposed that he is the son of the deceased Adam Haji Ali Talib (hereafter “the deceased”) and a brother to the Bilkish Adam Haji (hereafter “the Respondent”). It was his further deposition that despite the fact that the order was issued over 2 years prior to the filing of the application, the rent proceeds in respect of Plot No 815/I/MN had not been deposited in Court as directed. The rest of the beneficiaries had been held hostage by the acts of the Respondent. Her failure, the Applicant argued, was either a product of incompetence or malevolence. The Applicant accused the Respondent of embezzlement and plundering of the estate. He urged that he had the support of all the other beneficiaries to be appointed as an administrator.
4. The applicant thus urged that this Court invoke its wide discretion and issue an order revoking the Respondent’s appointment as an administrator “in a bid to stop any disposal of the property at a throwaway price that would be to the detriment of the estate”.
5. In his application, the Applicant invoked the provisions of section 76(d) (iii) and (iii), section 83(e), (f), (g), (h) and (i), and section 94 of the *Law of Succession Act* (hereafter “the LSA”) and Rules 44 and 73 of the *Probate and Administration Rules* (hereafter “the Rules”). The said Rules make provision for the orders that the Court may issue in the interest of justice.
6. The application was opposed by the Respondent Bilkish Adam Haji. She filed a Replying Affidavit sworn on 16<sup>th</sup> October 2023 vide which she averred that the deceased had 6 surviving beneficiaries at the time of his death to wit, Sakinabhai Adam Haji Ali (now deceased); Mustafa Adam Haji (deceased), Mohamed Ali Adam Haji, Bilkish Adam Haji, Najma Adam Haji, and Tazim Adam Haji.
7. She deposed that prior to her appointment as the administrator of the estate, the Applicant herein, together with his son Arshad Mohamed Ali, collected rent in respect of Plot No 815/I/MN and that they didn’t submit to her rental income at the time she took over in October 2021.
8. The Respondent accused the Applicant and his son of greed and of denying her a chance to meet their mother prior to her death. She averred that she was not handed any money by the Applicant and that when she took over, the property was in such a bad state of repair that some parts thereof were vacant.
9. To enable the property to be let, she caused the premises to be repaired by Baharini Property and partly by Laving Truck Parts. It was due to the cost of the repairs that she was unable to deposit any money in Court.
10. She further deposed that pursuant to the directions of the Court issued on 3rd April 2023, she caused the estate property to be advertised for sale by the Messrs. Mugema Auctioneers. The auction sale was, however, unsuccessful as the highest bid received was Kes.35,000,000/- which was way lower than the forced sale value of the property, as assessed by Messrs. Wasco Property Consultations, which was Kes 45,000,000/- with the open market value being Kes.60,000,000/-.
11. Bilkish denied that she was incompetent or had embezzled money. She further denied that the other beneficiaries were opposed to her. She averred that the Applicant, given his previous conduct, lacked the character to be appointed as an administrator as he had not accounted for the income that accrued to him at the time he had control of the suit property. The Respondent argued that no grounds warranting her removal had been provided. She, therefore, prayed that the Summons be dismissed.



12. She annexed to her affidavit a copy of an apology letter written by one Arshad Mohamed Ali, a Court order issued ex parte by Hon DW Mburu, SPM, on 17<sup>th</sup> August 2022 permitting her to see their mother, quotations by Amut Engineering Solutions Ltd, Baharini Properties Repairs and Laving Truck Parts (K) Ltd, photographs of the premises before and after repairs, which seem to show that the property's appearance was improved after the repairs and renovations undertaken on Plot No 815/I/MN from October 2021 to July 2023.
13. The Applicant filed a Supplementary Affidavit sworn on 24<sup>th</sup> October 2023, vide which he averred that the Respondent had admitted to disobeying Court orders. This contention was on the basis that the repairs the Respondent used to justify lack of adherence with the Court order were completed more than a year prior to the date the application was filed and "yet there is no attempt at compliance ever since."
14. The Applicant accused the Respondent of cherry-picking the court orders that she could comply with. He averred that he had never been the administrator of the estate or the person responsible for rent collection, which duties, he averred, fell on the previous administrator.
15. The Applicant further averred that the instant application was premised on the Respondent's conduct since she took over. In the said period, she had "continuously disobeyed Court's orders and pocketed all the rental proceeds, to the prejudice of all the other beneficiaries. For that reason, it was urged that this Court intervene and exercise its discretionary power to revoke the grant issued to the Respondent.

### **Submissions of the Parties**

16. On the 25<sup>th</sup> of October, 2023, this Court directed that the application would be canvassed by way of Written Submissions. Both the Applicant and the Respondent filed their respective Submissions. The submissions were highlighted on 27<sup>th</sup> November 2024. I shall look at each party's submissions, in turns below.

### **The Applicant's Written Submissions**

17. Kimathi & Co Advocates filed Written Submissions dated 3<sup>rd</sup> November 2023. In the said submissions, Mr. Kimathi, learned counsel for the Applicant, stated that the Respondent was issued with a fresh grant in place of Sakinabhai Adam Haji (deceased) on the 24<sup>th</sup> of September 2021. The Respondent was required to effect the distribution of the estate in accordance with the grant and where physical division was not possible, she was to seek appropriate orders for sale of the property by public auction to necessitate quick distribution of the estate to the respective beneficiaries. The Respondent was also ordered to collect rent in respect of Plot No 815/I/MN and to deposit the same in Court upon collection.
18. The counsel for the Applicant submitted that the Respondent collected rent in respect of the suit property but never deposited the same in Court as ordered. He further submitted that it was only after being ordered by this Court on 22<sup>nd</sup> March 2023 that the Respondent attempted to dispose of the property by public auction.
19. Mr Kimathi submitted that the Respondent was required under section 83(g) of the LSA to complete the administration of the estate within 6 months from the date the grant was issued to her and to produce to the Court a full and accurate account of the completed administration.
20. Counsel submitted that the Respondent had 2 further opportunities to sell the property, to wit:-



1. Within 90 days of 22<sup>nd</sup> March 2023, when she had the option of selling the property by public auction, subject to obtaining a court order; and
2. After 28<sup>th</sup> June 2023 when she was given the option to sell by private treaty.

In both instances, she was unable to comply.

21. It was urged that the Respondent had also failed to produce a statement of account.
22. Counsel submitted that given her conduct, the Respondent does not inspire faith, trust and confidence, and thus, her appointment ought to be revoked. Reliance was placed on the following cases:-
  1. [\*In re Estate of Agwang Wasiro \(deceased\)\*](#) [2020]eKLR;
  2. [\*In re Estate of Epharus Nyambura Nduta \(deceased\)\*](#) [2021]eKLR

### **The Respondent's Written Submissions**

23. Messrs. Mwamuye Mzungu Solomon & Co Advocates, *vide* their Written Submissions dated 10th November 2023, opposed the application.
24. Ms Mwanyika learned counsel from the said firm submitted that the Respondent complied with the orders of the Court issued on 3<sup>rd</sup> April 2023 by attempting to sell the suit property by public auction. The sale was, however, unsuccessful. She submitted that the Applicant insisted on the property being sold for at least Kes.45,000,000.00 even after an offer of Kes.40,000,000.00 was realised. She accused the Applicant of seeking to delay the matter further counsel. She urged that the summons are malicious, an afterthought, baseless and the same ought to be dismissed with costs.
25. The Respondent identified the single issue coming up for determination as being whether the grant of letters of administration issued on 24<sup>th</sup> September 2021 ought to be revoked. Ms Mwanyika argued, relying on W. Musyoka J's decision [\*In re Estate of Prisca Ongayo Nande \(deceased\)\*](#) [2020]eKLR, that although section 76 of the *LSA* permits revocation of the grant on the ground that there had been a failure to distribute the estate, such revocation was not automatic.
26. It was urged that the grant did not give the Respondent the power to distribute the estate. The Respondent repaired the building, resulting in an increment of rent collected from Kes.120,000/- per month to Kes.195,000/-, and the repairs were ongoing as of July 2023. The repairs also improved the property's value from Kes.35,000,000/- to Kes. 40,000,000/-, as demonstrated by the bids received.
27. Ms Mwanyika submitted that this Court's power to revoke the grant was discretionary and that I should not be quick to invoke it. She further submitted that her client has always been ready and willing to obey Court orders.
28. It was submitted that the duty of this Court was to uphold substantive justice. Counsel stated that no useful purpose would be served by revoking the grant. She urged that I invoke my powers under section 76 of the *LSA* and Rule 73 of the *Probate & Administration Rules* and dismiss the application with costs to the Respondent and order that the property Plot No 815/I/MN be sold through private treaty "and specifically through the offer of Kes.40,000,000/-"

### **Analysis and Determination**

29. From the Court record, it is apparent that this estate has a tumultuous history. The grant was issued on 14<sup>th</sup> July 1997 to Sakinabhai Adam Haji and was confirmed on 17th April 1998. On 16<sup>th</sup> March 2017,



the Respondent sought to have the grant revoked on the ground that her mother had failed, after due notice, to proceed diligently with the administration of the estate, had not provided accounts of the estate within 6 months after confirmation of the grant and for carrying out a conveyance in respect of the estate contrary to the confirmed grant. Although the conveyance of the suit property, Plot No 815/I/MN, in favour of Najma Adam Haji and Mustafa Adam Haji Ali, was declared a nullity, the grant was not revoked. The Court inter alia ordered Sakinabhai Adam Haji to reconvey the property to the beneficiaries within 30 days of 3rd May 2019 and to provide a full and accurate account on or before 3rd July 2019. It would appear to me that Sakinabhai Adam Haji never complied with the orders of the Court in the result that on 20<sup>th</sup> September 2021, the Respondent, in an application, sought to have her committed to civil jail for disobedience of the Court order.

30. Vide an application dated 18<sup>th</sup> March 2021, the Respondent sought the removal of her mother as an administrator, for her appointment as her administrator in her mother's place, and for the mother to provide full inventory and accurate accounts of the estate from 1993 up to the date. Her grounds for doing so were that her mother failed to comply with the orders issued on 3<sup>rd</sup> May 2019, 7<sup>th</sup> May 2018 and 10<sup>th</sup> March 2020.
31. After considering the said application, the Court invoked its jurisdiction under sections 47 and 66 of the *LSA* and Rule 73 of the *Rules* and removed Sakinabhai Adam Haji as the administratrix and replaced her with Bilkish Adam Haji. The Court observed in paragraph 22 of the ruling dated 24<sup>th</sup> September, 2021 that:-

“...The administratrix has failed to discharge her duties as required under sections 76 and 83 of the Law and Succession Act. Guided by sections 47 and 66 of the *Law of Succession Act*, plus Rule 73 of the Probate and Administration Rules, which grants Courts power to make orders geared towards attainment of substantive justice, I am persuaded that the administratrix herein is not fit to continue holding the grant for purposes of administration of the estate.”

32. The Court thus issued the following orders
  - a. The administratrix herein Sakinabhai Adam Haji is hereby replaced as the administratrix of the estate of the deceased with Bilkish Adam Haji as the fresh administratrix of the estate;
  - b. That a fresh grant to issue forthwith to the said Bilkish Adam Haji in place of Sakinabhai Adam Haji;
  - c. That the new administratrix to take over rent collections and cause rent collected in respect of Plot No 815/I/MN thereof to be deposited in Court upon collections;
  - d. That the fresh administratrix to effect distribution of the estate as per the confirmed grant and, where physical division is not possible, seek appropriate orders for the sale of the property by public auction to necessitate quick distribution of the estate to the respective beneficiaries;
  - e. That the new administratrix to appear in Court on 20<sup>th</sup> December 2021 to confirm compliance; and
  - f. Costs in the cause”
33. The appointment of the Respondent as an administratrix was a result of a great effort on her part against her own mother. The Court invoked its jurisdiction after it was convinced, on similar grounds as those used by the Applicant herein, that the estate had not been administered faithfully by Sakinabhai Adam Haji and that she had not rendered accounts of the estate.



34. For the said reason, the Court issued specific orders, of which the most relevant is that rent collected from Plot No 815/I/MN was to be deposited “in Court upon collection” and the estate was to be distributed “as per the confirmed grant.”
35. It is not in dispute that neither of the 2 things have occurred. Although the Respondent explained that the rent collections could not be deposited in Court as they were used to repair the property so that it could fetch higher rents. It is the view of this Court that no such election was given by the Court in the ruling dated 24<sup>th</sup> September 2021. A plain reading of the ruling is that all collections were to be deposited in Court without fail. If there was a need to repair the suit premises, the Respondent had the option of approaching the Court for an order that would permit her to use rent collection for repair or maintenance of the building.
36. It would appear to this Court that upon being appointed, the Respondent took no measure to effect the distribution of the estate. Statement of account was provided grudgingly, only upon the application of the Applicant. Despite receiving rents for a period of every 21/2 years the rent account had nominal balance on the statement date. It also took the effort of the Applicant to have her attempt sale of the suit property by public auction and private treaty.
37. The Court in *In re Estate of Prisca Ong'ayo Nande (deceased)* [2020]eKLR stated that:-

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

38. In *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*; Succession Cause No 158 of 2020 the Court stated that:-

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the Court to invoke section 76 and order to revoke or annul a grant. And when a Court is called upon to exercise this discretion, it must take into



account the interest of all the beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”

39. The Respondent had the duty to distribute the estate within 6 months of her appointment. Having litigated this issue against her mother, she was too aware of it. In the event she met difficulties she was free to approach Court, but she failed to do so. In the circumstances, I find and hold that there was no due administration on her part. To the contrary, she used the rent proceeds in an opaque manner.

40. She also failed to account to the Court as required by section 83(g) of the *LSA*. The necessity of providing accounts was discussed by E. Ogolla, J in *In re Estate of Mwaura Makuro [deceased]* eKLR. The Court stated that:-

“Production of accounts is a key component of the administration process of a deceased person's estate. From the moment the grant is issued to a personal representative of a deceased person, the grant holder becomes responsible to the Court in the carrying out of the duties of an administrator. Accounts are accountability tools that will tell the Court whether the administrator has been faithful to the role entrusted to him or her. When an administrator fails to file accounts as required, questions as to the integrity of the process are bound to arise as in the present case...”

41. The Respondent had the duty to provide the accounts within 6 months of her appointment. She failed to provide accounts and it was only after the Court intervened that she half-heartedly did so.

42. This Court thus agrees that the interest of justice demands that the Respondent be removed as an administrator pursuant to its jurisdiction under Sections 47 and 66 of the *LSA* and Rule 73 of the Probate and Administration Rules.

43. Although it is alleged that the Applicant intermeddled with the estate of the deceased by managing the suit properly, no evidence backing the said claim was provided. The Court notes that before the Respondent was appointed an administratrix, their mother, Sakinabhai Adam Haji held the said position and thus presumably managed the suit properly and collected the rents accruing.

44. The Administratrix/Respondent failed in her duty to administer the estate with diligence. She didn't complete the distribution of the estate within a reasonable time. If she remains an administratrix, the estate may never be fully distributed.

45. Accordingly, I revoke her appointment as the administrator of the estate and appoint Mohamed Ali Adam Haji as the new administrator. The new administrator must complete the administration of the estate within 6 months, failing which he will be removed. Fresh grant to issue forthwith.

46. In the interest of justice, I order that:-

1. Bilkish Adam Haji produces a statement of account of the estate for the period she was the administratrix;
2. All incomes due to the estate to be deposited in Court forthwith without any deductions;
3. Plot No 815/I/MN to be sold by public auction within 90 days and the proceeds therefrom distributed as per the confirmed grant; and
4. Mention on 18th June 2024.

47. This being a family matter all parties shall bear own costs.

48. Orders accordingly.



**DATED AND SIGNED THIS 1ST DAY OF MARCH 2024 AT MOMBASA.**

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Ms. Mwanyika for the Administratix/Respondent;

Mr. Kimathi for the Applicant/Beneficiary; and

Arthur - Court Assistant.

