



In re Estate of Husseinbhai Karimbhai Anjarwalla (Deceased) (Succession Cause 118 of 1989) [2024] KEHC 4157 (KLR) (15 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4157 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 118 OF 1989
G MUTAI, J
APRIL 15, 2024
IN THE MATTER OF THE ESTATE OF HUSSEINBHAI
KARIMBHAI ANJARWALLA (DECEASED)**

BETWEEN

SALMA ANJARWALLA APPLICANT

AND

SALIM ANJARWALLA 1ST RESPONDENT

TEHZEEN ANJARAWALLA 2ND RESPONDENT

RULING

1. The parties hereto are siblings, being the son and the daughters of Husseinbhai Karimbhai Anjarwalla and Mehmuda Husseinbhai Anjarwalla (both deceased). The estates of the two deceased persons are subjects of contestation between the parties. As they are closely intertwined, the instant cause has always been heard and or considered together with Mombasa High Court Succession Cause No. 66 “A” of 2017; In the Matter of the Estate of Mehmuda Husseinbhai Anjarwalla(deceased).
2. On the 2nd February 2021, M. Thande, J delivered a ruling in respect of Summons for Confirmation of Grant. The Court, in part: -
 1. Confirmed the Grant of Letters of Administration with Written Will Annexed made to Salim Anjarwalla, Salma Anjarwalla and Tehzeen Anjarwalla;
 2. Distributed the estate of the deceased in ratios given in the said ruling; and
 3. Ordered the administrators to cooperate and work together to give effect to the orders therein.
3. Although the Court exhorted the parties hereto to work together to distribute the deceased's estate in accordance with the confirmed grant, no progress was made as the disputants were unable to cooperate.



4. Vide Summons for Removal of a Co-Administrator and Rectification of Confirmation dated 24th May 2021 Tehzeen Anjarwalla, the 3rd Administrator/Respondent, sought to have Salma Anjarwalla (the 2nd Administrator/Applicant) removed as a co-administrator on the ground that she was frustrating the distribution of the estate.
5. After hearing the parties, Onyiego, J delivered a ruling on 27th May 2022. The Court was not convinced that the reasons given by Salma Anjarwalla for her refusal to sign transfers were justified. The Judge pithily observed that:-

“She should honour the Court order or she exits so as to enable the rest of the administrators serve her.”
6. In paragraph 31 of the said ruling, the Court stated: -

“Having found as above, I am inclined to find that Salma is obligated to execute all necessary transfer forms or any other documents relevant to facilitate full and complete administration and distribution of the estate within 45 days; in default, she shall cease to be an administrator and a fresh grant issued to the remaining administrators.”

The Notice of Motion dated 8th July 2022

7. On 12th July 2022, Salma Anjarwalla filed a Notice of Motion dated 8th July 2022, vide which she sought the following orders:-
 1. That the application be certified as urgent and service thereof be dispensed with in the first instance;
 2. That the honourable Court be pleased to discharge order 1 of the order issued by this honourable Court on 27th May 2022; and
 3. That the costs of and incidental to this application be in the cause.
8. The grounds upon which the said application was sought were that she had complied with the order of the Court and that “it is right and just that order 1 of the order issued on 27th May 2022 be discharged”.
9. The application is opposed by the 1st and 3rd Administrators/Respondents.
10. Tehzeen Anjarwalla deposed to 4 affidavits sworn on 26th September 2022, 27th March 2023, 24th April 2023 and 16th November 2023, vide which she contended that Salma Anjarwalla had not complied with the Court orders and ought, therefore, to be removed as a co-administrator. Tehzeen pointed out that Salma Anjarwalla failed to cooperate with her fellow co-administrators to have the estate accounts prepared and or audited. She accused her sister of misleading the Court, raising legal technicalities, twisting semantics and ignoring Tehzeen’s responses to her averments. She, therefore, prayed that the application be dismissed with costs.
11. Salim Anjarwalla also opposed the application. He, too, asserted that Salma had not fully complied with the court’s orders.

Submissions of the Parties

12. The Notice of Motion dated 8th July 2022 was heard on 18th December 2023. Mr. PM Gachuhi, learned counsel for Salma Anjarwalla, relied on his client’s 4 affidavits. He urged that Salma had complied with the Court orders. Mr Gachuhi submitted that Salma had produced a status report



which showed that the only thing pending on her side was the transfer of the interest in Habib Bank Limited UK. In her view, transfers of shares in Nation Media Group PLC were pending action by the share registrar. Counsel further submitted that recovery of Salim Anjarwalla's debt to the estate, as well as the distribution of the Shanzu property, had also not been concluded. The latter property is the subject of pending litigation as the decision of the Environment and Land Court was appealed to the Court of Appeal.

13. Counsel urged that full distribution of the estate's assets was only possible if all the administrators worked together. In support of this proposition, the Court was referred to the holdings in *Gulam Mohamed Noor v Bahadul Noor Mohamed Gulam & another* [2017]eKLR and *Zeinab Khalifa Khator & 4 others v Abdulrazak Khalifa Salim & another* [2017]eKLR.
14. Lastly, Mr. Gachuhi urged that there was no removal application pending before the Court as the same had been dealt with by Onyiego, J.
15. Mr Njoroge Regeru, SC, learned counsel for Tehzeen Anjarwalla, submitted that the grant was confirmed by Thande, J, despite Salma Anjarwalla's objection. He urged that Thande, J's ruling, dealt with each and every objection raised by Salma and distributed all the properties of the deceased. The said ruling wasn't appealed against or otherwise reviewed. Counsel submitted despite the fact that Onyiego J's order was self-executing, it hadn't been complied with to date. It was submitted that Salma refused to sign documents sent to her and did not attend meetings when requested or do anything to resolve the matter.
16. Mr Regeru submitted that Salma's removal as an administrator wouldn't affect her interest and that if the remaining administrators failed in their duties, she had remedies at law that she could pursue. He urged that the two estates being old, there was a pressing need to have them both concluded without further delay. He, therefore, submitted that Salma be removed as she was an impediment to the conclusion of the administration.
17. Mr. Echesa, learned counsel for Salim Anjarwalla, also opposed the application. He adopted his Written Submissions. Counsel urged that Salma's counsel hadn't argued that the estate had been fully administered. The Court was referred to Salma's Supplementary Affidavit wherein she deposed that she couldn't transfer the Shanzu property. Regarding the loan supposedly owed by his client to the estate Mr Echesa submitted that the same was unproven. Regarding Shanzu, property counsel submitted that litigation was concluded and that there was no stay pending appeal. Counsel, thus, urged that I dismiss the application.
18. In a rejoinder, Mr. Gachuhi submitted that there was no removal application before the Court as Onyiego J had dealt with the said application. He submitted that the application before the Court sought to discharge orders issued against his client. Counsel urged that the only pending matter was the transfer of the Shanzu property. The same could not be transferred as litigation is pending. It was urged that I should not remove Salma over historical issues. Mr. Gachuhi submitted that Salim Anjarwalla was the impediment to the distribution of the estate.

Analysis and Determination

19. The only purpose of the succession proceedings in my view is to distribute the estate of the deceased. W. Musyoka, J held in *In re Estate of Atibu Oronje Asioma (Deceased)* (Succession Cause 312 of 2008) [2022] KEHC 11046 (KLR) (22 July 2022) (Ruling) that:-

“The design of the *Law of Succession Act* is that the mandate of the probate court is limited to distribution of the assets, and where a dispute arises on ownership of any asset, then the



same should be placed in another forum, and not the succession cause, for litigation and determination.”

The administrators have the duty to ensure that they work together so that the said goal can be accomplished without delay.

20. The orders made by Thande, J and Onyiego, J are, in my view, clear enough and need no elucidation. The latter ruling directed Salma to execute all the requisite documents within 45 days, failing which she would be removed automatically without further orders from the Court. The said orders, as the Counsels for the Respondents have submitted, were self-executing.

21. I disagree with the premise upon which Mr. Gachuhi’s submissions are based. My understanding of the ruling delivered by Onyiego, J, is that he found Salma to have failed in her duties as an administrator. The court, rather than remove her immediately, gave her time to remedy her conduct.

22. Has Salma complied with the order issued by Onyiego, J? In this Court’s view, she failed to do all she was required to do so that there could be “full and complete administration and distribution of the estate.” I say so as the following matters are pending conclusion due to what any disinterested person would see as her foot-dragging:- Transfer of the estate interest in Habib Bank PLC, United Kingdom; Transfer of the Shanzu property Preparation of the estate accounts.

Her inaction appears to be motivated by a desire to relitigate issues that the court previously determined. I do not think that this Court should condone such conduct.

23. Although she has given reasons for her refusal to complete the transfers, this Court is unconvinced. She did not demonstrate how or why the transfer of the estate interest in Habib Bank could not be done. Regarding the Shanzu property, she did not furnish the Court with an order staying transfer of the same to the beneficiaries. In the submissions filed on her behalf by her counsels, it is conceded that quite a number of matters remain outstanding.

24. As Salma Anjarwalla conceded that there are pending transfers that have not been completed, I am not convinced that her continued role as an administrator is tenable. Having not fully complied with the order that the Court gave almost 2 years ago, this Court finds and holds that the prayer for discharge of orders that are adverse to her has no merit. The same is hereby dismissed.

25. In any event, in light of the arguments that she has raised, her continued tenure as an administrator merely creates a stalemate that impedes the distribution of the assets of the estate to the beneficiaries. Litigation should end. In a similar vein, the distribution of the deceased’s estate cannot be delayed forever. As it this this matter has been pending in the Probate Court for 35 years. A person born 35 years ago is most likely a parent with school-going children.

26. The orders that the Court gave on 27th May 2022 were, as I have stated, self-executing. Salma neither appealed against the said decision nor sought to have it reviewed. In the circumstances, I order that a new grant be issued to Tehzeen Anjarwalla and Salim Anjarwalla forthwith.

27. I have made the above determination with a heavy heart. Removal of an administrator, just like with the revocation of grant should be done sparingly and only in the most deserving of cases. In *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR EC Mwita, J held that:-

“ 13. 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 wrong doing 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 interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”

Giving effect to the decision of Onyiego, J, would appear to me to be the only logical thing to do so as to bring this matter to a close.

28. Further order that this matter be mentioned before me on 9th May 2024 for further directions.
29. As this is a family matter I make no order as to costs.
30. Orders accordingly.

DATED AND SIGNED THIS 15TH DAY OF APRIL 2024 AT MOMBASA.

GREGORY MUTAI

JUDGE

In the presence of: -

Mr Echesa for Salim Anjarwalla;

Ms Ng'onde holding brief for Mr Njoroge Regeru, SC, for Tehzeen Anjarwalla;

Ms Onyango holding brief for Mr Gachuhi for Salma Anjarwalla; and

Arthur - Court Assistant.

