



REPUBLIC OF KENYA



In re Estate of Akram Amrani Mohammed (Deceased) (Succession Cause 113 of 2021) [2023] KEHC 20527 (KLR) (14 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20527 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 113 OF 2021**

**G MUTAI, J
JULY 14, 2023**

BETWEEN

MARIAM AKRAM AMRAN 1ST PETITIONER

HINDU AKRAM AMRAN 2ND PETITIONER

MARIAM AKRAM AMRAN 3RD PETITIONER

AND

SHADIA AKRAM AMRAN 1ST APPLICANT

ZAINAB MWAMBUI TSUMA AKA ZEINAB AKRAM 2ND APPLICANT

RULING

1. The Applicants filed a Summons for Revocation or Annulment of Grant dated March 6, 2023. Their main prayer was that grant of letters of administration *ad litem* made on January 14, 2021 and issued on January 31, 2021 be revoked and or annulled.
2. The said application was based on the following grounds to wit that the grant:-
 - a. Was obtained by making a false statement or by concealment from the Court of something material to the case;
 - b. Was obtained by means of an untrue allegation of a fact essential to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently; and
 - c. Was obtained without full authority of all the heirs of the estate and was being used to alienate a faction of the beneficiaries of the estate.
3. The Applicants also argued that Amran Akram Amran, a Petitioner, was deceased.



4. The Applicants, relying on the judgment of the Kadhi, issued in Mombasa Kadhi Court Succession Cause No 215 of 2012, deposed that they were a daughter and a widow respectively of the deceased. They averred that they had not been recognized in the succession cause before this court and were not involved in the filing thereof. The proceedings were commenced without their knowledge, consent, or authority. This was done so that that the Petitioners could disinherit them through unorthodox means. The Applicants disclosed that the issue as to who should be appointed as an administrator had been litigated before the Court below leading to an appeal to this Court. They therefore sought to have the grant revoked and or annulled.
5. On March 13, 2023 the Petitioners filed their own Summons of Revocation of Grant. The said summons sought two main orders to wit that:-
 - a. grant of letters of administration made to Hindu Akram Amran and Mariam Akram Amrani and the late Amran Akram Amran on January 31, 2022 by this honourable Court be revoked and or annulled;
 - b. this honourable Court be pleased to issue a fresh grant in our joint names – Hindu Akram Amran and Mariam Akram Amrani”.

The applicants in the latter application averred that Amran Akram Amran, their co-administrator, died on April 4, 2022 before the said grant could be confirmed. The said death, it was argued, had rendered the grant issued herein useless and inoperative.

6. The Petitioners argued that grant of their prayers would assist in the expeditious administration of the estate in accordance with the law.
7. The parties appeared before me on April 18, 2023. By the consent of Mr Mureithi for the Petitioners and Mr Mwawasa for the Applicants in the application dated March 6, 2023 the impugned grant was revoked. I issued directions to the effect that parties file written submissions in respect of prayer number 2 of the application dated March 13, 2023. The submissions were to be highlighted before me on May 10, 2023.
8. I have considered the submissions of the parties. In my opinion, following the recording of the consent between the parties, the only substantive issue pending determination is whether a grant should issue in the names of Hindu Akram Amran and Mariam Akram Amrani. The Court is aware that the learned Kadhi held that the 1st and 2nd Applicants are heirs of the estate. The said determination has not been challenged.
9. This Court agrees with the Petitioners that parties are bound by their pleadings. The Court, on its part, makes determination on issues before it. In *Raila Amolo Odinga & Another versus IEBC & 2 others* [2017] eKLR the Court held that

“in absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each party is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the Court for its consideration. An issue arises only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a Court to frame an issue not arising out of the pleadings”



10. The authorities, as I understand them, are unanimous that I may only determine issues which arise from pleadings and I may only rule on such issues as the parties have framed for my determination.
11. In this matter the only issue pending determination is whether I should issue a fresh grant in the name of Hindu Akram Amran and Mariam Akram Amrani. I take note that upon the revocation of the previous grant the estate is now without administrators. There is thus a clear and present risk that the estate may be wasted. I take a further note that the Petitioners, together with their deceased brother, were previously administrators of the estate pursuant to the grant issued on January 31, 2022. Appointing them as administrators now would be the least disruptive option.
12. The 1st Applicant has a pending application before this Court vide which she appealed against the decision of the Kadhi to disallow her application to be appointed as a co-administrator. I agree with the Petitioners that Mombasa HCFA No E004 of 2023 should be heard and determined on merits. Appointing her an administrator at this point would defeat her appeal and render it academic.
13. I am of the firm conviction that by allowing prayer No 2 of the Summons of Revocation of Grant dated March 13, 2023.

Disposition

14. I therefore order as follows: -
 1. Grant in the name of Hindu Akram Amran and Mariam Akram Amrani shall issue forthwith;
 2. Summons for Confirmation of Grant of the Letters of Administration Intestate in respect of the estate of the deceased be filed within 30 days of the date of this ruling; and
 3. In the interest of justice, I order that the applicants be involved and consulted in all subsequent pleadings.
15. I make no orders as to costs.

Orders accordingly.

DELIVERED, DATED, AND SIGNED THIS 14TH DAY OF JULY, 2023 AT MOMBASA VIA MICROSOFT TEAMS

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GREGORY MUTAI

JUDGE

In the presence of:-

Ms. Justus for the Petitioners/Applicants

No appearance for the Applicants/Respondent

Mr. Arthur Ranyundo – Court Assistant

