



In re Estate of Anna Wanjiku alias Hannah Wanjiku Mungai (Deceased) (Succession Cause E030 of 2020) [2024] KEHC 7020 (KLR) (22 May 2024) (Ruling)

Neutral citation: [2024] KEHC 7020 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E030 OF 2020
SM MOHOCHI, J
MAY 22, 2024**

BETWEEN

**MOSES NJUGUNA MUNGAI 1ST APPLICANT
JOYCE MUNGAI 2ND APPLICANT
DAVID KIRUGA MUNGAI 3RD APPLICANT
GLADYS WANGUI NJEHIA 4TH APPLICANT**

AND

GEORGE MUIGAI NJEHIA RESPONDENT

RULING

1. On the 25th January 2024, this court delivered a ruling following an application by the respondent on the following terms;
 - i. An Order for reasonable provision of Kshs 300,000/- is hereby made in favour of the Applicant Joseph Wanyoike Mungai payable by the Administrators Jointly and severally not later that 5th Day of every calendar month.
 - ii. The Administrators shall file a summons for confirmation of grant of letters of administration intestate within Sixty 60 days from today.
 - iii. A default of Order (a) or (b) above shall automatically lead to the automatic revocation of the grant dated 12th March 2021.
 - iv. A Mention Date to be assigned by the Court Assistant Court number 3 to confirm filing of the summons for confirmation.
 - v. This Being a family matter, parties shall bear their own Costs.



2. It is noteworthy that the Applicants participated in the proceedings until the 3rd November 2023 when the court allowed the Applicants a further seven (7) days to file their written submissions as requested by Oseko Advocate.
3. The Applicants have now filed the instant summons dated 7th February 2024 brought pursuant to Sections 1A, IB & 34 and 63(e) of the *Civil Procedure Act*, Cap 21 Laws of Kenya, Rules 63 of the *Probate and Administration Rules* craving for the following reliefs;
 - i. Spent
 - ii. Spent
 - iii. That, the Court be pleased to set aside the *ex parte* ruling entered on 23rd January, 2024 against the deceased's estate.
 - iv. That, the court be pleased to grant leave to the Administrators to file and serve their Response to the Application dated 20th June, 2023 and defend the application generally and the resultant Response be deemed as properly filed and be considered during determination of the aforementioned application.
 - v. That the costs of this Application be in the cause.
4. The Applicants now contend that, the Application was undefended and now seek to be allowed to re-argue the Application owing to alleged mistake and inadvertence by their previous advocates.
5. By the Supporting and Supplementary Affidavit dated 7th February 2024 and 25th March 2024, Moses Njuguna Mungai the 1st Applicant depones that, their previous Advocates Ms Mirugi Kariuki & Co. Advocates had instructions from the Applicants to file a response to oppose the said application vehemently and to outline the financial limitations facing the estate, thus their incapability to meet the demands of the aforementioned beneficiary.
6. That, indeed the previous Advocates did file a Replying Affidavit on the 12th July 2023, and written submissions on the 27th November 2023 and the Applicants have provided extracts bearing the court stamp.
7. That, it has now come as a surprise to the administrators that the said Application was undefended hence the ruling which is prejudicial to the interests of the estate and its beneficiaries.
8. That, deliberations by the administrators with the said law firm has revealed that the response had court stamp affixed on the front page of the response but upon perusal of the file, there therein
9. That, the failure by the appointed advocates to properly file the said Response should not be meted upon the estate, the administrators and its beneficiaries.
10. That, the Application being heard, adjudged and determined without the administrators considered only serves to prejudice the interests of the estate and those of the other beneficiaries.
11. That, pertinently, mistakes of counsel ought not to be visited on an innocent litigant. To appreciate that the door of justice is not closed on account of an advocate's mistake.
12. That, no prejudice will be occasioned on Respondent if the representations of the administrators are considered. Considering that the said beneficiary continues to enjoy the fruits of the estate by collecting rental income in the sum of approximately Kshs. 90,000/= from one of the properties of the estate.



13. That, furthermore, the Respondent has been a thorn in the flesh to the estate and its beneficiaries, having refused to attend family meetings scheduled by the administrators to discuss and deliberate on the issues of ultimate distribution of the estate.
14. That, were it not for the Respondent's actions, the said estate would have been distributed in accordance with Section 29 and 26 of the Law of Succession Act, thus dispensing with the need for his application.
15. That, the Respondent cannot continue to arm-twist the estate and its beneficiaries and certainly cannot be aided by this Honourable Court to do so, on account of an intended omission and mistake by the appointed counsels for the administrators and estate.
16. That considering that the said estate cannot even raise the ordered sum of Kshs. 300,000/=, since its rental collections are already reduced by Respondent's collections, and on account of all the loan obligations of the estate, it is trite that this court considers that the order issued is incapable of being implemented.
17. That the administrators and indeed the beneficiaries face the risk of being in contempt of a court order for reasons that the estate cannot raise the monthly ordered sum of Kshs. 300,000/= for the estate is financially bereft.
18. That it is trite thus, that this succession court, in the interests of justice that the court sets aside the ex-parte order and grants the administrators another opportunity to defend the interests of the estate and the other beneficiaries.

Respondent's Case

19. The Respondent opposes the Application through his undated sworn Affidavit filed on the 11th March 2024, by contending that the same is grossly incompetent and an abuse of the process of the court and should be dismissed accordingly.
20. That the Respondent is not in any meaningful employment and therefore he requires dependency provision on his own behalf and that of his children.
21. The Applicants response gravitates and revolves around his predicaments, his foresight on the estate, its magnitude in the Nature of rental yields. The Respondent denies collecting rent from assets belonging to the estate of the deceased.
22. The Respondent contends that the Applicants never raised any objection or Appealed against the Impugned Order and that the Administrator's Role has been diminished following the court order and that the Administrator has no funds from an estate worth kshs 80,000,000/- from which estate he the Administrator has been collecting money from since the deceased demise.
23. That there is urgent need for professional management of the estate pending resolution of the Succession dispute, no account has been rendered to the court.
24. In submission the Applicant argues that the court should be guided by the Childs best interests' principles noting that the grand-children of the deceased who he submits are of tender years of twenty-two (22) years, fifteen (15) years, Six (6) years and two (2) years.
25. The Respondent further submits on the need by the court to order for his provision and that its desirable that the letter and spirit of the law of succession be followed.



Issue(s)

26. The solo issue crystalizing for this court is, whether the Applicants have made out a case to review the Ruling dated 25th January 2024 and set-aside the resultant orders.

Analysis & Determination

27. This Respondent had sought to revoke the Grant issued but in its ruling of 25th January 2024 this court restrained itself from revoking the grant and created a self-trigger mechanism, that the grant would automatically stand revoked if the Administrators failed to comply with the ruling.
28. In this instance it is crucial to locate the law affording this court powers of review and setting aside of orders Order 45 Rules (1) and (2) of the Civil Procedure Rules and Rules 63 and 73 of the Probate & Administration Rules, provided the legal basis for the application.
29. Although this is a succession cause, Order 45 of the Civil Procedure Rules would apply herein by dint of Rule 63 (1) of the Probate & Administration Rules.
30. Indeed, in John M. Njoroge & Others v Cecilia M. Njoroge & Others [2016] eKLR, the court held: -
“As stated above, the only provisions of the Civil Procedure Rules imported to the Law of Succession Act are orders dealing with service of summons, interrogatories, discoveries, inspection, consolidation of suits, summoning and attending witnesses, affidavits, review and computation of time. Clearly, Order 45 relating to review is one of the Civil Procedure Rules imported into succession practice by Rule 63 of the Probate & Administration Rules. An application for review in succession proceedings can be brought by a party to the proceedings, a beneficiary to the estate or any interested party. However, the application must meet the substantive requirements of an application brought for review set out in order 45 of the Civil Procedure Rules.”
31. Thus, the substantive requirements of Order 45 of the Civil Procedure Rules, which deals with review are firstly, the discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant and could not be produced at the time when the decree was passed. Secondly, an applicant must demonstrate that there has been some mistake or error apparent on the face of the record. Thirdly, review can be possible for any other sufficient reason.
32. In sum, Order 45 of the Civil Procedure Rules and Rule 63 of the Probate & Administration Rules, is the framework to be invoked alongside Rule 73 of the Probate & Administration Rules, which provides for the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court, in the application by the applicant/Administrators dated 7th February 2024 which never explicitly invoked Order 45 which in this instance was not fatal as it was apparent the impugned orders had aggrieved the Applicants thus intended to remedy the situation however nothing has been placed before this court in persuasion that this court can invoke Order 45 of the Civil Procedure Rules and Rules 44,63 and 73 of the Probate & Administration Rules.
33. The Applicant filed the instant Application seeking an equitable relief of review and setting aside this court’s orders dated 25th January 2024 the Applicant were expected to demonstrate a high degree of *bonafide* which in this instant is lacking.
34. The Applicants have in fact not complied with this court’s direction to file a status report as directed on 22nd June 2023.



35. The Applicants did propose on the 18th July 2023 through Kahiga Advocate to file a summons for confirmation of grant within fourteen (14) days from this day and the same is yet to happen.
36. This Court finds that the Applicants have not shown any discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicants and could not be produced at the time when the order was made.
37. The Applicants fully participated in the Application giving rise to the Order of 25th January 2024 and that the same cannot be termed as *ex-parte*. The Applicants had all the opportunity to oppose the Application giving rise to the impugned ruling.
38. This Court finds that the Applicants have not shown any mistake or error apparent on the face of the record that would warrant a review and resultant setting aside of orders.
39. As earlier intimated the Applicants are not of clean hands and cannot be heard to argue that they are innocent of any laches. The Applicants appear to forget that the Authority they exercise in the estate of the deceased is only Donated to them by the Grant dated 12th March 2021 and that the purpose of administration is to settle all liabilities and distribute the net estate.
40. With regards to the Respondent, his response and submissions were misplaced and I shall not regurgitate the same but it is important to clarify that this succession only concerns itself with the beneficiaries to this estate and nobody else. That the Respondent's children have never been and will not be dependants or beneficiaries to this estate unless he predeceased them.
41. The Failure to comply with all aspects of the impugned order and the continued refusal by the administrators to file a status update or statements of account deprive the Applicants of any equitable remedies.
42. The court reiterates that the sibling rivalries can only be resolved by distributing the estate of the deceased of which the Applicants have filed to exhibit an appetite to distribute the estate.
43. The upshot is that, the Application Summons dated 7th February 2024 is without merit and the same is accordingly dismissed.
44. For avoidance of doubt, the grant made to the Administrators dated 12th March 2021 stands revoked.
45. The Respondent may consider Applying to administer this estate by filing a fresh petition for issue of grant of letters of administration intestate.
46. The court shall not make any order as to costs, this being a family matter.
47. This Probate and Administration shall be marked as closed.

Dated, Signed and Delivered at Nakuru On this day of 22nd Day of May, 2024.

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S. Mohochi

JUDGE

