



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Amina Juma Kasam (Deceased) (Succession Cause
667 of 2014) [2024] KEHC 4813 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4813 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 667 OF 2014
TW CHERERE, J
APRIL 18, 2024**

BETWEEN

GULZAR ABDUL WAIS 1ST ADMINISTRATOR

RESHIMA JUMA 2ND ADMINISTRATOR

AND

YASMIN RASHID GANATRA 1ST PROTESTOR

TARIQ ABDUL RASHID 2ND PROTESTOR

RIZVAN A. RASHID 3RD PROTESTOR

NAUSHEEN GANATRA 4TH PROTESTOR

RULING

1. As stated by Gikonyo J in his judgment dated 28th July, 2021, this cause which has been in the courts for over a decade has span from Succession Cause, Civil Case and Constitutional Petition due its highly contested issues.
2. In the aforementioned judgment, the court established that deceased's estate comprised in the following assets:
 1. Nairobi LR. No. 209/4300/109
 2. LR. No. Ntima/Igoki/5685
 3. LR. Ntima/Igoki/1597
 4. M/V KXP 101 M/Benz
 5. Bank account No. 006100010258



3. The court after hearing both parties on a protest filed by the Protestors/Applicants distributed the 1st floor of LR. No. Ntima/Igoki/5685 to the Protestors and all the other assets jointly to the Administrators/Respondents.
4. Subsequent to the judgment, the Certificate of Confirmation dated 31st January, 2017 was rectified by an Amended Certificate of Confirmation was issued on 28th July, 2021.
5. I however notice that the Amended Certificate of Confirmation issued on 28th July, 2021 has an inadvertent error in that it does not refer to the balance of LR. No. Ntima/Igoki/5685 that was distributed to the Administrators/Respondent.
6. To date, the estate of the deceased has not been distributed and the parties are back to court with issues relating to distribution of the estate.
7. By summons dated 05th April, 2023, the Protestors/Applicants fault the Administrators for not distributing the estate, threatening to evict them and pray that for orders that;
 - a. The grant issued to the Administrators on 23rd January, 2017 and rectified on 28th July, 2021 be revoked and the same be issued to the Protestors
 - b. The Respondents be restrained from in any way interfering with the Protestors/Applicants occupation and user of LR. No. Ntima/Igoki/5685 and LR. Ntima/Igoki/1597 pending the distribution of the estate
8. In support of the summons, Protestors/Applicants have relied on the 1st Protestor/Applicant's affidavit sworn on 05th April, 2024 in which the grounds on the face of the application have been reiterated. Annexed to the supporting affidavit is a letter dated 08th December, 2022 in which the Protestors/Applicants through their advocate reminded the Administrators/Respondents of their failure to distribute the estate and also gave notice that they would seek revocation of the grant on the ground of that failure. Also annexed is a proclamation for attachment of goods for alleged rent arrears of Kes. 300,000/- owed the 3rd Protestor/Applicant Rizvan A. Rashid.
9. In their response, the Administrators/Respondents opposed the summons by way of a replying affidavit sworn by Gulzar Abdul Wais in which she faults the Protestors/Applicants of occupying LR. Ntima/Igoki/1597 and the ground floor of LR. No. Ntima/Igoki/5685 which were bequeathed to the Administrators/Respondents and additionally that they have instructed their advocate to appeal the judgment dated 28th July, 2021.

Analysis and Determination

10. I have considered the summons dated 05th April, 2023 in the light of the affidavits on record and annexures thereto.
11. Section 76 of the *Law of Succession Act* Cap 160 Laws of Kenya (the Act) provides as follows:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

 - (a) that the proceedings to obtain the grant were defective in substance;
 - (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;



- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.”

12. Additionally, the duties of administrators under the provisions of Section 83 of the *Act* was enunciated in *Re Estate of Wilfred Munene Ngumi (deceased)* [2020] eKLR where the court stated that:

“Section 83(g) of the *Act* mandates administrators of an estate to, within six months of confirmation of grant or longer period as the court may allow, complete the administration of the estate, and to produce to the court a full and accurate account of the complete administration....”

- 13. No doubt the Administrators/Respondents have since 28th July, 2021 not distributed the estate which is in contravention of the Sections 76 (d) (ii) and (iii) and Section 83(g) of the *Act*.
- 14. Administrators/Respondents’ explanation that the estate has not been distributed for the reason that Protestors/Applicants are in occupation of LR. Ntima/Igoki/1597 and the ground floor of LR. No. Ntima/Igoki/5685 is unjustifiable for the reason that the whole estate remains undistributed and no party can claim to have a better title than the other.
- 15. The provisions of Section 76 (1) (d)(ii) as cited above allow this court to revoke grant of letters of administration in the event the administrator has failed after due notice and without reasonable cause to proceed diligently with the administration of the estate. (See In *re Estate of Agwang Wasiro (Deceased)* (2020) eKLR and In *re Estate of the Late Njonjo Kibiga (Deceased)* [2022] eKLR).
- 16. Court frown upon parties that do not comply with court orders. If for any reason the Administrators/ Respondents had difficulty in complying with the court orders, the honourable thing to do was to come back to court and explain the difficulties faced by the need to comply with the order for the reason that once a Court order is made in a suit, the same is valid unless set aside on review or on appeal
- 17. By failing to transmit the estate to the beneficiaries, the Administrators/ Respondents have not only acted maliciously and with unfairness but have no doubt prejudiced the Protestors/Applicants who have a legitimate expectation to receive their share of the Deceased’s estate as ordered by the court and this calls for sanctions against the defaulting parties.



18. The foregoing notwithstanding, I decline to revoke the grant and graciously grant the Administrators/ Respondents additional time to ensure distribution of the estate.
19. Consequently, the summons dated 05th April, 2023 is considered and determined in the following terms:
1. Amended Certificate of Confirmation issued on 28th July, 2021 shall further be amended to reflect that the ground floor of LR. No. Ntima/Igoki/5685 shall be distributed jointly to Administrators/Respondents Gulzar Abdul Wais and Reshima Juma
 2. The Administrators/Respondents Gulzar Abdul Wais and Reshima Juma have 45 days to complete transmission of the estate to all the beneficiaries of the deceased
 3. In the event that the Administrators/Respondents do not comply with order (2) above, this court hereby authorizes and empowers the Deputy Registrar of this court to sign all the necessary transmission documents on behalf of the Administrators/Respondents Gulzar Abdul Wais and Reshima Juma and on behalf of any other defaulting party to ensure that the estate of deceased is transmitted with finality
- c. Pending the transmission of the estate, the Administrators/Respondents Gulzar Abdul Wais and Reshima Juma are restrained from in any way interfering with the Protestors/Applicants, occupation and user of and ingress to and egress from the 1st floor of LR. No. Ntima/Igoki/5685 which was distributed to them
20. Mention on 12th June, 2024 to confirm transmission
- Costs shall be in the cause

DELIVERED AT MERU THIS 18TH DAY OF APRIL 2024

T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Administrators/Respondents - Mr. Nyaga for Kiautha Arithi & Co. Advocates

For Protestors/Applicants - Ms. Aketch for Vivian Loice Aketch & Co. Advocates

