



In re Estate of Ali Guchu Karua (Deceased) (Miscellaneous Succession Cause 253 of 1992) [2023] KEHC 24359 (KLR) (Family) (19 September 2023) (Ruling)

Neutral citation: [2023] KEHC 24359 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS SUCCESSION CAUSE 253 OF 1992
EKO OGOLA, J
SEPTEMBER 19, 2023
IN THE MATTER OF THE ESTATE OF ALI GUCHU KARUA (DECEASED)

BETWEEN

MWANAIIDI ALI GUCHU APPLICANT

AND

MAJID ALI GUCHU 1ST RESPONDENT

ADAM GUCHU KARUA 2ND RESPONDENT

RULING

1. The Summons before this Court is dated 20th June 2019. The Applicant prays for the following:-
 - a. Spent;
 - b. That the grant of letters made to Adam Karua Guchu and Majid Ali Guchu on 16th July 1992 be revoked and be given to the Applicant Mwanaidi Ali Guchu;
 - c. To refer the matter to the Kadhi's Court at Murang'a for distribution of the estate to the rightful heirs in accordance to Islamic Law;
 - d. To award costs of this application to the Applicant.
2. The Summons were based on the grounds set therein and the Affidavit sworn by the Applicant.
3. Ali Guchu Karua died intestate on 1st September 1965. He was survived by two wives, four sons, and six daughters. Grants of Letters of Administration intestate was first issued to the public trustee on 16th July 1992. On 28th February 2012, the grant was revoked and issued to Adam Karua Guchu and



Majid Ali Guchu, sons of the deceased. Since then, the administrators have not taken any measures to have the grant confirmed.

4. According to the Applicant, the Respondents have been acting as the sole beneficiaries of the estate; they have been unfairly benefiting themselves from the estate to the exclusion of the remaining beneficiaries; and they have adamantly refused to include the other beneficiaries to agree on the mode of distribution.
5. The 1st Respondent opposed the Application vide a Replying Affidavit dated 20th September 2019. He deposed that the process of confirmation of grant has stalled because the beneficiaries have not been able to agree on the mode of distribution. He further deposed that the beneficiaries have been benefiting from the proceeds of the estate
6. The 2nd Respondent opposed the Application vide a Replying Affidavit dated 9th August 2019. He deposed that he is desirous and willing to have the grant confirmed if only the 1st Respondent, the Applicant and the other beneficiaries would agree on the mode of distribution. He deposed that he has been using the proceeds from the estate to manage the estate and the remaining, he has been dutifully sharing with the beneficiaries.

Determination

7. I have considered the Application, the Affidavits filed and the entire record of the court. There two issues for determination:-
 - a. Whether the grant should be revoked
 - b. Whether the matter should be referred to the Kadhi's Court for distribution

Whether the grant should be revoked

8. Section 76 of the *Law of Succession Act* provides for the conditions that must be attained for a grant to be revoked or annulled. It stipulates as follows:-

“76. Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any Interested Party or of its own motion—

- (a) ...
- (b) ...
- (c) ...
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or



(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) ...”

9. The Applicant's case is that the grant issued to the Respondents should be revoked because, for over 10 years now, the Respondents have failed to take steps to have the grant confirmed. From the record of the court and the affidavits of the parties, it can be deduced that the beneficiaries of the estate have been unable to agree on the mode of distribution of the estate. The parties were referred to Mediation, but the results were not fruitful.
10. Section 76(d) provides that if there is no reasonable cause as to why the administrators have not applied for confirmation of grant; diligently administered the estate; or produced to court the inventory or account of the administration of the estate, the grant issued to them should be revoked. In the circumstances, the reasonable cause is that the beneficiaries have been at loggerheads with each other and have been unable to agree on among other things the mode of distribution. The Applicant has not satisfied the court on why the grant issued on 28th February 2012 should be revoked. In my view, the issue is not who is the administrator, rather the mode of distribution of the estate.

Whether the matter should be referred to the Kadhi's Court for distribution

11. The jurisdiction of the Kadhi's Courts is established under article 170 of the Constitution of Kenya 2010. Article 170(5) provides that:

“The jurisdiction of a Kadhi's Court shall be limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's courts.”
12. The above is replicated in section 5 of the Kadhi's Court Act, cap 11 Laws of Kenya which states that:

“A Kadhi's Court shall have and exercise the following jurisdiction, namely the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion; but nothing in this section shall limit the jurisdiction of the High Court or of any subordinate court in any proceeding which comes before it.”
13. Going by the above I need only emphasize that the only limitation set by the law on the jurisdiction of the Kadhi's Court is the subject matter of the claim or dispute i.e whether the matter relates to personal status, marriage, divorce or inheritance of a Muslim, whether parties profess the Muslim faith and the choice on whether or not the parties submit to the jurisdiction of the Kadhi's Court. There is no requirement for the value of the subject matter both under the Constitution and under the Kadhi's Act.



14. The High Court is the succession court under Section 47 of the Law of Succession Act, which provides as follows:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient”

15. However, the Law of Succession Act is alive to the fact that when it comes to matters of inheritance amongst parties who profess the Islamic faith, the Kadhi's Court is also vested with powers to determine the said issues. Section 48(2) of the Law of Succession Act provide that:

“For the avoidance of doubt, it is hereby declared that the Kadhis' courts shall continue to have and exercise jurisdiction in relation to the estate of a deceased Muslim for the determination of questions relating to inheritance in accordance with Muslim law and of any other question arising under this Act in relation to such estates.”

16. The only requirement for Section 48(2) is that persons of Muslim faith submit to the jurisdiction of the Kadhi's Court. In this instant case, the respondents in the Replying Affidavit did not address the Applicant's prayer for the matter to be referred to the Kadhi's Court for distribution.

17. Accordingly, for the reasons set out above, the court makes the following order:

- a. Prayer (b) on the revocation of grant issued on 28th February 2012 is hereby dismissed.
- b. This matter is hereby transferred to the Kadhi's Court in Nairobi to determine the mode of distribution of the estate of Ali Guchu Karua.
- c. Costs of the Application be in the cause.

It is so ordered

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2023

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E.K. OGOLA

JUDGE

In the presence of:

Mr. Nandama for the Applicant

Mr. Ndegwa for the 1st Respondent

N/A for the 2nd Respondent

Gisiele Muthoni Court Assistant

