



REPUBLIC OF KENYA



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**In re Estate of the Late Ezekiel Barngetuny (Deceased) (Probate & Administration
22 of 2021) [2024] KEHC 12658 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12658 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 22 OF 2021
JR KARANJA, J
OCTOBER 23, 2024
IN THE MATTER OF THE ESTATE OF THE
LATE EZEKIEL**

RULING

1. For avoidance of doubt, this ruling is essentially on the protest dated 22nd February 2024, made by Aisha Muthoni Kiringo, challenging the summons for confirmation of grant dated 24th January 2024 taken out by Oglá Jemel Barngetuny seeking confirmation of the grant of Letters of Administration intestate issued on the 7th December 2023 respecting the Estate of the Late Ezekiel Kiplelei Barngetuny (deceased) to Erick Kipkemboi Barngetuny, Edna Cheptum Sang, Leo Kipkeny and Oglá Jemeli Barngetuny, who therefore became the duly appointed administrators of the Estate of the deceased by dint of this court's ruling made on the date of issue.
2. The powers and duties of administrators or personal representatives are clearly spelt all in Section 82 and 83 of the [Law of Succession Act](#) (Cap 160 Laws of Kenya).

Confirmation of grants is provided for under Section 71[1] of the Act in the following terms: -

“After the expiration of a period of six months or such shorter period as the court may direct under subsection [3], from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.”

3. Upon issuance of the new grant, this court ordered that the necessary summons for confirmation of grant be taken out by the administrators within a period of six (6) months from the date of issue or any other shorter period that the parties may deem necessary. The present summons for confirmation of grant dated 24th January 2024 was taken out by the Fourth Administrator [Oglá] hardly two months after the date of issue of the grant.
4. Section 71 of the [Law of Succession Act](#) as read with Section 83[a] of the Act intended that confirmation of the grant and the completion of the administration of the estate be under taken within a short period



of time. Thus, an application for the confirmation of the grant is required to be made after expiration of six months from the date of the grant and the administration of the estate is required to be completed within six month from the date of the confirmation of the grant.

The failure or neglect to complete the administration of the estate expeditiously may be construed to be a breach of the Succession Act.

5. Section 83[e] of the Act requires the Administrator to produce to court within six months from the date of the grant a full and accurate inventory of the assets and liabilities of the deceased and also on accurate account of all dealings there with up to the date of the account.

In this case, the initial grant was issued on 24th October 2014, but it would appear that the delay in the completion of the administration of the estate in the last ten[10] or so years was occasioned by disagreements and disputes between the then sole administrator, Erick Kipkemboi Barngetuny and a section of the beneficiaries of the estate. This led to the matter being referred to mediation and then back to the court with no end in sight on the question of distribution of the estate which seems to be the “Achilles tendon” in this matter.

6. A serious determination to bring this matter to a close appears to be lacking thereby putting the estate at the risk of going to waste and the beneficiaries thereto “blowing up” their inheritance into smithereens. All these, despite this court issuing a fresh grant with four administrators on the 7th December 2023, with a view to expediting the completion of the administration of the estate and to allow the deceased to truly “rest in peace”.
7. While issuing the fresh grant, this court in its ruling of the 7th December 2023 appointed the current four [4] administrators of the estate and directed them to take necessary steps to determine the actual estate property available for distribution and the actual true beneficiaries of the estate whether or not included as such in the previous grant dated 24th October 2014 which thereby stood revoked.

The administrators were thereafter expected to agree or arrive at a consensus on the distribution of the estate prior to their taking out summons for confirmation of the grant and ultimately complete the administration of the estate for the benefit of the heirs and/or dependants of the deceased.

8. It was held in *Monica Jesang Vs. Jackson Chepkwony & Another* [2011] eKLR, that the sacrosanct line of devolution of a deceased person’s estate is construed around dependency, the legal entitlement to take under the estate and that the scheme of entitlement, in this regard is set out in Section 29 of the *Law of Succession Act*.

Dependant, under Section 29[a] of the Act means the wife or wives or former wife or wives and the children of the deceased whether or not maintained by the deceased immediately prior to his death. Section 27 of the Act donates unfettered discretion to order a specific share of the Estate to be given a dependent or to make for a dependent such other provision by way of periodical payments or a lump sum and to impose such conditions as it deems fit.

9. A person is deemed to die intestate in respect of all his free property of which he has not made a will which is capable of taking effect and free property is the property which the deceased was legally competent and free to dispose of during his lifetime and in which his interest has not been terminated by his death.

Such is the property which would be available for distribution to the heirs and/or dependants/beneficiaries of the deceased who have been clearly and properly identified for purposes of distribution of the net estate of the deceased after payment of accruing expenses, debts and liabilities.



10. The summons for confirmation of grant dated 27th January 2024 was filed by the fourth administrator [Ogla] a month or two after the issuance of the fresh grant on the 7th December 2023, thereby implying that the administrators' and the other beneficiaries had already identified with certainty the deceased's free property as well as the actual and true beneficiaries of the estate to arrive at a consensus and/or agreement on the distribution of the estate in the manner proposed in the appropriate summons.

However, with the filing of the affidavit of protest dated 22nd February 2024 by the Protestor or Objector [i.e. Aisha Muthoni] and a second application by the First Administrator [Erick] for confirmation of grant vide the summons dated 11th May 2024, it would appear that the parties are yet to determine and confirm all assets belonging to the deceased available for distribution, let alone to identify the actual and true beneficiaries of the estate.

11. The protestor's main ground of protest is that she is a daughter of the deceased but was excluded as a beneficiary of the estate in the impugned summons for confirmation of grant and indeed, in these entire proceedings related to the deceased's estate. She asserted or implied that she is a kin of the deceased through blood and/or consanguinity ties, hence a person who has the right to inherit the deceased property together with her siblings and other beneficiaries.
12. In her protest affidavit, the protestor averred that these proceedings were commenced in secrecy without her knowledge even though she was brought up by the deceased who also catered for her wellbeing. That, the administrators of the deceased's estate never sought her consent while pursuing the grant of letters of administration and/or applying for confirmation of the grant. The protestor contended that she is entitled to a share of the estate just like her other siblings and/or dependants and that the proposed mode of distribution was not all inclusive in as much as it excluded her as a beneficiary and was made without notice to herself and others.

The Protestor implied that the administrators of the estate do harbor an intention to disinherit her of her lawful share of the estate and beseeches this court to order her inclusion as a beneficiary of the estate before the grant is confirmed.

13. Apparently, the fourth Administrator who is the "mover" of the impugned summons for confirmation of grant is not opposed to the protest, a position shared with the third administrator, Leo Kipkeny. This is demonstrated by the fact that the two did not file any response to the protest by way of replying affidavits and/or grounds of opposition. It would therefore follow that the main ground for the protest is valid and it may as well as be taken as the truth that the protestor is indeed a daughter of the deceased and entitled to a share of his vast estate. Any attempt to alienate her from her lawful inheritance would be unlawful and a mockery of the *Law of Succession Act*.
14. It would also follow that the opposition to the protest mounted by the First Administrator and the Second Administrator, Edna Cheptum Sang, in the form of their respective replying affidavits dated 6th May 2024, 3rd July 2024 and 11th October 2024 and the witness affidavit of Wilson Kipyego Keter, dated 6th May 2024, is without substance and merit.

Both the First and Second Administrators contended that the protestor was a stranger to the estate of the deceased yet they have failed to provide any substantial and relevant evidence to establish and prove their contention which formed the basis of their opposition to the protest.

15. The most effective and water proof evidence of paternity would be the legally and scientifically accepted deoxyribonucleic acid test otherwise known as the DNA test.

The First and Second Administrators ought therefore commission a DNA test so as to leave no doubt in their mind that the protestor is indeed a known or unknown daughter of their late father, hence their



sibling. Indeed, the Second Administrator in her replying affidavit to the protest alludes to a DNA test being carried out to establish and/or prove and/or determine the protestor's disputed paternity.

16. In view of the observations made hereinabove, this court finds the protest to be merited and is hereby upheld with orders that the protestor be included as a beneficiary of the deceased's estate prior to the confirmation of the grant.

Further, being evident that the impugned summons for confirmation of grant dated 24th January 2024 was taken out without, consensus and/or agreement of all the administrators on Firstly, the identity of all lawful and true beneficiaries of the estate and Secondly, the identity of all the assets or property lawfully available for distribution amongst the beneficiaries, the summons is hereby treated as being premature and disallowed.

The same fate would apply to the second summons for confirmation of grant dated 11th May 2024 in as much as it excludes the protestor and is at variance with the impugned first summons for confirmation vis-à-vis the actual property available for distribution.

17. Given that this matter has been in the corridors of justice for an unnecessary long period of time, it would be prudent for the four administrators to take a fresh full and accurate inventory of the assets and liabilities of the deceased and also an accurate account of all dealings therewith upto the date of the account from the date of the initial revoked grant of letters of administration intestate [i.e. 24th October 2024] in terms of Section 83[e] of the Succession Act before they take out any new summons for confirmation of grant.

18. Ultimately, for all the reasons foregoing and in particular that this court is not satisfied as to the respective identities and shares of all persons beneficially entitled to the estate of the deceased and in terms of the proviso to Section 71(2) of the Succession Act, the impugned grant dated 7th December 2023 cannot be confirmed at this juncture in any manner.

The Administrators must understand that their mandate is heavy in responsibility and must be treated with the seriousness deserved if the administration of the estate is to be completed without further delays. There should be no room for egocentrism, narcissism or even machismo if the administrators are to deliver their mandate.

DELIVERED AND DATED THIS 23RD DAY OF OCTOBER, 2024

J. R. KARANJAH,

JUDGE

