



REPUBLIC OF KENYA



**In re Estate of Weru Joseph (Deceased) (Succession Cause 485 of 2018)
[2023] KEHC 24377 (KLR) (Family) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24377 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 485 OF 2018
MA ODERO, J
OCTOBER 13, 2023**

IN THE MATTER OF THE ESTATE OF WERU JOSEPH (DECEASED)

BETWEEN

JERITH NJERI WERU APPLICANT

AND

FLORENCE NYAWIRA WERU RESPONDENT

RULING

1. Before this Court for determination is the Notice of Motion dated 13th July 2022 by which the Applicant Jerith Njeri Weru seeks the following orders:-
 - “1. That the Respondent does render an account of the assets and liabilities of the deceased and a full accurate account of all the dealings therewith.
 2. That the Applicant and Respondent do open a jointly held estate account to channel the income of the estate.
 3. That within six months of the determination of this application, the Administrators do make an application for confirmation of grant.
 4. That the costs of this application be in the cause.”
2. The Application was premised upon Section 45 and 83(b), (e) of the *Law of Succession Act* and all other enabling provisions of the law and was supported by Applicant’s affidavit of even date and a Further Affidavit dated 21st September 2022.



3. The Application was opposed by the Respondent Co-administrator Florence Nyawira Weru who filed the Repling Affidavit dated 10th February 2023 and a further affidavit dated 22nd December 2022.
4. The application was canvassed by way of written submissions. The applicant filed written submissions dated 8th November 2022 and further submissions dated 20th December 2022. The Respondent's submissions are dated 5th March 2023.

Background

5. This Succession Cause relates to the estate of the late Joseph Weru who died intestate on 9th January 2018. A copy of the Death Certificate Serial No. xxxx is annexed to the Petition for Grant of Letters of Administration Intestate dated 15th May 2019 (Annexure 'JW1').
6. The Deceased was survived by the following persons:-
 - (i) Florence Nyawira Kabiru - Widow
 - (ii) Peninah Nyawira Weru - Daughter
 - (iii) Jerith Njeri Weru - Daughter
 - (iv) Joseph Wanjohi Weru - Son
 - (v) Michael Kabiru Weru - Son
 - (vi) Faith Nyamathai Weru - Daughter
7. The estate of the Deceased was said to comprise of the following assets:-
 - a) Land Title No. Ex Kibagare/Soweto Scheme Plot No. 70E
 - b) Plot No. D-9 Kayole Riverside South
 - c) Plot No. 63 E Kayole Riverside South
 - d) Plot No. D-4-212 Kayole
 - e) Plot No. E2 on LR No.11344/R Kayole
 - f) Plot No. G 12/1 on LR No. 11344/R Kayole
 - g) Money in Equity Bank Account
 - h) Money in NIC Bank Account No.xxxx
 - i) Money in Stanbic Bank Account
 - j) Motor vehicle KBP 688V - Public service vehicle (joint property)
 - k) Motor vehicle KBZ 031Q Public service vehicle
 - l) Motor vehicle KBS 017 T - Public service vehicle (joint property)
 - m) Motor vehicle KBW 513M - Public service vehicle (joint property)
 - n) Motor vehicle KCC 642A - Public service vehicle (joint property)
 - o) Motor vehicle KCA 279B - Private vehicle



8. Following the demise of the Deceased his widow Florence Nyawira Kabiru and daughter Jerith Njeri Weru petitioned for Grant of Letters of Administration Intestate. The Grant was duly issued to the two on 30th October 2019. The Grant is yet to be confirmed.
9. The Applicant has now filed this application accusing her Co-administrator who is her step-mother of sidelining her in the administration of the estate. The Applicant alleges that the Respondent who resides and works in Mombasa has been receiving all the rental income from the properties left behind by the Deceased without accounting for said income to the other beneficiaries.
10. The Applicant further alleges that the Respondent has taken control of the PSV Vehicles left behind by the Deceased notwithstanding the fact that the Applicant who is a trained accountant is qualified to operate and manage the PSV vehicles.
11. The Applicant further accuses the Respondent of concealing some of the properties left behind by the Deceased. That the Respondent has allowed her son Joseph Weru to collect and utilize the rental income derived from a rental property in Kiamaiko.
12. The Applicant states that all her efforts to engage her Co-administrator with a view to resolving these differences have been rebuffed.
13. The Applicant prays that her Co-administrator be directed to file accounts regarding her administration of the estate. She further prays that all income derived from estate properties be deposited into a joint account opened in the name of both Administrators of the estate.
14. The Respondent who is the Co-administrator of the estate opposes the application. She confirms that she is the widow of the Deceased whilst the Applicant and Peninah Nyawira Weru are her step-daughters. That the Applicant and her sister are all adults whilst the children of the Respondent are minors.
15. The Respondent confirms that she and the Applicant were both appointed as administrators of the estate. She insists that she submitted all Title Documents and log books in respect of property belonging to the Deceased to the Advocates handling this Succession Cause.
16. According to the Respondent as the widow she has a life interest in the properties left behind by the Deceased. That having contributed towards the purchase and/or development of the real property left behind by the Deceased she is entitled to a 50% share of the same. She urges the court to dismiss this application.

Analysis and Determination

17. I have carefully considered this application, the Reply filed thereto as well as the written submissions filed by both parties.
18. It is clear from the Affidavit filed in this court that there has been a serious falling out between the two Administrators of the estate and they are not acting in tandem as a team for the benefit of the estate and the other beneficiaries.
19. The Applicant accuses her Co-administrator of sidelining her and managing the estate on her own without accounting to any of the other beneficiaries of the estate.
20. It must be pointed out that in a situation where more than one administrator is appointed, the appointment is made jointly and not to each individual administrator. It is anticipated that the administrators will act jointly for the benefit of the estate. Where as in this case there is acrimony between the administrators then the Grant ought to be revoked and fresh administrators appointed.



21. It is therefore wrong for the Applicant to file an application asking that her Co-administrator be ordered to file accounts, as the duty to file accounts lies on both administrators jointly. The Applicant cannot remove herself from this obligation.

22. The duties of personal representatives to an estate are set out in Section 83 of the Law of Succession Act. Section 83 (g)(h) provides that:-

“Personal representatives shall have the following duties:-

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)

- (g) Within Six months from the date of confirmation of the Grant or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;
- (h) to produce to the, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealing therewith up to the date of the account;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.” [own emphasis]

23. The instances where a personal representative of an estate will be required to tender accounts was discussed extensively in the case of RE Estate of Julius Mimano (Deceased) [2019] eKLR where Hon Justice Musyoka observed as follows:-

“.....Section 83 of the Act has imposed a positive duty on personal representatives to specifically render accounts at two stages. The first instance is in the first six months of the administration. It is at this stage that they ought to account as to whether they spent any funds from the estate for the purpose of disposing the remains of the deceased and, if so, how much. State whether they got in or gathered or collected or brought together all the assets that make up the estate. The getting in of the estate is critical, it should precede settlement of debts and liabilities and distribution of the assets. Indeed, these duties can only be discharged if there are assets sufficient to settle debts leaving a surplus for distribution. It would also be from the assets collected that the estate would have a pool of resources for administration expenses. Section 83(e) commands the personal representatives to produce in court a full and accurate inventory of the assets and liabilities, no doubt generated from the exercise of getting in the assets and ascertaining the debts of the estate. There is also an obligation to render an account of all their dealing with the assets and liabilities up to the point of the



account. The second occasion for rendering accounts is at the completion of administration. The duty is stated in section 83(g) of the Act. The object of the second and final account is to give opportunity to the personal representative to demonstrate that they have complied with the duty in section 83 (f) of distribution of the estate to the beneficiaries.”

24. As stated earlier this duty to render accounts falls on the Administrators jointly. In the premises I do direct that the Administrators of the estate of the Deceased to file within forty-five (45) days accounts of all their dealings with the estate from 30th October 2019 to the present time.
25. The duty of a Probate Court is to supervise the distribution of the estate to the genuine beneficiaries. As things stand it appears that one Administrator is utilizing the proceeds of the estate to the exclusion of all the other beneficiaries. This cannot be allowed to continue.
26. Section 47 of the *Law of Succession Act* vests court with wide discretion in granting protective powers of purposes of safeguarding the estate of a Deceased person. It provides:-

“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.”
27. Likewise the Rule 73 of the Probate and Administration Rules provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of the justice or to prevent abuse of the process of the court.”
28. The court deems it necessary to direct that an independent estate agent be appointed to collect the rental income derived from estate properties in order to avert the possibility of waste and/or dissipation of the estate before final distribution.
29. The Respondent has stated that she is entitled to a 50% share of some of the estate properties. Any claim the Respondent may have to estate assets can only be litigated in the Environment and Land Court, which is the only court mandated to determine questions of ownership, use or occupation of land.
30. Finally, I allow the Notice of Motion dated 13th July 2022 and make the following orders:-
 - (1) The Administrators of this estate are ordered to file within forty-five (45) days a full and accurate account of all dealings in estate properties with effect from 30th October 2019 to date.
 - (2) The Administrators are directed to appoint within fourteen (14) days a registered Estate Agent to collect and receive all rental income derived from properties comprising the estate of the Deceased pending confirmation of the Grant.
 - (3) If the Administrators are unable to agree on estate agent then the Hon. Deputy Registrar of the Family Division shall appoint a registered real estate agent to collect the rental proceeds from the said properties.
 - (4) All rental income derived from the estate properties is to be deposited into a joint Account to be opened in the name of the two (2) Administrators within Fourteen (14) days. Removal of any funds from this joint account may only be done with the consent of all the beneficiaries of the estate.
 - (5) The fees for said Estate Agent will be paid out of the rental income collected.



(6) This being a family matter each side will bear its own costs.

DATED IN NAIROBI THIS 13TH DAY OF OCTOBER, 2023.

MAUREEN A. ODERO

JUDGE

