



REPUBLIC OF KENYA



**In re Estate of the Late Isack Suleiman Haji (Deceased) (Succession Cause 8 of 1994) [2024] KEHC 11634 (KLR) (Family) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11634 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**SUCCESSION CAUSE 8 OF 1994**  
**HK CHEMITEI, J**  
**OCTOBER 3, 2024**  
**IN THE MATTER OF THE ESTATE OF THE LATE ISACK SULEIMAN HAJI (DECEASED)**  
**BETWEEN**  
**FAIZAL SULEIMAN ..... APPLICANT**  
**AND**  
**HAVA ISAK SULEIMAN ..... RESPONDENT**

**RULING**

**Background**

1. The deceased herein died on 12<sup>th</sup> September 1993 leaving a written Will. The Respondent, his widow, applied for the grant of probate which was issued to her on 10<sup>th</sup> March 1994 and confirmed on 19<sup>th</sup> July 1996.
2. The said Will specifically indicated that the estate was to be distributed according to Mohamedan law as he professed Islamic faith. The beneficiaries who included the Applicant and the Respondent as well are Muslims.
3. The deceased left behind the following properties namely:-
  - (a) Nairobi LR NO 209/80001/119,
  - (b) South C Nairobi LR NO 209/5882,
  - (c) South C Nairobi LR NO 103/387,
  - (d) Narok Township LR NO 8494/5, and
  - (e) Narok Township LR NO 49.



4. Apart from the Applicant and the Respondent herein who are the son and widow respectively the other beneficiaries left behind are his daughters namely Zeenat Isak Suleiman, Farhana Isak Suleiman And Saira Jamil Haroon.
5. It appears that after the grant was issued and confirmed the Respondent has failed to distribute the estate hence the applications herein. The court shall proceed to deal with them and give a cumulative decision
6. The first application dated 21<sup>st</sup> July 2023 seeks the following orders:-
  - (a) That this court be pleased to transfer this suit to the Kadhi's court at Milimani for distribution of the deceased's estate as per the Will dated 18<sup>th</sup> August 1980.
  - (b) That in the alternative and without prejudice to the above prayer the court be pleased to give directions on the distribution of the estate under Mohamedan law as per the Will dated 18<sup>th</sup> August 1980.
  - (c) That pending the determination of the application a temporary injunction do issue to restrain the Respondent by herself, servants and agents or employees including Reshman Rehan Awan and Nazma Suleiman from intermeddling with transferring, alienating or misappropriating or wasting the properties known as Nairobi LR NO 209/80001/119 ,South C Nairobi LR NO 209/5882, South C Nairobi LR NO 103/387, Narok Township LR NO 8494/5 and Narok Township LR NO 49 and all other pending properties forming the estate of the deceased.
  - (d) Pending the hearing and determination of this application a temporary injunction be issued against the Respondent servants or employees including Reshman Rehan Awan, and Nazma Suleiman from receiving, intermeddling or misappropriating income deposited in Diamond Trust Bank account number 7860411004 generated from LR NO 209/8000/119, South C LR NO 209/5882, South C LR NO 103/387, Narok Township LR NO 8494/5 and Narok Township LR NO 49.
  - (e) Pending the hearing and determination of this application this court be pleased to direct the maintenance of status quo in terms of the ownership of all those properties known as Nairobi LR NO 209/8000/119, South C Nairobi LR NO 209/5882, South C LR NO 103/387, Narok Township LR NO 8494/5 and Narok Township LR NO 49.
7. The application is based on the grounds thereof and the Applicants sworn affidavit dated 21<sup>st</sup> July 2023. The said affidavit in support is however signed by one Suad Salim Abubakar at the jurat and not the Applicant.
8. This necessitated the Applicant to apply vide an application dated 22<sup>nd</sup> August 2023 to correct the above anomaly through leave to amend the same. The substance of the said application is to the effect that a mistake of the counsel ought not to be visited on the litigant or client.
9. Although the Respondent opposed the application dated 22<sup>nd</sup> August 2023 vide the grounds of opposition dated 11<sup>th</sup> September 2023 to carry out an amendment to the names in the jurat I respectfully do not think allowing it will cause any harm or injury to the parties. I say so because the spirit, the letter and tenor of the application clearly indicates that it is the Applicant who is deposing to the issues and not one Suad Salim Abubakar who is nowhere in these proceedings.
10. I think the provisions of Article 159 of our progressive constitution as well as Rule 73 of the *Probate Rules* of Cap 160 laws of Kenya permits this court to apply its inherent powers to correct such small



anomalies so as to ensure justice is indeed served. In this regard therefore I shall allow the amendment as prayed in the application dated 22<sup>nd</sup> August 2023.

11. The Applicant also filed an application dated 4<sup>th</sup> October 2023 seeking the following orders:-
  - (a) That the administrator has failed without any reasonable cause to diligently administer the estate of the deceased.
  - (b) The administrator has failed without any reasonable cause refused to distribute the estate as per the written Will of the deceased; and,
  - (c) Despite the grant of probate being confirmed on 19<sup>th</sup> July 1996 the administrator has failed to complete administration of the estate within six months of confirmation of grant and produce before this court a full and accurate account of the completed administration as stipulated at paragraph (g) of Section 83 of the *Law of Succession Act*.
12. The application is supported by the Applicants sworn affidavit dated the same date. The said affidavit gives chronology of events leading to the confirmation of grant to the Respondent and has attached the deceased Will.
13. The Applicant has accused her two sisters of harassing the tenants with the aim of moving into the properties. He further accused the Respondent of failing to act on the grant 27 years from the time it was confirmed.
14. The Respondent in opposing the Applicants above applications filed a preliminary objection on a point of law dated 1<sup>st</sup> of August 2023 in which she accused the Applicant of filing a defective application by virtue of the fact that the same was sworn by a different person and not the Applicant. According to her the same contravened Order 19 of the *Civil Procedure rules*.
15. I think I have explained this courts position regarding the above and thus although there could be merit in the preliminary objection, overallly I find that for now if allowed it will merely forestall the progress of this estate which has taken almost three decades for it to be concluded. This court is also mindful of the fact that the Administrator is well advanced in age and thus she needs to deal with the issues bedevilling her husband's estate expeditiously.
16. On her part the Respondent filed an application dated 1<sup>st</sup> August 2023 seeking the following orders against the Applicant:-
  - (a) Spent.
  - (b) Spent.
  - (c) Spent.
  - (d) Spent.
  - (e) This court be pleased to issue an order restraining the Respondent his agents and or servants from alienating charging or adversely dealing with the estate properties namely LR NO 209/8000/119 in Muthaiga, LR NO 209/5882 IN South C, LR NO 8494/5 in Narok, LR NO 103/387 South C.
  - (f) This court be pleased to issue an order directing that all rental income in respect of the properties belonging to the estate of the deceased to the estate account under the name of estate of Isack Suleiman Haji, Account Number 550300xxxxxx Upper Hill Branch, Swift Code Unafkena, Branch Code 03.



- (g) That the court to issue an order directing the Respondent to render true account of all the rent he has collected from the properties forming the estate of the deceased.
17. She also prayed that the court be pleased to issue any other relevant order that shall be deemed just and expedient.
  18. The application is based on the grounds thereof and the sworn affidavit of the Applicant dated the same date.
  19. The substance of the supporting affidavit basically confirms that she was the Administrator of the estate and that the other beneficiaries who are her daughters were subsequently married and the only person left to assist in managing the estate was the Applicant, her son.
  20. She accused him of instructing the tenants not to take any instructions from anyone else except himself and that all the income from the said rentals have been deposited in his personal account. She went on to accuse the Applicant of failing to comply with the family arrangements even after mediation was undertaken.
  21. She further accused the Applicant of leasing out the Muthaiga property to persons known to him and at some unspecified monthly rent.
  22. The Respondent has generally accused the Applicant of failing to account for the rental income for the last twenty years or more despite various attempts she has tried to intervene.
  23. The Applicant has filed various affidavits in reply and the Respondent has equally filed supplementary affidavits which the court has perused. These affidavits include that Respondent reply sworn on 28<sup>th</sup> August 2023 in which he deponed that the Respondent on her own volition involved him in the management of the estate including the period she had travelled to USA to live with her daughter.
  24. He denied that the money was paid to his account but to the estate's account at Diamond Trust Bank where he was a joint account holder with the Respondent. The said position according to him was approved by the rest of the beneficiaries.
  25. The Applicant went to the extent of explaining the Mpesa transactions including payments authorised by the Respondent. That he leased out the Muthaiga property with the authority of the Respondent.
  26. The court has perused the supplementary affidavit sworn by the Respondent dated 28<sup>th</sup> March 2024, further affidavit by the Applicant sworn on 14<sup>th</sup> March 2024, an affidavit of one Mohamed Sabir Ismail who attempted mediation sworn on 15<sup>th</sup> March 2024, Respondent's further affidavit sworn on 16<sup>th</sup> February 2024 as well as the Respondent's supplementary affidavit sworn on 4<sup>th</sup> March 2024.
  27. The court directed the parties to file written submissions so as to dispose the applications. They have all complied and the court has perused the same with the attendant cited authorities.

### **Analysis and Determination**

28. The issues captured by the parties in their submissions are clear and almost similar. These include whether this matter should be referred to the Kadhi's court; whether the two properties namely LR NO 103 /387 in South C and LR NO 209/8000/119 Muthaiga forms part of the deceased estate; whether temporary injunction against the Applicant ought to be granted.
29. What is not disputed herein is that the deceased written Will has not been challenged or impugned. All the parties are in agreement with it and therefore it ought to be implemented to the full extent possible.



30. At the same time save for the two properties which the Respondent is of the opinion that they do not form part of the estate the rest are due for distribution. On this score I find that in view of the annexures HIS 01 and HIS 02 in the further affidavit of the Respondent sworn on 16<sup>th</sup> February 2024 the two properties namely LR 209/8000/119 and LR NO 103/387 do not form part of the estate herein. The same were jointly registered in the joint names of the deceased and the Respondent.
31. The copies of the titles attached to the above affidavits say as much. This accords well with the provisions of Section 2 of the Lands Act which provides that:-
- “joint tenancy” means a form of concurrent ownership of land where two or more persons each possess the land simultaneously and have undivided interest in the land under which upon the death of one owner it is transferred to the surviving owner or owners;”
32. In the premises the same are hereby expunged from the deceased estate for all intent and purposes despite being mentioned in this cause and the legal assumption barring any other challenge therefore is that the same ought to be transferred as of right to the Respondent who is the legitimate owner pursuant to the death of the joint owner. Needless to state that for purposes of this cause the same are not available for distribution.
33. Consequently, the remaining properties can be distributed to the beneficiaries. I reckon that since in his Will the deceased was clear that it ought to be dealt with under Islamic law this court cannot be an impediment. The parties by their conduct and even in their various affidavits are in agreement that Mohamedan law as indicated in the Will is the best way forward.
34. The Applicant has asked this court to refer the same to the Kadhi’s Court for such determination. The Respondent has opposed this position. This court shall however accede to the Applicant’s request. I do so for the simple reason that the parties profess the Muslim faith and that the Kadhi’s court is a creature of our Constitution and is well versed with the Islamic law and specifically the division of estates such as the one herein.
35. Of course this referral does not take away the appellate rights of this court. Should any of the parties feel that the decision by the honourable Kadhi ran contrary to the Islamic law or our Constitution for that matter, they have a recourse to this court.
36. On the question of the injunction as prayed by the Respondent, I think the Applicant has explained much in his opposing affidavit. There is sufficient evidence that the amount collected from the rentals although not for the period demanded by the Respondent has been well utilised. There is evidence that the tenancy agreements entered between the Applicant and the tenant has been sanctioned by the Respondent. The attached tenancy agreement for the Muthaiga property state as much.
37. All that the court is pointing out is that so much has taken place for the last almost thirty years. The parties have not been keen to have the estate distributed. The Respondent who is aging now should move with speed to complete the same. It will not be efficacious to dislodge her from her administration work as the issues are clearly defined.
38. At the same time to allow the Respondent’s application will stall the immediate completion of the estate. The Kadhi must be allowed to complete the exercise within a specific time frame. This will obviate the need to open parallel accounts or for that matter remove the Respondent from her administrative office.
39. It will also be remiss if this court does not reprimand the Applicant and her sisters. From the pleadings on record it appears to me that in one way or the other they have taken their turf wars to the estate.



Whether their mother has been baited is not for this court to discuss now. The estate nonetheless must be distributed and a final report filed in this court.

40. In view of the above findings this court in answering all the prayers in the applications herein and so as to fastrack the matter orders as hereunder:-
- (a) This matter is hereby transferred to the Kadhi's court at Milimani Nairobi for distribution of the following deceased properties as per Islamic law:-
    - (i) Narok Township LR NO 8494/5
    - (ii) Narok Township LR NO 49
    - (iii) LR NO 209/5882 South C Nairobi
  - (b) The above exercise should be completed within 45 days from the date herein and a report be made by the Respondent/Administrator to that effect.
  - (c) Costs shall be in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI VIDE VIDEO LINK THIS 3<sup>RD</sup> DAY OF OCTOBER, 2024.**

**H K CHEMITEI**

**JUDGE**

