



REPUBLIC OF KENYA



**In re Estate of Gabriel Nalyanya Naulikha (Deceased) (Probate & Administration
74 of 1999) [2024] KEHC 15903 (KLR) (22 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 15903 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
PROBATE & ADMINISTRATION 74 OF 1999
REA OUGO, J
OCTOBER 22, 2024**

IN THE MATTER OF

**BIBIANA OKWARA NALYANYA 1ST ADMINISTRATOR
ANTONY NAULIKHA NALYANYA 2ND ADMINISTRATOR
CHARLES SIFUNA NALYANYA 3RD ADMINISTRATOR
PATRICK SIFUNA NALYANYA 4TH ADMINISTRATOR**

RULING

1. In Chamber Summons dated 3.9.2018 the applicant Charles Nalyanya, seeks an order that Bibiana Okwara Nalianya render an account in respect of the proceeds of rent collected from Plot No. Bungoma Township/319 and Plot No. 3 Kanduyi.
2. The application is supported by the affidavit of Charles Sifuna Nalyanya he avers that on 26th June 2002 the parties recorded a consent that:-

“The money payable be deposited in an interest-earning account in the names of the four administrators at Barclays Bank of Kenya, Bungoma Branch”.
3. Account No. xxxx was opened at Barclays Bank and consequently notices were issued to tenants to pay rent to the aforesaid account. This order was later varied that the money be deposited in a joint earning account with Cooperative Bank, Bungoma Branch instead of Barclays Bank Bungoma. This account was however not opened. Charles avers further that the co-administrator has been collecting rent from the premises.
4. The application was opposed.
5. Mr Murunga for the applicant indicated that there is no dispute that the two proprietries belong to the estate and that Bibian was collecting rent. He also admitted that there was a consent that was recorded



in court. It was further submitted by Mr Murunga that the consent obligates Bibiana to render an account of the estate and in the affidavit of Antony dated 4th October paragraph 18, he states he has no problem accounting for the rents collected in regards to the 2 properties.

6. Mr Amollo in opposing the application argued that there had been no efforts made to prosecute the application since 2018 and there was indolence on the part of the applicant. Despite the account being opened on the 17th of September 2021, Charles and his mother declined to go to the bank to admit signatures as signatories to the account and thereafter Andrew and Bibiana saw no need and it was closed. He believes that money is still in the account. Mr. Amollo admitted that Bibiana had been collecting rent and that now that the applicant wants the account it should be done by an accountant. He posed the question of whether the applicant wants Bibiana to go and hire an auditor to prepare the accounts. To this query, Mr Murunga's response is that all they want is to have the accounts rendered.
7. I have considered the rival affidavits and the oral submissions. It is not in dispute that Bibian has been collecting rent from the two premises. Section 83 (e) obligates an administrator to give an account of the proceeds of an estate. The Applicant is only seeking an account of the rents collected and deposited, not an audited account. Though the application was filed in 2018, I find that no prejudice will be caused to the respondent/administrators, if the orders are granted, as the rent from the two premises constitutes part of the proceeds of the estate of the deceased which is subject to distribution to the beneficiaries of the deceased estate.
8. I, therefore, order that Bibian Okwara render an account in proceeds of rent collected from plot No. Bungoma Township/319 and Plot No.3 Kanduyi. The same is to be rendered in court 45 days for the period from the date of consent until October 2024. Costs shall be in the cause.

DATED, SIGNED, AND DELIVERED AT BUNGOMA ON THIS 22ND DAY OF OCTOBER 2024.

R.E.OUGO

JUDGE

In the presence of:-

Mr. Murunga - For the Applicant

Mr. Amollo For the Respondent - Absent

Wilkister - C/A

