



**In re Estate of Josephat Nyanga Achoka (Deceased) (Succession Cause 1920 of 2002) [2024] KEHC 13015 (KLR) (Family) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13015 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1920 OF 2002  
PM NYAUNDI, J  
OCTOBER 18, 2024  
IN THE MATTER OF THE ESTATE OF JOSEPHAT NYANGA ACHOKA (DECEASED)**

**BETWEEN**

**GAVIN ACHOKA ..... APPLICANT**

**AND**

**MARGARET WANGARI NYANGA ..... RESPONDENT**

**RULING**

1. Before the court for determination is the Applicant's Summons for accounts dated 19<sup>th</sup> June 2024. The Applicant seeks the following orders;
  1. This Honourable Court be pleased to compel the Respondent to produce to court within 14 days a full and accurate inventory of all assets and liabilities of the deceased including the deceased's parcels of land and location, bank accounts and businesses.
  2. This Honourable Court be pleased to compel the Respondent to deposit into court all title documents which they are holding in respect of property forming part of the subject estate.
  3. This Honourable Court be pleased to compel the Respondent to render a true, proper and comprehensive account of their administration of the estate from the time of the deceased's death and to avail the applicant's share of the estate.
  4. This Honourable Court be pleased to order the Respondent to produce or avail in court Bank Statements in respect of all the Deceased's bank account at Standard Chartered Bank (K) Limited, Kenyatta Avenue Branch-Nairobi, Account No. 0\*\*0 - 2\*\*6, pension and benefits from employer-Nairobi City Council and National Social Security funds benefits from the date of appointment to date.



5. The whereabouts and log books in respect of motor vehicle registration numbers; KUL 291, KMA 364, KWU 013 and KAJ 253 E.
  6. The ownership details of plot at Kariobangi River Bank allotted to the deceased vide letter 26<sup>th</sup> February 1992 by Nairobi City Council.
  7. The Respondent be compelled to disclose to this Honourable Court all discoveries of the deceased's assets not included in the petition for letters of administration intestate and their current status including funds received by and spent by themselves from the date of their appointment up to date.
  8. Should there be a finding of misappropriation of accounts mentioned above, the Respondent be ordered to reimburse the same to the estate of the deceased.
  9. Costs of this application be met by the Respondent.
  10. The Honourable Court be pleased to issue any other or further orders as it may deem fit.
2. The Application is supported by Applicant's affidavit of even date. The Applicant's case is that the Respondent was appointed as Administrator of the estate of the deceased on 7<sup>th</sup> October 2002. That the Respondent has failed to proceed diligently with the administration of the estate. She has failed to provide accounts of the estate from the time she was appointed up to now. She has also failed and/or neglected to account for income due to the estate and has failed to comply with the [Law of Succession Act](#).
  3. The Application is unopposed.

### **Background.**

4. Josephat Nyanga Achoka (hereafter the deceased) died intestate on 15<sup>th</sup> January 2002. On 29<sup>th</sup> July 2002, Margaret Wangari Nyanga and Michael Ndiritu Karangu petitioned this court to be issued with letters of administration intestate. They were issued with a Grant of Letters of Administration Intestate on 7<sup>th</sup> October 2002. Subsequently, the grant was revoked and a new grant dated 15<sup>th</sup> October 2004 was issued to Margaret Wangari Nyanga and Alex Lwande Achoka (the deceased's step brother).
5. The Deceased is said to be survived by the following;
  - i. Margaret Wangari Nyanga- widow.
  - ii. Jojina Nyanga- daughter.
  - iii. Joy Nancy Nyanga- daughter.
  - iv. Gavin Nyanga Achoka-son.
  - v. Lavina Resula Juma
6. In her Petition, the Petitioner listed the following as the assets of the estate of the deceased:
  - i. Cash at Standard Chartered Bank (K) Limited Account No. 0\*\*\*\*0 - 2\*\*\*\*\*6-00 Kenyatta Avenue Branch-nairobi Pension & benefits From Employer- Nairobi City Council.
  - ii. National Social Security Fund Benefits.

Liabilities.



KSHS. 300,000 Owed To Patrick Waweru Njihia.Kshs. 69,600 Owed To New Sunset Tools &building Material Store.Kshs. 138,000 Owed To Kegs Fabricators.

7. The grant has never been confirmed. In the course of time one the Applicant who was a minor at the time of the grant is now an adult and has now made this application seeking that the surviving administrator render an account of the management of the estate of the deceased.

### **Analysis And Determination**

8. The issue for determination is whether this application has merit and the Administrator should render accounts as demanded.
9. This application must also be faulted in part as the Applicant embarks on a fishing expedition and seeks the Court to make orders based on vague averments or unsubstantiated claims. For starters, the applicant demands that the Respondent provides an account of the administration of the estate and in particular that the ‘all assets and liabilities of the deceased, including the deceased’s parcels of land and location bank accounts and businesses.’ In addition, he demands at prayer 2 of the application that the Respondent deposit into court all the title documents which they are holding in respect of property forming part of the subject estate.
10. Without proof of ownership the Applicant demands that the Respondent [ discloses] the whereabouts and the log books of motor vehicle registration number KUL 291, KMA 364, KWU 013 and KAJ 253 E (with regards to the last-mentioned vehicle the court in ruling dated 15<sup>th</sup> October 2004 held that this vehicle was not an asset of the estate of the deceased).
11. At prayer 6, the Applicant seeks ownership details of a plot at Kariobangi river Bank allotted to the deceased via letter dated 26<sup>th</sup> February 1992 by the Nairobi City Council. This letter has not been availed to the Court. Finally, at Prayer 7 the Applicant seeks that the Respondent be compelled to disclose to this Honourable Court all discoveries of the deceased’s assets not included in the petition for letters of administration intestate and their current status including funds received by and spent by themselves from their date of appointment to date.
12. No evidentiary basis has been laid for the grant of the orders sought. Section 107 is categorical on the burden of proof and states as follows
  107. Burden of proof
    - (1) Who ever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist
13. The burden of proof in this instance was to be discharged by the Applicant and in this instance, it matters not that the matter was not defended. Accordingly, I dismiss prayers 1, 2, 5, 6 and 7 of the Application.
14. Under Section 83 of the *Law of Succession Act* personal representatives have the following duties:
  - “ a).....  
.....
  - 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.”

15. There are two instances in which administrators are required to render accounts and this was discussed by this court *in re Estate of Julius Mimano(Deceased)* [2019] eKLR where Musyoka J observed that;

.....section 83 of the Act has imposed a positive duty on personal representatives to specifically render accounts at two stages. The first instance is in the first six months of the administration. It is at this stage that they ought to account as to whether they spent any funds from the estate for the purpose of disposing the remains of the deceased and, if so, how much. State whether they got in or gathered or collected or brought together all the assets that make up the estate. The getting in of the estate is critical, it should precede settlement of debts and liabilities and distribution of the assets. Indeed, these duties can only be discharged if there are assets sufficient to settle debts leaving a surplus for distribution. It would also be from the assets collected that the estate would have a pool of resources for administration expenses. Section 83(e) commands the personal representatives to produce in court a full and accurate inventory of the assets and liabilities, no doubt generated from the exercise of getting in the assets and ascertaining the debts of the estate. There is also an obligation to render an account of all their dealings with the assets and liabilities up to the point of the account. The second occasion for rendering accounts is at the completion of administration. The duty is stated in section 83(g) of the Act. The object of the second and final account is to give opportunity to the personal representative to demonstrate that they have complied with the duty in section 83(f) of distribution of the estate to the beneficiaries.

16. From the foregoing, it is evident that the role of a personal representative as bestowed by the Court, is fiduciary in nature. A personal representative is appointed by the Court, to collect in and manage the assets of the estate of a deceased person as trustee, for the benefit of its beneficiaries in accordance with the law. A personal representative thus owes a fiduciary duty to the beneficiaries. Indeed, when applying for a grant of representation, a personal representative undertakes and to render a just and true account thereof whenever required by law to do so. Further, the dealings of a personal representative with the estate of a deceased person, are of great interest to the Court, which has the responsibility of ensuring that the estate is not mismanaged or wasted. The production of a full and accurate inventory of assets and liabilities as well as accounts is the tool provided by statute, to monitor the dealings, by the personal representatives, with the estate of the deceased.

17. In the case of *In re Estate of David Kyuli Kaindi (Deceased)* [2015] eKLR Musyoka, J. had this to say on the obligation of personal representatives to render account:

The obligation to account is tied up with the fact that personal representatives are also trustees. They are defined as such in the Trustee Act, Cap 167, Laws of Kenya, at Section 2. This is so as property belonging to another vests in them in their capacity as personal representatives, and they hold the same for the benefit of others – beneficiaries, heirs, dependants, survivors, creditors, among others. They stand in a fiduciary position in relation



to the property and the beneficiaries. As they hold the property for the benefit of others or on behalf of others – they stand to account to the persons for whose benefit or on whose behalf they hold the property. It is an equitable duty and a statutory obligation.

18. Thus under the provisions of Section 83 of the *Act*, the Administrators are required to produce to Court, accounts within 6 months from issuance of the grant and also within 6 months from confirmation of the grant or after completion of the administration of the estate. Accounts must also be produced when the Court of its own motion or on the application of an interested party requires the same either before or after completion of administration of the estate.
19. In light of the provisions of Sections 79 and 83 of the *Act*, the Applicant, being a beneficiary of the estate of the deceased, is well within his right to apply for accounts notwithstanding that the grant is yet to be confirmed. He has raised concern as to the Administrator’s dealing with the estate. In the premises, the Court must prior to confirmation of the grant, satisfy itself that the Administrators have thus far, faithfully dealt with the estate of the deceased.
20. In light of the above, I find that the Application dated 19<sup>th</sup> June 2024 is partly merited and the same is hereby allowed as follows:
  - i. The Administrators shall within 21 days of the date hereof, produce to the Court an account in respect of the deceased’s account at Standard Chartered Bank (K) Limited, Kenyatta Avenue Branch (K) Limited Account Number 0\*\*\*\* - 2\*\*\*\*\*6. The Pension and Benefits of the deceased from the Employer, Nairobi City Council and National Social Security Fund Benefits from the date of Appointment to date.
  - ii. Mention on 11.11.2024 to confirm compliance and take directions
  - iii. This being a family matter there shall be no order as to costs.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 18TH DAY OF OCTBER, 2024.**

**P. NYAUNDI**

**JUDGE**

In the presence of:

Court Assistant

