



In re Estate of the Late Mohammed Ahmed Ali (Succession Cause E075 of 2022) [2024] KEHC 6886 (KLR) (7 June 2024) (Ruling)

Neutral citation: [2024] KEHC 6886 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E075 OF 2022**

JRA WANANDA, J

JUNE 7, 2024

IN THE MATTER OF THE ESTATE OF THE LATE MOHAMMED AHMED ALI

BETWEEN

SOFIA ALI 1ST APPLICANT

FARIDA ALI 2ND APPLICANT

AND

TRUPHENA TAPEN KUKO 1ST RESPONDENT

LEILA MOHAMED ALI 2ND RESPONDENT

RULING

1. The Application herein seeks Revocation or annulment of the Grant of Letters of Administration issued in this Cause.
2. The background of the matter is that the deceased, Mohamed Ahmed Ali, died intestate on 25/01/2016 at the age of 63 years. On 5/07/2022, the Applicants and the Respondents (4 of them) jointly applied for Letters of Administration over the estate. According to the letter from the Chief relied upon in filing the Petition, the deceased had 2 wives. The 1st wife was Susan Chepkurgat Robinson alias Suraya Ibrahim and the 2nd wife was the 1st Respondent herein, Truphena Tapen Kuko. Both wives got 3 children each.
3. In the Petition, filed through Messrs Daniel Orenge & Co. Advocates, the said Susan Robinson was described as a former wife and the 1st and 2nd Applicants and the 2nd Respondent were all described as daughters of the deceased. According to the Chief's letter, the 1st and 2nd Applicants were the daughters of the 1st wife (described as a former wife), Susan Chepkurgat Robinson, while the 2nd Respondent as the daughter of the 2nd wife, the 1st Respondent herein. In short therefore, the Applicants are from the 1st house and the Respondents are from the 2nd house.



4. The Petition also alluded to the existence of 2 properties left behind by the deceased, namely, Kitale Milimani LR No. 2116/XVI/90 and Eldoret Municipality Block 5/221 whose values were each estimated at approximately Kshs 100,000,000/-.
5. The Grant was then issued by the Court on 21/09/2022. The Applicants then on 17/01/2023, filed Summons for Confirmation of the Grant. They prayed that the Grant be confirmed in terms of the Judgment delivered in Eldoret High Court (Family Division) Citation Cause No. 45 of 2017. When the Summons came up in Court however, the Court (Nyakundi J) did not confirm the Grant because the Respondents were absent and had also not signed the consent to the Summons.
6. Now before the Court for determination is the Application brought by way of the Summons dated 6/03/2023 and filed by the 1st and 2nd Applicants. The Summons is filed through the same Messrs Daniel Orege & Co. Advocates and the prayers sought are as follows:
 - i. That Truphena Tapen Kuko and Leila Mohammed Ali be and are hereby removed as Administrators of the estate herein for adamantly refusing and declining to sign their part in the Supporting Affidavit to the Summons for Confirmation of Grant herein and the proposed mode of distribution outlined in the Affidavit of Sofia Mohammed Ali and Farida Mohammed.
 - ii. That the Grant of Letters of Administration intestate made to Sofia Mohammed Ali, Farida Mohammed, Triuphena Tapen Kuko and Leila Mohammed Ali in this matter on 20th September 2022 be annulled and in place another one be issued in the names of Sofia Mohammed Ali and Farida Mohammed proceed for confirmation pursuant to grant of prayer 1 above.
 - iii. That the Grant of Letters of Administration intestate made to Sofia Mohammed Ali and Farida Mohammed above proceed for confirmation.
 - iv. That such other relief this Honourable Court may deem fair and just to grant.
7. The Application is expressed to be brought pursuant to Section 76 of the Law of Succession Act. It is then premised on the grounds stated on the face thereof and is supported by the Affidavit sworn by the 1st Applicant, Sofia Mohammed Ali.
8. In the Affidavit, the 1st Applicant deponed that since the Grant was issued on 26/09/2022, their Advocates have tried to get the Respondents and 4 other beneficiaries to execute their part and/or sign the consent to the Summons for Confirmation of the Grant and/or the consent thereto on the mode of distribution of the estate but that the said persons have all refused to do so and have thus held the Court at ransom. He deponed further that the issue of distribution of the estate was fully deliberated by Hon. Lady Justice H. Omondi (as she then was) through viva voce evidence and Judgment delivered and which awarded all the beneficiaries each share, that there is therefore nothing more to be challenged herein as regards the mode of distribution, and that the Respondents continue to benefit from the estate and are the sole reason for the lack of cooperation,
9. She deponed further that when the Summons for Confirmation for Grant came up in Court on 20/02/2023, the Respondents who are co-Administrators failed to appear in Court despite being notified, that both Applicants and their mother reside outside Kenya and it has become very expensive for their mother who travelled all the way from the United Kingdom to attend Court on 20/02/2023. She also deponed that the Respondents and the other beneficiaries have colluded to frustrate the process, that the Respondents have an obligation to act in the best interest of the estate and not pursue their personal goals, that Section 83(g) of the Law of Succession Act requires Administrators to complete



administration without delay, and that failure to complete the administration is a ground for removal of such Administrators

Grounds of Opposition and Replying Affidavit

10. The Summons is opposed vide the Grounds of Opposition dated 24/03/2023 and the 1st Respondent's Replying Affidavit both filed on 3/05/2023. The contents of the two are a replica of each other. I will therefore only recite the Affidavit.
11. In the Affidavit, the 1st Respondent denied that the Respondents were served to appear in Court on 20/02/2023 for confirmation of the Grant and deponed that their Advocates were served only on 19/02/1993, one day to the date of confirmation. She urged that this was late service and in contravention of the rules. She then deponed that there is a pending Appeal, namely, Eldoret Court of Appeal No. 22 of 2021 and also an Application for stay of proceedings before the same Court, that if the Court overturns the High Court decision after the Grant has been confirmed, the Appeal will be rendered nugatory especially if the property is already sold and proceeds divided, that the Applicants have not explained how the Respondents are allegedly benefiting from the failure to confirm the Grant, that there is no other benefit that the 1st Respondent derives from the occupation of the house and that she, as the spouse of the deceased, has a right to occupy the matrimonial home.

Applicants' Supplementary Affidavit

12. With leave of the Court, the Applicants on 4/05/2023 filed the Supplementary sworn by the 1st Applicant. She reiterated that the Respondents were indeed served to attend Court for the confirmation. She then deponed that the pending Appeal cannot stop the proceedings herein, that the Respondents have concealed material facts arising out of Eldoret High Court Citation Case No. 45 of 2017, namely, that the Respondents filed an Application dated 12/02/2020 seeking stay of the Judgment delivered therein and that the Application was dismissed by the Ruling delivered on 30/04/2021. She therefore contended that there are no orders for stay of proceedings and that the Summons for Confirmation of Grant at paragraph 6 of the Affidavit thereto and which is in compliance with the said Judgment has clearly laid out each share each beneficiary is entitled to.
13. She reiterated that the Respondents are out to frustrate the process and added that the 1st Respondent is misleading the Court that she is the only spouse of the deceased and that she is not benefiting from the property, Kitale Milimani LRNo. 2116/XV1/90 yet in the Judgment, it is illustrated that during cross-examination, the 1st Respondent testified that she rented the main house at a rent of Kshs 60,000/- per month. She added that the 1st Respondent has been occupying the property since the death of the deceased in January 2016 and even before his death, that the rent has since increased to Kshs 90,000/- per month, that despite the foregoing, the Respondents have never paid land rates which as at 13/04/2023 stood at Kshs 667,977/-, that the land rates for the Nairobi property have also accumulated, that in its said Judgment, the Court observed that the 1st Respondent "has solely benefited from the rental proceeds relating to the Kitale property to the exclusion of other beneficiaries and has not rendered any accounts". In conclusion, she deponed that the Respondents are not fit to administer the estate as they are actively working to delay and frustrate the process hence they should be removed as co-Administrators.

Hearing of the Application

14. It was then agreed, and I directed, that the Application be canvassed by way of written Submissions. Pursuant thereto, the Applicants' Counsel filed his Submissions on 2/10/2023 while the Respondents'



Counsel filed his on a date that I cannot ascertain from the face of the document but which is dated 30/05/2023.

Applicants' Submissions

15. The Applicant's Counsel reiterated the matters already stated in the Applicants' Affidavits including that there is sufficient evidence that the Respondents have refused to cooperate and execute their part as well as the Confirmation of Grant and also failed to show up in Court for the confirmation, and that they should therefore be removed as co-Administrators. Regarding the Kitale property, Counsel submitted that the Court has the discretion to order all rental income therefrom to be deposited in Court. She cited the case of *In Re Estate of Mwongo Gakira (Deceased)* 2019 eKLR and also *In Re Annah N. Koikai (Deceased)* (2021) eKLR.

Respondents' Submissions

16. On his part, on non-attendance on the date fixed for confirmation of the Grant, the Respondents' Counsel urged the Court to take judicial notice that this was the first time that the Respondents are accused of non-attendance, that in any event, the Respondents were never served, and that their Advocates were served only a few hours to the said date. He submitted that the reasons proffered by the Applicants are not enough to warrant revocation of the Grant. He cited the case of *In re of Annah Nenchungei Koikai (Deceased)* [2021] eKLR and also *Mary Wangari Kibika vs. John Gichuhi Kinuthia & 2 Others* [2015] eKLR.
17. Counsel then reiterated that there is a Court of Appeal case as well as an Application for stay of proceedings both pending before that Court, and that if the Court of Appeal overturns the High Court decision after the Grant is confirmed, the Appeal will be rendered nugatory. He also reiterated that the Applicants have failed to demonstrate how the Respondents are benefitting from the failure to confirm the Grant, and that there is no other benefit the Respondents derive from the occupation of the house. He also denied that the rent had escalated to Kshs 90,000/- and insisted that it was still Kshs 60,000/- per month and which is used to maintain the property. In conclusion, Counsel submitted that if the Application is allowed, it will have the effect of denying and trampling the Respondents' constitutional right to be heard which is non-derogable.

Determination

18. The issue that arises for determination herein is "whether the Respondents should be removed as co-Administrators of the estate for the reason that they have failed to co-operate with their co-Administrators, the Applicants, to proceed diligently with the administration and/or to conclude the same".
19. In this case, at present, both Applicants and both Respondents are all 4 joint or co-Administrators of the estate herein. The Applicants now want the Grant issued herein to be revoked and/or annulled and a fresh one issued to only the Applicants as co-Administrators. As aforesaid, they accuse the Respondents of failing to co-operate with them to proceed diligently with the administration and/or to conclude the same
20. Regarding revocation and/or annulment of Grant, Section 76 of the *Law of Succession Act* referred to above, provides as follows:

"Revocation or annulment of grant



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 order or allow; 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.”

21. It is clear that the ground that is likely to accommodate the matters raised by the Applicant would possibly be sub-Sections (d) (iii) above.
22. On the issue of revocation of Grants, Section 76 was expounded upon by Hon. Justice W. Musyoka in the case of *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where he stated as follows:

“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.”

23. In this case, the specific grievance raised by the Applicants is that the Respondents have declined to sign their part of the documents geared towards finalizing the Administration of the estate and have also declined to sign the consent to the Summons for Confirmation of Grant. In my view, the Applicant’s grievance is misconceived. A co-Administrator is entirely within his/her rights to refuse to sign estate documents where he/she differs with his co-Administrator’s opinions or views. A co-Administrator cannot be compelled to agree with his/her co-Administrator on the mode of distribution. Like in any other relationship, even in Administration, parties would regularly agree on some items and disagree on others. That is quite understandable and also acceptable. In this case therefore, the Applicants cannot purport to invoke Section 76 of the Law of Succession Act and ask the Court to remove the Respondents as co-Administrators simply because the Respondents have declined to sanction the mode of distribution put forward by the Applicants.
24. The question that should arise is; what is the way forward where, as herein, co-Administrators cannot agree on the mode of distribution of the estate?
25. The answer to the above question is for either of the co-Administrators to proceed to file Summons for Confirmation of the Grant and serve it upon the disagreeing co-Administrators. Upon service, the disagreeing would then be at liberty to also file his/her own separate proposed mode of distribution. The Court may then hear representations from both sides and then make a Ruling on how the estate shall be distributed. If the disagreeing co-Administrator does not bother to file or present any rival proposal on distribution, then the Court may be at liberty to treat the Applicants’ mode of distribution as uncontested and adopt it if merited.
26. Luckily, in this matter, the road is even clearer since the parameters of the mode of distribution have already been set by Hon. Omondi J (as she then was) by dint of her Ruling delivered on 12/02/2020 in Eldoret High Court Citation Cause No. 45 of 2017. That Citation Cause preceded the current proceedings and was between the same parties as herein. The parties are therefore bound by it and have no choice but to distribute the estate in accordance with the findings and/or directions made in that Citation Cause.
27. Granted, the Respondents submit that they filed an Appeal challenging the said Ruling of Omondi J together with an Application for stay of proceedings and which are awaiting hearing and determination before the Court of Appeal. In support of this contention, the Respondents have only exhibited a copy of the Notice of Appeal dated 12/02/2020. Although they have indicated the Appeal to be Eldoret Court of Appeal Case No. 22 of 2021, they have not exhibited a copy of the Memorandum of Appeal or any other pleading or document to enable this Court scrutinize the same. Further, the alleged Application for stay of proceedings has not been exhibited and neither has even the Application number disclosed.
28. In any case, the Applicants have in their Supplementary Affidavit, exhibited a copy of the subsequent Ruling delivered in the same Eldoret High Court Citation Cause No. 45 of 2017 on 30/04/2021 whereof Hon. Omondi J dismissed the Respondents’ Application for stay of execution “and any consequential actions flowing from the judgment of the High Court made on 12th February 2020 entirely pending the hearing and determination of the Appeal filed by the Applicant”. In the circumstances, issues of stay appear to have already been determined by this Court.
29. Coincidentally, while carrying out my research, I have also come across a recent decision of the Court of Appeal delivered on 22/03/2024 in Court of Appeal Civil Application No. E023 of 2023 and



reported as *Kuko & Another v Ali & Another; Robinson (Interested Party)* (Civil Application E023 of 2023) [2024] KECA 305 (KLR) (22 March 2024) (Ruling). The same dismisses an Application for stay of execution. Looking at the decision, it is clear that it is the Court of Appeal's verdict on the Respondents' further Application for stay of execution of the same orders of H. Omondi J (as she then was) delivered on 12/02/2020 in Eldoret High Court Citation Cause No. 45 of 2017. If this is correct, then clearly, the issue of stay of execution is no longer in issue either in the High Court or in the Court of Appeal.

Final Orders

30. In the premises, I rule and/or order as follows:
- i. The Summons dated 6/03/2023 filed by the Applicants is hereby dismissed with no order on costs.
 - ii. However, the Summons filed on 17/01/2023 shall be fixed for confirmation of the Grant herein.
 - iii. The Respondents are given liberty to file and serve, within 21 days from the date hereof, their own proposed mode of distribution for the Court's scrutiny, save that such proposal must be strictly in accordance with the findings, determinations and directions made and/or given in the Judgment delivered by Hon. H. Omondi J (as she then was) on 12/02/2020 in Eldoret High Court Citation Cause No. 45 of 2017.
 - iv. Should the Respondents opt to file their own proposed mode of distribution, then upon being served, the Applicants shall be at liberty to file and serve, within 14 days, their written Submissions thereon. Upon service of the Applicant's written Submissions aforesaid, the Respondents shall also within 14 days thereafter, also be at liberty to file and serve their written Submissions. Both Submissions shall strictly be limited to commenting on the issue of mode of distribution without raising any new or fresh issues.
 - v. Should the Respondents not file their own proposed mode of distribution as directed hereinabove or should they not attend Court on the date to be fixed for confirmation of the Grant, the Applicants' proposed mode of distribution as contained in the Affidavit in support of their Summons for Confirmation of Grant shall be treated as uncontested or unopposed and the Court shall then be at liberty to adopt the same as drawn and confirm the Grant in accordance thereto.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 7TH DAY OF JUNE 2024

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WANANDA J. R. ANURO

JUDGE

Delivered in the Presence of:

Mr. Orenge for Applicants

Ms. Awuor h/b for Sala for Respondents

