



**In re Estate of Abdulkarim Chatur Popat, also known as Abdulkarim Chaturbhai (Deceased)
(Succession Cause 346 of 2013) [2024] KEHC 9251 (KLR) (19 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9251 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 346 OF 2013**

G MUTAI, J

JULY 19, 2024

**IN THE MATTER OF THE ESTATE OF ABDULKARIM CHATUR
POPAT, ALSO KNOWN AS ABDULKARIM CHATURBHAI (DECEASED)**

BETWEEN

ADIL ABDULKARIM CHATUR POPAT 1ST APPLICANT

GULZAR ABDULKARIM CHATUR POPAT 2ND APPLICANT

KARIM SAIFUDDIN ANJARWALLA 3RD APPLICANT

AND

AZIM ABDULKARIM CHATUR POPAT RESPONDENT

RULING

Introduction

1. This Court delivered a ruling on 9th February 2024 vide which it found in paragraphs 30 and 31 as follows: -

“ 30. The upshot of the foregoing is that the Summons for Confirmation of Grant dated 22nd October 2014 is hereby allowed. The grant issued on 29th January 2014 is subject to the consent between Alnashir and Gulzar, adopted by this Court on 3rd July 2023, confirmed.

31. The Executors are hereby directed to complete the administration of the estate within 6 months from the date hereof in compliance with section 83 of the [Law of Succession Act](#) and to produce to this Court a full and accurate account of the completed administration.”



2. The ruling was delivered virtually via Microsoft TEAMS in the presence of Mr Mohamed Karega for the 1st, 2nd and 3rd Co-Executors/Applicants, Ms Akinyi, who held brief Mr Macharia for the 4th Co-Executor/Respondent, Azim Abdulkarim Chatur Popat, and his son, Jameel Popat, and Mr Njoroge Regeru, SC and Ms Amuka, who together appear for Alnashir Popat, the Beneficiary.
3. The effect of the Court's ruling was that the administration of the estate of the deceased is expected to be completed by the 8th day of August 2024 or thereabouts. It was for that reason that a mention date was fixed for 25th September 2024 so that the Court could ascertain compliance and close its file.
4. Azim Abdulkarim Chatur Popat and his son, Jameel Popat, as 1st and 2nd Protestors, were aggrieved by the decision of this Court and consequently filed a letter dated 9th February 2024 vide which they sought typed and certified proceedings as well as a certified copy of the ruling. Concomitantly, they filed a Notice of Appeal, also dated 9th February 2024, vide which they evinced an intention to appeal against the whole of the aforesaid decision.

The Summons Dated 30th April 2024

5. Vide Summons dated 30th April 2024, the 1st, 2nd and 3rd Co-executors/Applicants (hereafter referred to as "the Applicants") sought the following orders against Azim Abdulkarim Chatur Popat (hereafter referred to as "Azim"):-
 1. Spent;
 2. That the 4th Co-Executor/Respondent be compelled to execute and to return to the Advocates for the 1st, 2nd and 3rd Co-executors the following documents in respect to the distribution of the shares constituting the estate of the deceased within seven (7) days of the date of this Order: -
 1. Transfer Forms in relation to the transfer of the properties being transferred to Alnashir Abdulkarim Chatur Popat, each in triplicate:-
 - i. Form LRA 39 Transfer to the Personal Representative as Executor/Administrator in respect of Land Reference Number 209/7472 (Original Number Part Of 6863/71), City of Nairobi (I.R.24802);
 - ii. Form LRA 42 Transfer by Personal Representative to Persons Entitled Under Will/intestacy in respect of Land Reference Number 209/7472 (Original Number Part Of 6863/71), City of Nairobi (I.R.24802);
 - iii. Form LRA 39 Transfer to the Personal Representative as Executor/Administrator in respect of Subdivision Number 5074 (Original Number 1710/5) Section I, Mainland North, Mombasa (C.R.19130); and
 - iv. Form LRA 42 Transfer by Personal Representative to Persons Entitled Under Will/intestacy in respect of Subdivision Number 5074 (Original Number 1710/5) Section I, Mainland North, Mombasa (C.R.19130).
 2. Transfer Deeds in relation to the transfer of shares each in duplicate:
 - v. Transfer Deed in respect of eleven million three hundred and eleven thousand nine hundred and fifty (11,311,950) ordinary shares in Simba Corporation Limited being transferred to Adil Abdulkarim Chatur Popat;



- vi. Transfer Deed in respect of four million three hundred and fifty thousand seven hundred and fifty (4,350,750) ordinary shares in Simba Corporation Limited for execution by the 4th Co-executor as both an executor and beneficiary (as the subject shares are being transferred to him);
- vii. Transfer Deed in respect of one million seven hundred and forty thousand three hundred (1,740,300) ordinary shares in Simba Corporation Limited being transferred to Jameel Abdulkarim Chatur Popat;
- viii. Transfer Deed in respect of one hundred and forty-nine thousand seven hundred and seventy-three (149,773) ordinary shares in Simba Motors Limited being transferred to Adil Abdulkarim Chatur Popat;
- ix. Transfer Deed in respect of fifty-seven thousand six hundred and five (57,605) ordinary shares in Simba Motors Limited for execution by the 4th Co-executor as both an executor and beneficiary (as the subject shares are being transferred to him);
- x. Transfer Deed in respect of twenty-three thousand and forty-two (23,042) ordinary shares in Simba Motors Limited being transferred to Jameel Abdulkarim Chatur Popat;
- xi. Transfer Deed in respect one (1) ordinary share in Bouganvillea Properties Limited being transferred to Gulzar Abdulkarim Chatur Popat;
- xii. (xii) Transfer Deed in respect of one hundred and seventy-four (174) ordinary shares in Deluxe Motors Limited being transferred to Noorbegum Sadruddin Hasham;
- xiii. Transfer Deed in respect of two thousand five hundred (2,500) ordinary shares in Regal Properties Limited being transferred to Alyana Abdulkarim Chatur Popat;
- xiv. Transfer Deed in respect of two thousand five hundred (2,500) ordinary shares in Regal Properties Limited being transferred to Alykhan Abdulkarim Chatur Popat;
- xv. Transfer Deed in respect of two thousand five hundred (2,500) ordinary shares in Regal Properties Limited being transferred to Alyssa Abdulkarim Chatur Popat;
- xvi. Transfer Deed in respect of two thousand five hundred (2,500) ordinary shares in Regal Properties Limited being transferred to Jameel Abdulkarim Chatur Popat;
- xvii. Transfer Deed in respect of two thousand five hundred (2,500) ordinary shares in Regal Properties Limited being transferred to Rahim Abdulkarim Chatur Popat;
- xviii. (xviii) Transfer Deed in respect of twenty-five (25) ordinary shares in Regal Investment Limited being transferred to Alyana Abdulkarim Chatur Popat;
- xix. Transfer Deed in respect of twenty-five (25) ordinary shares in Regal Investment Limited being transferred to Alykhan Abdulkarim Chatur Popat;



- xx. Transfer Deed in respect of twenty-five (25) ordinary shares in Regal Investment Limited being transferred to Alyssa Abdulkarim Chatur Popat;
 - xxi. Transfer Deed in respect of twenty-five (25) ordinary shares in Regal Investment Limited being transferred to Jameel Abdulkarim Chatur Popat;
 - xxii. Transfer Deed in respect of twenty-five (25) ordinary shares in Regal Investment Limited being transferred to Rahim Abdulkarim Chatur Popat;
 - xxiii. Transfer Deed in respect of nine hundred and seventy-seven (977) ordinary shares in Regal Hire Purchase Limited being transferred to Alykhan Abdulkarim Chatur Popat;
 - xxiv. Transfer Deed in respect of nine hundred and seventy-eight (978) ordinary shares in Regal Hire Purchase Limited being transferred to Alyana Abdulkarim Chatur Popat;
 - xxv. Transfer Deed in respect of nine hundred and seventy-eight (978) ordinary shares in Regal Hire Purchase Limited being transferred to Alyssa Abdulkarim Chatur Popat;
 - xxvi. Transfer Deed in respect of nine hundred and seventy-eight (978) ordinary shares in Regal Hire Purchase Limited being transferred to Jameel Abdulkarim Chatur Popat;
 - xxvii. Transfer Deed in respect of nine hundred and seventy-eight (978) ordinary shares in Regal Hire Purchase Limited being transferred to Rahim Abdulkarim Chatur Popat; and
 - xxviii. Transfer Deed in respect of one hundred twenty-five (125) ordinary shares in Watson Investments Limited being transferred to Gulzar Abdulkarim Chatur Popat.
3. That if the 4th Co-Executor/Respondent fails to execute the deeds of transfer and the transfers of land in order number 2 above within ten (10) days of such order being made, then his signature be dispensed with and any two (2) of the four (4) Co-executors be and are hereby authorized and empowered to execute the deeds of transfer and transfers of land as listed in Order Number 2 above in addition to any other attendant documents for purposes of completing the administration of the Estate;
 4. That in the interest of justice, this Honourable Court be pleased to make such additional orders and give such further directions as it shall deem fit; and
 5. That the costs of this application and any costs of redrafting the transfer forms and deeds of transfer be met personally by the 4th Co-executor/Respondent.
 6. The Summons is supported by the affidavit of Adil Abdulkarim Chatur Popat (hereafter referred to as "Adil") and also on the grounds that the certificate of Confirmation of Grant was issued on 21st March 2024 whereupon the necessary transfer forms vesting various properties in the beneficiaries names were prepared and sent to the 4th Co-Executor/Respondent directly in Canada and separately to his counsel on record requiring the same to be signed so that the administration process proceed. It was averred that Azim received the said documents in Canada on 9th April



2024, while his counsels received a separate set of the same documents on 12th April 2024. Despite receiving the transfer documents, he refused to execute them, even though a reminder was sent to him on 23rd April 2024.

7. The Applicants contended that Azim had no intention of meeting his fiduciary obligations unless the Court intervened. They urged that the family matriarch was of advanced age while one beneficiary, Noorbegum Sadruddin Hasham, was chronically ill. Counsel contended that it was not in the best interest of the estate for it to remain undistributed almost a decade after the grant was issued.

The Affidavit of Alnashir Abdulkarim Chatur Popat

8. Alnashir Abdulkarim Chatur Popat, the Beneficiary herein (hereafter referred to as “Alnashir”), supported the application vide a Replying Affidavit sworn on 16th May 2024 in which he averred that Azim had not given an indication as to whether he would execute the documents of transfer that were sent to him despite being reminded to do so. Alnashir deposed that he fully supported the application and stated categorically that he didn’t think that Azim had any intention of complying with this Court’s orders despite not having a good reason in law to decline to execute the transfer documents shared with him. He, therefore, urged that the application be allowed.

The Replying Affidavit of Azim Popat

9. Azim opposed the application. His Replying Affidavit was sworn on 3rd June 2024 before a Notary Public in Vancouver, Canada. In the said affidavit Azim stated that he had been opposed to the confirmation of Grant based on matters set out in the Notice of Preliminary Objection dated 12th July 2023, Supplementary Affidavit dated 13th September 2023 and the application dated 21st September 2023. He contended that this Court struck out his application on 27th October 2023 principally on the grounds that the issues raised therein had been determined by a consent filed in Court on 25th September 2017 as read with the Settlement Deed dated 4th September 2017.
10. He further stated that he was aggrieved by the decision of this Court and had obtained leave to appeal. The appeal had not been filed as the Registry of this Court had not provided typed proceedings. He also stated that the grant was confirmed despite his strenuous objection.
11. Azim averred that he was proceeding to file an application for a stay of execution so as to preserve the subject matter of the appeal. In his view, his assertion of his right to appeal cannot be deemed as a dereliction of his duties as a co-executor, frustration of the estate administration or refusal to comply with the Court order. He argued that if he executed the transfer documents, it would be presumed that he had constructively abandoned the intended appeal and that his appeal could be opposed on estoppel grounds.
12. He contended that his mother’s age had been deployed to defeat his claim and averred that her age hadn’t mattered when Alnashir was pursuing his ultimately successful appeal. He urged that this Court to dismiss the application and stay further proceeding in the interest of justice.

Supplementary/Affidavit of Adil Abdulkarim Chatur Popat

13. Adil’s affidavit was sworn on 18th June 2024. In the said affidavit, he stated that the filing of a Notice of Appeal cannot operate as a stay of execution of stay of proceedings. Adil averred that Azim had previously filed an application for a stay pending appeal, which this Court dismissed on 2nd February 2024, and that he couldn’t possibly file another application as doing so would be res judicata. He contended that Azim had, in paragraph 10 of his affidavit, admitted that he had no intention of carrying



out his mandate as a personal representative of the deceased's estate and had placed his interests above those of the beneficiaries of the estate.

14. Adil brought to the attention of this Court a decision of Lady Justice Florence Macharia delivered on 2nd May 2024 in Mombasa High Court Misc. Case No E196 of 2023; Adil Abdulkarim Chatur Popat & 2 others vs Azim Abdulkarim Chatur Popat & 2 Others. He stated that Azim was intent on engaging the co-executors in unending litigation and desired to frustrate the impending execution of the decree arising from the decision of the Commercial Court in the above-cited case. It was thus urged that I allow the application.

Submissions of the Parties

15. This Court directed the parties to file Written Submissions. The Written Submissions were highlighted on 2nd July 2024.

Submissions of the 1st, 2nd & 3rd Co-Executors/Applicants

16. Wanjiku Mohamed Advocates LLP, counsel for the Applicants, filed Written Submissions dated 18th June 2024, in which they urged the Court to allow the application.
17. The Applicants identified 3 issues as coming up for determination, to wit:-
 1. Whether the 4th Co-Executor should be compelled by this Honourable Court to execute the document sent to him;
 2. Whether this Court should, in the event of default on the part of the 4th Co-executor, direct that the 4th Co-Executor's signature be dispensed with to, ensure that the ends of justice are met and that the Court orders are complied with; and
 3. Whether the 4th Co-Executor should be compelled to bear the costs of the application.
18. On whether the 4th Co-Executor should be compelled by this honourable Court to execute the documents sent to him, it was urged that he ought to do so as he had not provided any justifiable reason for refusing. Counsels submitted that Azim's intention to appeal was not a proper ground to disobey court orders and that he breached his duties as a personal representative under section 83(e) of the [Law of Succession Act](#). It was urged that this Court's orders are not issued in vain and that there should be compliance.
19. On whether Azim's signature should be dispensed with if he persisted in his refusal to execute the transfers, counsels submitted that the deceased appointed four executors, including an advocate of this Court, to ensure that his wishes were carried out. It was urged that Azim's signature be dispensed with if he refused. Counsel referred me to the case of re Estate of Michael Munyeni Macharia (Deceased) [2021] eKLR, where the Court, in a similar matter involving the transfer of titles, dispensed with the production of original titles.
20. On costs, I was urged to consider the conduct of the 4th Co-Executor/Respondent and award costs to the Applicants.

Submissions of the Beneficiaries

21. Alnashir supported the application. His counsels, Njoroge Regeru & Co Advocates, in submissions dated 1st July 2024, identified two issues as coming up for determination: -



1. Whether the continued delay/refusal by Azim Popat to execute the necessary documents to distribute the estate was in breach of his duty as a co-executor and whether reasons given by him to justify the delay are justifiable in law;
 2. Whether the Court is empowered to give the remedies sought.
22. With respect to the first issue, it was urged that notwithstanding the effluxion of 4 months, the estate of the deceased remains undistributed as Azim Popat declined to sign the transfer forms and deeds necessary to effect the distribution. It was urged that his admitted refusal breached his statutory duty as a co-executor. Counsel submitted that there was no application for review or appeal, nor was a stay order in place, and therefore, Azim’s argument that execution of documents could be interpreted as abandonment of the appeal had no basis in law.
23. Counsel submitted that Azim bore a fiduciary duty to the beneficiaries and could not prioritize his interests over those of the estate. Reliance was placed on the decision of the Court in *Rupal Shah & another vs Ramesh Bhagwani Shah* [2015]eKLR.
24. Regarding the second issue, it was urged that this Court has the requisite powers to give the orders sought. Reliance was placed on the decisions of the Court in *re Estate of George Gikundi (deceased)* [2021]eKLR. Counsel submitted that section 47 of the *Law of Succession Act* and Rule 73 of the Probate & Administration Rules, 1980, clothes this Court with inherent powers to make such orders as may be necessary to meet the ends of justice or to prevent abuse of the Court process.
25. Counsel thus urged that I allow the application and award costs against Azim.

Submissions of the 4th Co-Executor/Respondent

26. Azim’s counsels, Mbugua Atudo & Macharia Advocates, filed Written Submissions dated 1st July 2024 vide which they opposed the application.
27. The said counsel submitted that this Court, in a ruling dated 27th October 2023 struck out the 4th Co-Executor’s application dated 21st September 2023 on the basis, principally, that the issues raised in the said application had been determined by a consent dated 5th September 2017 as read with Settlement Deed dated 4th September 2017. Being aggrieved, he sought and obtained leave to appeal against the decision.
28. It was urged that the 4th Co-Executor/Respondent was denied a fair hearing contrary to Articles 48 and 50(1) of *the Constitution* of Kenya and “cannot therefore voluntarily execute the transfer documents sent to him by his co-executors as such action would constitute constructive abandonment of his intended appeal”.
29. Reliance was placed on the Supreme Court decision in *Westmont Holdings SDN BHD vs Central Bank of Kenya & others* in support of the proposition that an order directing a party to deposit a huge amount of money violated Article 48 in so far as such a decision denied a party access to justice.
30. Counsel submitted that “the 4th co-executor is yet to file a Record of Appeal since the Registry is yet to provide him with typed proceedings.”
31. The 4th Co-Executor’s counsels also cited the Court of Appeal decision In *Purshottam Ramji Kotecha & another vs Narandas Ranchoddas Pau & another* [2006] eKLR in support of his submissions that a party could not be compelled to obey orders issued in breach of natural justice.



Analysis & Determination

32. I have read the Summons filed by the Applicants, as the affidavit in support, as well as those in opposition. I have also considered the oral and written submissions filed by the parties.
33. It is a common ground that:-
1. The deceased left a Will dated 15th May 2008;
 2. The grant of Probate of the said Will was issued by this Court on 29th January 2014;
 3. Vide Summons for Confirmation of Grant dated 22nd October 2014, the executors applied for confirmation of grant of probate;
 4. The Summons for Confirmation of Grant was allowed vide a ruling of this Court dated 9th February 2024. This Court, in the said ruling, gave the executors six months from the said date to comply with Section 83 of the Law of Succession Act;
 5. The Certificate of Confirmation of Grant was issued by this Court on 21st March 2024;
 6. The 1st, 2nd & 3rd Co-Executors/Applicants sent the share transfer deeds and transfers of land to the 4th Co-Executor/Respondent, who received them on 9th April 2024. The said forms were delivered to his advocates on 12th April 2024;
 7. The 4th Co-Executor/Applicant declined to sign them on the grounds, inter alia, that to do so would defeat his intended appeal; and
 8. There is no stay order in respect of the decision this Court made on 9th February 2024.
34. In my view, three issues call for determination by the Court. These are: -
1. Whether the 4th Co-Executor/Respondent is in breach of his fiduciary obligation as an executor;
 2. If so, whether this Court may either compel him to comply or, in default thereof, dispense with his signature; and
 3. Who should bear the costs of the application?
35. To determine these three issues, I must first set out the governing provisions of the Law of Succession Act and the Rules made thereunder.
36. Section 83 of the Law of Succession Act lists down the duties of a personal representative. These are
- (a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;
 - (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
 - (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
 - (d) to ascertain and pay, out of the estate of the deceased, all his debts;



- (e) within six months from the date of the grant, to produce to the court 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;
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
- (h) to produce to the court, if required by the court, either of 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;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

Is the 4th Co-Executor/Respondent in breach of his duties?

- 37. As a co-executor, the 4th Co-Executor, together with his fellow executors, is in a fiduciary relationship. He is required to act for the benefit of the beneficiaries and owes them the duty to act in good faith and with loyalty, to exercise due care and to make full disclosure of his dealings. It is a heavy duty that may often call for a person to give a lower consideration to his interests, as compared to those of the beneficiaries.
- 38. Executors have the obligation to transfer to the beneficiaries their share of the estate. This is an obligation placed on them by the law and from which they may not decline to undertake.
- 39. Courts have often been met with situations such as the one herein. In *re Estate of George Gikundi (Deceased)* [2021] eKLR, the High Court stated as follows:

“.....The respondent has a duty to complete the administration by executing the documents which are necessary to conclude the administration. Section 47 of the *Law of Succession Act* provides that:- “The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient: Provided that the High Court may for the purpose of this section be represented by resident magistrates appointed by the Chief Justice.” It gives this court powers to make such orders as may be expedient. It is my view that the Respondent has no basis for refusing to sign the requisite documents to effect Grant issued on 6th July 2020 and complete the administration of the estate of the deceased as provided under the law.Rule 73 of the Probate and Administration Rules gives this court inherent powers to make such orders as may be necessary to meet the ends of justice, or to prevent abuse of the court process. I find that the Application is merited. The respondent has duty as an administratrix of the estate of the deceased to sign/execute all the requisite documents for



transmission of LR Mwimbi/Kiraro/1275 pursuant to the certificate of confirmation of grant issue on 6/7/2020....”

40. In my view, the fiduciary duty to execute the transfers exists even where such duty conflicts with his interest. I agree with the Beneficiary's submissions that the Co-Executor/Respondent cannot prioritize his interests over his duties as an executor. I thus concur with the holding of R. Ougo, J in Rupal Shah & another vs Ramesh Bhagwani Shah [2015]eKLR that:-

“On the issue of whether the applicants have raised valid questions on conflict of interest, I find 45 <http://www.kenyalaw.org> - Page 4/5 Rupal Shah & another v Ramesh Bhagwani Shah [2015] eKLR that the respondent being an executor puts him in a fiduciary duty to safeguard the interest of the deceased as far as the administration of his estate is concerned. The respondent has laid a claim against the deceased’s estate by claiming that the 1,000,000.00 dollars, worth of shares that were held by the deceased for State Bank of India belonged to the deceased’s mother this in my view creates conflict as he seems to advance his personal interests as opposed to those of the deceased’s estate. As such I find that this coupled with him transferring funds without authority makes him unsuitable to be a co-executor of the deceased’s estate and I substitute him with the Rupal Shah and Rakhi Bedi. The three Sejal, Rupal and Rakhi shall within sixty days from the date of this ruling apply to have the grant confirmed.”

41. The fact that the Co-Executor/Respondent filed a Notice of Appeal against this Court’s decision is not a sufficient justification for the failure to comply.

42. Order 42 Rule 6(1) provides that:-

“6.

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.”

43. In re Estate of Stephen Mungori Anampiu (Deceased) (Succession Cause 69 of 2015) [2022] KEHC 477 (KLR) the court held that: -

“.....I do agree with the Protestors sentiments that there is no stay of execution in this matter and that the 1st Administratrix/Respondent has neither sought an order for stay nor does her application to the Court of Appeal contain an order of stay of execution... No doubt the orders of this court cannot be executed unless the transmission documents have been duly signed. The 1st Administratrix/Respondent has for no reasonable cause declined to sign the said documents. It must be remembered that Court orders are not made in vain and



are meant to be complied with and once a Court order is made in a suit the same is valid unless set aside on review or on appeal...”

44. I do not think that Azim’s grievance against the decision of the London Court of International Arbitration excuses his conduct. There are lawful orders of this Court which bind him. Until those orders are set aside or reviewed, he is legally obliged to carry out his fiduciary obligations. He has no legal basis to decide which orders he should obey. I disagree with his counsel’s submissions that the cases he cited support such contention.
45. It has been submitted that the execution of the transfers would defeat Azim’s intended appeal. I do not agree with this argument. It is made on the assumption that the Court hearing the appeal wouldn’t be able to separate Azim’s actions as a fiduciary, while executing the transfers, from his undoubted right to prosecute an appeal against a decision he is aggrieved with.
46. There is no stay order barring this Court from proceeding with this matter. In the circumstances I find hold that the 4th Co-Executor breached his duties as an executor by refusing to execute the transfers. Can the Court either compel the Executor to sign the transfers or dispense with his signature?
47. Court orders are not issued in vain. They are not moral exhortations, beseeching a party therein ordered to find a place in his heart to comply. They are mandatory and must be complied fully and promptly.
48. The High Court has powers under section 47 to “... entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient...”
49. Under Rule 73 the Probate & Administration Court has the inherent powers to make such orders as may be necessary to meet the ends of justice and to prevent abuse of the Court process.
50. Given the above provisions, this Court can grant the orders sought by the Applicants. I am guided by the persuasive authority of the High Court decision in *In re Estate of Wilfred Munene Ngumi (deceased)* [2020]eKLR where it was stated that:-

“Rule 73 provides for the saving of 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. 8. It is evident from the Applicant’s affidavit in support of the application and oral arguments by her Advocate, Mr. Kahiga, that the respondents have refused to sign the necessary documents to facilitate execution of the court’s Judgment/decree. 9. To prevent abuse of the court process, by the above legal provisions, this court has inherent powers to prevent such abuse. I therefore find, and hold that the petitioner’s summons dated 23/9/2019 and filed on the 25/9/2019 to be merited. 10. Accordingly, I grant Prayers No. 1, 2, 3 & 5.”
51. I am thus persuaded that Azim should have a final opportunity to execute the transfer documents. However, the court must ensure that the opportunity granted to him does not become a veto power.
52. Although directing the Deputy Registrar to execute the requisite transfer documents, if the 4th Co-executor persists in his refusal to carry out his fiduciary obligations is ordinarily the course adopted by Courts in similar situations, I note that the documentation in respect of this estate is quite extensive, large in number and relatively complex. Further, considering the limited time remaining before the six-month period within which the administration must be completed under section 83 of the *Law of Succession Act*, that may not be the best option. I agree with the Applicants’ proposal that it would be in the best interest of all the beneficiaries for execution to be done by any two executors if Azim persists in his refusal.



Who should bear the Costs of the Application?

53. The Family Court ordinarily does not award costs. However, in the circumstances of this matter, the Court feels that having acted willfully and deliberately in an obstructive manner, the conduct of the 4th Co-Executor/Respondent should attract condemnation. In the circumstances, I feel compelled to exercise my discretion regarding costs by ordering Azim to pay costs to the Applicants.

Disposition

54. Having found merit in the application, I order as follows: -
1. I order the 4th Co-Executor/Respondent to execute and return to the Advocates for the 1st, 2nd and 3rd Co-Executors the underlisted documents listed within 7 days of the date of this ruling: -
 - a. Transfer Forms in relation to the transfer of the properties being transferred to Alnashir Abdulkarim Chatur Popat, each in triplicate: -
 - i. Form LRA 39 Transfer to the Personal Representative as Executor/Administrator in respect of Land Reference Number 209/7472 (Original Number Part Of 6863/71), City of Nairobi (I.R.24802);
 - ii. Form LRA 42 Transfer by Personal Representative to Persons Entitled Under Will/intestacy in respect of Land Reference Number 209/7472 (Original Number Part Of 6863/71), City of Nairobi (I.R.24802);
 - iii. Form LRA 39 Transfer to the Personal Representative as Executor/Administrator in respect of Subdivision Number 5074 (Original Number 1710/5) Section I, Mainland North, Mombasa (C.R.19130); and
 - iv. Form LRA 42 Transfer by Personal Representative to Persons Entitled Under Will/intestacy in respect of Subdivision Number 5074 (Original Number 1710/5) Section I, Mainland North, Mombasa (C.R.19130).
 - b. Transfer Deeds in relation to the transfer of shares each in duplicate:
 - v. Transfer Deed in respect of eleven million three hundred and eleven thousand nine hundred and fifty (11,311,950) ordinary shares in Simba Corporation Limited being transferred to Adil Abdulkarim Chatur Popat;
 - vi. Transfer Deed in respect of four million three hundred and fifty thousand seven hundred and fifty (4,350,750) ordinary shares in Simba Corporation Limited for execution by the 4th Co-executor as both an executor and beneficiary (as the subject shares are being transferred to him);
 - vii. Transfer Deed in respect of one million seven hundred and forty thousand three hundred (1,740,300) ordinary shares in Simba Corporation Limited being transferred to Jameel Abdulkarim Chatur Popat;
 - viii. Transfer Deed in respect of one hundred and forty-nine thousand seven hundred and seventy-three (149,773) ordinary shares in Simba Motors Limited being transferred to Adil Abdulkarim Chatur Popat;



- ix. Transfer Deed in respect of fifty-seven thousand six hundred and five (57,605) ordinary shares in Simba Motors Limited for execution by the 4th Co-executor as both an executor and beneficiary (as the subject shares are being transferred to him);
- x. Transfer Deed in respect of twenty-three thousand and forty-two (23,042) ordinary shares in Simba Motors Limited being transferred to Jameel Abdulkarim Chatur Popat;
- xi. Transfer Deed in respect one (1) ordinary share in Bouganvillea Properties Limited being transferred to Gulzar Abdulkarim Chatur Popat;
- xii. (xii) Transfer Deed in respect of one hundred and seventy-four (174) ordinary shares in Deluxe Motors Limited being transferred to Noorbegum Sadruddin Hasham;
- xiii. Transfer Deed in respect of two thousand five hundred (2,500) ordinary shares in Regal Properties Limited being transferred to Alyana Abdulkarim Chatur Popat;
- xiv. Transfer Deed in respect of two thousand five hundred (2,500) ordinary shares in Regal Properties Limited being transferred to Alykhan Abdulkarim Chatur Popat;
- xv. Transfer Deed in respect of two thousand five hundred (2,500) ordinary shares in Regal Properties Limited being transferred to Alyssa Abdulkarim Chatur Popat;
- xvi. Transfer Deed in respect of two thousand five hundred (2,500) ordinary shares in Regal Properties Limited being transferred to Jameel Abdulkarim Chatur Popat;
- xvii. Transfer Deed in respect of two thousand five hundred (2,500) ordinary shares in Regal Properties Limited being transferred to Rahim Abdulkarim Chatur Popat;
- xviii. (xviii) Transfer Deed in respect of twenty-five (25) ordinary shares in Regal Investment Limited being transferred to Alyana Abdulkarim Chatur Popat;
- xix. Transfer Deed in respect of twenty-five (25) ordinary shares in Regal Investment Limited being transferred to Alykhan Abdulkarim Chatur Popat;
- xx. Transfer Deed in respect of twenty-five (25) ordinary shares in Regal Investment Limited being transferred to Alyssa Abdulkarim Chatur Popat;
- xxi. Transfer Deed in respect of twenty-five (25) ordinary shares in Regal Investment Limited being transferred to Jameel Abdulkarim Chatur Popat;
- xxii. Transfer Deed in respect of twenty-five (25) ordinary shares in Regal Investment Limited being transferred to Rahim Abdulkarim Chatur Popat;
- xxiii. Transfer Deed in respect of nine hundred and seventy-seven (977) ordinary shares in Regal Hire Purchase Limited being transferred to Alykhan Abdulkarim Chatur Popat;
- xxiv. Transfer Deed in respect of nine hundred and seventy-eight (978) ordinary shares in Regal Hire Purchase Limited being transferred to Alyana Abdulkarim Chatur Popat;
- xxv. Transfer Deed in respect of nine hundred and seventy-eight (978) ordinary shares in Regal Hire Purchase Limited being transferred to Alyssa Abdulkarim Chatur Popat;
- xxvi. Transfer Deed in respect of nine hundred and seventy-eight (978) ordinary shares in Regal Hire Purchase Limited being transferred to Jameel Abdulkarim Chatur Popat;



xxvii. Transfer Deed in respect of nine hundred and seventy-eight (978) ordinary shares in Regal Hire Purchase Limited being transferred to Rahim Abdulkarim Chatur Popat; and

xxviii. Transfer Deed in respect of one hundred twenty-five (125) ordinary shares in Watson Investments Limited being transferred to Gulzar Abdulkarim Chatur Popat.

2. I order that if the 4th Co-Executor/Respondent fails to execute the deeds of transfer and transfers of land under the order above within ten (10) days of the date hereof his signature shall be dispensed with, and any two (2) of the four (4) Co-Executors shall, and are hereby authorized, to execute the deeds of transfers and transfers of land as listed above in order 1 above for purposes of completion of the administration of the estate; and

3. The Applicants shall have the costs of the application.

55. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 19TH DAY OF JULY 2024. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Mrs Wanjiku Mohamed for the 1st, 2nd & 3rd Co-executors/Applicants;

Mr Macharia, for the 4th Co-executor/Respondent;

Ms Amuka, for Alnashir Abdulkarim Chatur Popat; and

Arthur - Court Assistant.

