



REPUBLIC OF KENYA



**In re Estate of Ahmed Meera Lebbe Seyado Shjab Deen (Deceased) (Succession Cause 2188 of 2015) [2024] KEHC 6348 (KLR) (Family) (3 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6348 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2188 OF 2015  
MA ODERO, J  
JUNE 3, 2024**

**RULING**

1. Before this court for determination is the Chamber Summons dated 28<sup>th</sup> April, 2017 by which the Applicant Saiyad Abbas Aysha Rauff seeks the following orders:-
  1. Spent.
  2. Spent.
  3. That the Respondents do produce to the Honourable Court a full and accurate inventory of the assets and liabilities of the Estate and an accurate account of all dealings they have had with the estate of the deceased within fourteen (14) days.
  4. That in default of prayer 3 above, the Grant of Probate of the Estate of Ahmed Meers Lebbe Seyado Shiab Deen (deceased) issued by this Honourable Court to the Respondents on 30<sup>th</sup> November, 2015 and confirmed on 7<sup>th</sup> December 2016 be revoked; and
  5. The Respondents do pay the Applicant's costs of this

**Application.**

2. The application was premised upon Article 159(2)(a) & (b) of the Constitution of Kenya, Sections 83(b) of the Law of Succession Act, Cap 160, laws of Kenya, Rules 49, 58 & 59 of the Probate and Administration Rules Sections 1A, 1B, 3A and 5 of the Civil Procedure Act Cap 21, Laws of Kenya and all other enabling provisions of law and was supported by the Affidavit of even date and the Supplementary Affidavit dated 23<sup>rd</sup> May, 2023 both sworn by the Applicant.
3. The Respondents Ahmed Saleem Deen And Zainab Deen filed a Replying Affidavit dated 27<sup>th</sup> April, 2023 opposing the Application.



4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 7<sup>th</sup> June, 2023 whilst the Respondents relied upon their written submissions dated 21<sup>st</sup> June, 2023.

### **Background**

5. The Deceased herein Ahmed Meera Lebbe Seyado Shaib Deen died testate on 26<sup>th</sup> October, 2014. The Deceased was survived by the following persons:-
  - a. Zinath Minyungi - widow.
  - b. Ahmed Saleem Deen - son.
  - c. Zainab Shahab Deen Imbuhirs - daughter.
  - d. Saiyad Abbas Rauff - niece
  - e. Sahabdeen Mohamed Mubarak - son.
6. His estate comprised the following assets:-

Assets

  - a. LR No. 12596/68 Nairobi.
  - b. Shares in Occidental Investments Limited.
  - c. 35% Equity in Ascon Limited
  - d. Bank Accounts: Credit Bank Ltd and ABC Bank Ltd.
  - e. Motor Vehicle, Suzuki KAA 936T.
  - f. Proceeds of Guardian Life Policy 59070971/8/9 with  
Madison Insurance

Liabilities

Kshs. 4.5 million due to Credit Bank ltd.
7. The Deceased left behind a written will dated 13<sup>th</sup> August 1997 as well as a Codicil dated 7<sup>th</sup> January, 2010 detailing how he wished his estate to be distributed.
8. Whereas in the will dated 13<sup>th</sup> August, 1997, the Deceased appointed three Executors he later revoked the appointment of the three through the codicil dated 7<sup>th</sup> January, 2010 and instead appointed Ahmed Saleem Deen and Zainab Deen (the Respondents herein) as Executors. The Applicant Saiyab Abbas Aysha Rauff was appointed as Executor to take care of and implement the wishes of the Deceased in respect of the Deceased's interests in Sri Lanka.
9. The three Executors petitioned the court for a Grant of Probate with written will which Grant was issued to them on 1<sup>st</sup> September, 2015. A certificate of confirmed Grant was duly issued on 7<sup>th</sup> December, 2016.

### **Analysis And Determination**

10. I have carefully considered this application seeking Accounts, the reply filed by the Respondents as well as the written submissions filed in the this matter.



11. Although there are three Executors of the estate the fact of the matter is that one of the Executors (the Applicant) resides in Sri Lanka whilst the other two Executors (the Respondents) live in Kenya. As such the Respondents would be best placed to know and handle the interests of the estate in Kenya whilst the Applicant was to take care of the interests of the estate in Sri Lanka.
12. Nevertheless it is presumed that persons who are appointed to manage an estate will do so jointly and will act in tandem in securing the interests of the entire estate.
13. The Respondents appear to have taken a hostile approach in administering the estate of the Deceased. The Applicant avers that he has made not less than two trips all the way from Sri Lanka to Kenya seeking to have a sit down meeting with the respondents and their advocates but on both occasions the respondents have failed to attend for the scheduled meetings.
14. The record clearly indicates that on 15<sup>th</sup> February, 2023, this court ordered the Respondents to file accounts of their dealings with the estate. Later on 22<sup>nd</sup> March, 2023, the court was told that parties were engaging in negotiations. No consent or settlement was reached.
15. Once again the court directed that Accounts be filed. To date no accounts have been filed. Why is there a reluctance on the part of the Respondents to co-operate with the Applicant in filing accounts. The filing of Accounts is not optional.
16. The property / assets of an estate belong to the estate and to the beneficiaries named in the will and are not available for the Executors to utilize as they wish. The Executors are accountable to the estate for the manner in which the estate is administered under their watch.
17. *In Re Estate Of Julius Mimani (Deceased)* 2019 eKLR it was held

“ Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will in cases of testate succession and those identified at confirmation of grant in cases on intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate ..... In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them the duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representatives to hold on behalf of the beneficiaries.” [Own emphasis]

18. It is trite law that an Administrator of an estate is a trustee of the same and as such is accountable to all the beneficiaries for the manner in which he handles the estate. Section 13 of the *Law of Succession Act* provides for the ‘Duties of Personal Representatives.’ Section 83 (h) provides that –

19.

(83) personal representatives shall have the following duties

.....

1. to produce to the court. If required by the court either on its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.”



20. *In Re Estate Of David Kyuli Kaindi (Deceased)* [2016] eKLR Hon. Justice William Musyoka stated as follows:-

“The personal representative must give account of the assets and liabilities that he has ascertained, and the assets that he has collected, gotten in, recovered or gathered and the titles he has perfected, and the steps taken to preserve the estate. He should also state the debts and liabilities that he has paid or settled before moving to court for confirmation of the grant and if he has not yet settled the debts, state how he proposes to have them settled. The account at this state should also state the assets that generate income, stating how much has been collected and how it has been utilized.”

21. Therefore the duty to render accounts is a statutory duty – it is not optional. The duty falls on all the Executors jointly.

22. Finally I find merits in this application. I direct that the Executors do produce for the inspection of the court a full and accurate inventory of all the assets and liabilities of the estate as well as an accurate account of all dealings with the estate with effect 7<sup>th</sup> December, 2016 to date. The said accounts to be filed within forty (40) days of the date of this Ruling.

23. Each side will meet their own costs.

**DATED IN NYERI THIS 3<sup>RD</sup> DAY OF JUNE, 2024.**

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**MAUREEN A. ODERO**

**JUDGE**

