



**In re Estate of the Late Kamandura Ali (Deceased) (Succession Cause  
1399 of 2003) [2024] KEHC 11812 (KLR) (Family) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11812 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1399 OF 2003  
HK CHEMITEI, J  
OCTOBER 3, 2024  
IN THE MATTER OF THE ESTATE OF THE LATE KAMANDURA ALI (DECEASED)**

**BETWEEN**

**MARIAM NJOKI CHEGE ..... APPLICANT**

**AND**

**FATUMA WAITHIRA KAMANDURA ..... RESPONDENT**

**RULING**

1. In her application dated 1<sup>st</sup> August 2023 the Applicant seeks the following orders:-
  - (a) That this court be pleased to revoke the grant issued to Zuhura Wangare Kamandura (deceased) as the executrix of the above named estate on 23<sup>rd</sup> September 2013 which has since been rendered inoperative and or useless following the death of the executrix.
  - (b) That the court be pleased to grant letters of administration de bonis non to the Applicant Mariam Njoki Chege for purposes of administering effects un-administered.
  - (c) Any further orders of this court.
2. The application is supported by the Applicant's sworn affidavit which shows that the deceased herein died on 5<sup>th</sup> November 1992 leaving a Will in which he had appointed his wife the late Zuhura Wangare Kamandura as the executrix. She was then issued with a grant dated 23<sup>rd</sup> September 2013 and having been unable to distribute the estate this court vide a ruling dated 5<sup>th</sup> February 2015 directed the said executrix to complete the exercise within 40 days.
3. The said executrix died on 25<sup>th</sup> May 2020 leaving the estate un administered. The Applicant has therefore filed this application claiming that by virtue of being a beneficiary in the said Will she ought



to be appointed an administrator so as to complete the process. She further claimed that she was the daughter in law to the deceased herein and part of the property namely Dagoretti/Riruta /329 was hers by virtue of the Will and the confirmed grant.

4. The Respondent has opposed the application vide her replying affidavit sworn on 27<sup>th</sup> September 2023 arguing among others that the Applicant was not the right person to be issued with the administration of her father's estate for the reason that she intended to withdraw the appeal case No 385 of 2018 between Zuhura Wangare Kamandura vs. Miriam Njoki Chege.
5. She went on to state that she had already obtained limited letters of administration so that she could pursue the above appeal after her mother had passed on.
6. One Omari Kamandura Ali, a grandson to the deceased supported the position taken by the Respondent vide his replying affidavit sworn on 27<sup>th</sup> September 2023 in which he deponed that the Applicant has been very cruel to them and that they ought to await the outcome of the appeal.
7. The Respondent countered the two replying affidavits vide her supplementary affidavit sworn on 29<sup>th</sup> September 2023 in which she stated that the appeal mentioned by the Respondent had since abated by virtue of the death of her mother in law.
8. That her interest was not to disinherit the Respondents but to give effect to the deceased Will and specifically the un administered part of the estate.
9. She said that she has not been cruel to the grandchildren of the deceased and that she had in fact given them a portion of the estate which they were enjoying rent of up to Kshs. 60,000 per month.
10. The court directed the parties to file their written submissions which they have complied and the court has perused the same extensively together with the cited authorities.

#### **Analysis and determination.**

11. It is not in dispute that the executrix herein has since passed on and thus the grant issued to her on 23<sup>rd</sup> September 2013 is useless and inoperative for all intent and purposes.
12. The Respondent is not objecting to the fact that an administrator ought to be appointed so as to complete the process. That person should not be the Applicant for a simple reason that she was likely to withdraw the appeal pending before the Court of Appeal.
13. The Applicant on the other hand has argued that the appeal had abated by virtue of the fact that there was no replacement of the appellant one year after she died. Consequently, for whatever it was worth the appeal was no longer tenable.
14. Secondly she argued that even if the appeal was still active she had no capacity to seek its withdrawal as it was not her appeal as she had been sued as the Respondent.
15. Taking the totality of the issues herein it is true that under Rule 20 of the 5<sup>th</sup> schedule to the CAP 160 a new representative of the estate has to be appointed. The same states as follows:-

“Grant of effects unadministered

If the executor to whom probate has been granted has died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.”



16. The same obtains under Section 63(c) of the Act. It states that:

“Grant of administration to universal or residuary legatee

When a deceased has made a will, but—

- (a) he has not appointed an executor; or
- (b) the only executors appointed are legally incapable of acting, or have renounced their executorship, or have died before the testator or before receiving a grant of probate of the will, or have failed within the time limited by a citation to apply for probate thereof; or
- (c) all proving executors have died before completing administration of all the property to which the will applies a universal or residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.”

17. In light of the above I think that it is appropriate to have a new representative be appointed so as to complete what the executrix did not complete despite the court granting her 40 days.

18. In my view since the Applicant and the Respondent appear in the grant issued on 23<sup>rd</sup> September 2013 as beneficiaries there is no harm in granting the two the opportunity to complete the exercise. They both have equal interest in the estate despite their opposing position.

19. In any case it is not to their interest alone that they should complete the administration but it is to the interest of the other beneficiaries as well.

20. In fact, they should proceed to complete the exercise within 40 days from the date herein as there is nothing stopping them from exercising the powers granted to them. In other words, there is no stay orders from this court nor from the Court of Appeal as things stand now.

21. The matter pending before the Court of Appeal is above my pay grade to comment for now. Whether it has abated or not is for the parties and the said appellate court to decide.

22. In the premises the application is allowed as hereunder:-

- (a) The grant issued to the late Zuhura Wangare Kamandura on 23<sup>rd</sup> September 2023 is hereby revoked.
- (b) A joint grant is hereby issued to Mariam Njoki Chege and Fatuma Waithira Kamandura and are hereby directed to complete the un administered estate of the deceased herein within 40 days from the date herein.
- (c) Costs shall be in the cause.

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

**H K CHEMITEI**

**JUDGE**

