



REPUBLIC OF KENYA



In re Estate of the Late James Kasyula Mutua (Deceased) (Succession Cause 704 of 2019) [2024] KEHC 11811 (KLR) (Family) (3 October 2024) (Ruling)

Neutral citation: [2024] KEHC 11811 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 704 OF 2019

HK CHEMITEI, J

OCTOBER 3, 2024

IN THE MATTER OF THE ESTATE OF THE LATE JAMES KASYULA MUTUA (DECEASED)

BETWEEN

JESSE KASYULA MUTUA APPLICANT

AND

JOHN KIOKO MUTUA 1ST RESPONDENT

SARAH NZEMBI NZIOKA 2ND RESPONDENT

RULING

1. The Applicant has filed two sets of applications dated 26th June 2023 and 28th February 2024.
2. The first application seeks the following orders:-
 - (a) That this court be pleased to remove John Kioko Mutua as a co administrator and replace him.
 - (b) That the court be pleased to order the Respondent to deposit Kshs. 18,000,000 being the balance of funds received from Mr Ahmed Kassim Bharadia for the sale and purchase of LR NO 3734/340 Nairobi and being the Applicant's share as per the confirmation of grant dated 5th February 2022.
 - (c) That pending the hearing and determination of this application an order to stop all transactions involving the estate of the late James Kasyula Mutua.
 - (d) That the Respondents be ordered to give an accurate and proper account of the estate properties.
2. The Applicant prayed for costs as well.



3. The application is based on the grounds thereof as well as the supporting affidavit sworn on even date.
4. The first Respondent has opposed the said application vide the replying affidavit sworn on 14th October 2023.
5. The second application dated 28th February 2024 seeks the following orders:-
 - (a) That this court gives orders to the Administrators to dispense to the Applicant his equal share of the estate within 30 days as per the courts orders in the confirmation of grant dated 5th February 2020.
 - (b) That this court be pleased to order the Respondent to deposit Kshs. 18,000,000 being the balance of funds received from Mr Ahmed Kassim Bharadia for the sale and purchase of LR NO 3734/340 Nairobi and being the Applicants rightful share as per the confirmation of grant dated 5th February 2020.
 - (c) That the court do order the Administrators to provide bank statements of the bank accounts in confirmation of grant dated 5th February 2020 from date 4th October 2018 and release the Applicants equal share within 14 days.
 - (d) That the court do issue orders for the Administrators to immediately open an estate bank account where all beneficiaries are signatories.
 - (e) That the court compels the Administrators to give an audited account of all the estate properties as of February 2024.
6. The application is based on the grounds thereof and the sworn affidavit of the Applicant dated 14th February 2024.
7. The 1st Respondent has opposed the same vide his replying affidavit sworn on 22nd May 2024.
8. The Applicant has filed a further replying affidavit sworn on 11th July 2024.
9. Looking at the two applications it is apparent in my view that they are more less asking for similar orders. To this end I shall proceed to deal with them simultaneously and issue orders which captures both applications.
10. The court directed the parties to file written submissions and at the time of writing this ruling it was the Applicant alone who had complied. I have perused the same together with the rival affidavits and the annexures thereto.
11. The issues herein emanate from the grant issued by this court on 22nd October 2019 and confirmed on 5th February 2020. In the said grant which has not been challenged in any way the Applicant together with the Respondents have been granted several properties which mostly they are to share equally. These constitutes fixed assets as well as accounts in various banks and shares in different institutions.
12. It is evident from the affidavits in support and in opposition to the applications that land parcel number 3734/340 was sold to one Ahmed Kassim Bharadia for a consideration of Kshs.170,000,000 which amount was to be shared equally.
13. It was the Applicant's case that based on their numbers in the grant each of the beneficiaries was to get a total of Kshs.18,000,000. That amount was not wired to his account but instead he was only paid Kshs.9,000,000 leaving a sum of Kshs.5,000,000 since according to the Respondents the sum of Kshs.84,259,260 was used to defray the estates liabilities hence each one of them was to get a sum of Kshs.14,000,000 out of Kshs. 85,740,740.



14. I have read the replying affidavit by the 1st Respondent as well as perused the excel sheet showing how the amount was received and dispersed. Evidently the balance of Kshs. 85,740,740 was therefore available for disbursing to the beneficiaries including the Applicant in equal shares.
15. Being the case therefore and without acceding to the Applicant's other demands for accounts since from the excel sheet the liabilities prima facie appears legitimate the logical thing to do was to release to the Applicant all his shares totalling Kshs. 14,000,000 as he was entitled to just like the rest of the five beneficiaries.
16. I respectfully do not see any reason to remove the Respondent from his administration work granted by this court. It appears to me from the annexures to the replying affidavits that the estate has been embroiled in serious litigations and the Administrators have acquitted themselves well in its defence.
17. The issue of dual nationality of the Applicant for now is neither here nor there. As long as the grant is still legitimate and he is entitled to his shares then he has all the rights just like the rest of the beneficiaries mentioned therein.
18. The same goes with the issues raised by the Applicant concerning the use of the 1st Respondent's girlfriends name at Arthisasa. That issue ought to be channelled to the concerned authorities.
19. Is there need to open an estate joined account as prayed by the Applicant? I think that would be relevant if there is evidence of impropriety by the Administrators which has not been proved at this juncture. Nevertheless, to assuage any fears by the Applicant the estate ought to be distributed except those with challenges like litigations or interest of other parties outside those mentioned in the grant.
20. The distribution ought to be completed by the Administrators so that each of them including the Applicant can deal with their portions as they deem necessary. This court obviously presumes, and rightfully so, that the accounts mentioned in the grant are as from 5th February 2020. If there is any evidence of interference of the said account unless by the order of this court, then it ought to be brought out.
21. At the same time this court presumes that any dealings with the said accounts by the Administrators after 5th February 2020 was within the powers donated by the grant and the usage of funds therein was to the benefit of the estate.
22. In conclusion therefore this court directs as hereunder:-
 - (a) The Respondents/Administrators within 14 days from the date herein should release a sum of Kshs. 5,000,000 to the Applicant being the balance of his share from the proceeds of sale of LR No 3734/340.
 - (b) The Respondents/Administrators should within 90 days from the date herein execute the grant herein dated 5th February 2020 and ensure the Applicant gets his rightful share as directed save for those properties in contention by third parties.
 - (c) Costs shall be in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 3RD DAY OF OCTOBER 2024.

H K CHEMITEI

JUDGE

