



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Amina Juma Kasam (Deceased) (Succession Cause
667 of 2014) [2024] KEHC 4814 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4814 (KLR)

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

RULING

1. Gikonyo J in his judgment dated 28th July, 2021 established that deceased's estate comprised in the following assets:
 - Nairobi LR No 209/4300/109
 - LR No Ntima/igoki/5685
 - LR Ntima/igoki/1597
 - M/V KXP 101 M/BENZ
 - Bank Account No 00610001XXXX
2. 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.
3. Subsequently, the Certificate of Confirmation dated 31st January, 2017 was rectified by an Amended Certificate of Confirmation was issued on 28th July, 2021.
4. 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.
5. 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.
6. By summons dated 18th April, 2023, the Administrators/Applicants fault the Protestors/Respondent of failing to vacate the ground floor of LR No Ntima/igoki/5685 and for utilising LR Ntima/igoki/1597 that were distributed to them to their detriment.
7. By a replying affidavit sworn on behalf of the Protestors/Respondents by Yasmin Rashid Ganatra on 09th May, 2023, they fault the Administrators/Applicants of not distributing the estate as directed by



the court and of attempting to evict them and make their access to the 1st floor of LR No Ntima/igoki/5685 since they can only get right of access after the asset has been converted into sectional property which the administrators have not implemented. He additionally avers that they only occupy one store on LR Ntima/igoki/1597 which fact the Administrators/Applicants did not controvert.

Analysis and Determination

8. I have considered the summons dated 18th April, 2023 in the light of the affidavits on record and annexures thereto.
9. There is no doubt that the Administrators/Respondents have since 28th July, 2021 not distributed the estate which is in contravention of Sections 76 (d) (ii) and (iii) and Section 83(g) of the [Law of Succession Act](#).
10. In attempting to evict the Protestors/Respondents, the Administrators/Applicants are putting the cart before the horse and this court declines the invitation to afford them an opportunity to benefit from their disobedience of the court order contained in the judgment dated 28th July, 2021 that directed them to distribute the estate.
11. Consequently, the summons dated 18th April, 2023 is considered and found to have no merit and it is dismissed with an order that each party bears its own costs.
12. This cause will be mentioned on 12th June, 2024 to confirm transmission

DELIVERED AT MERU THIS 18TH DAY OF APRIL 2024

T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

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

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

