



In re Estate of the Late Daniel Mutiso Kangu (Deceased) (Succession Cause 38 of 2000) [2024] KEHC 14127 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14127 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 38 OF 2000**

FR OLEL, J

NOVEMBER 14, 2024

BETWEEN

JOSEPH MUTHIANI MUTISO PETITIONER

AND

MARTHA WANGENE MUTISO OBJECTOR

RULING

A. Background

1. The Application before the court for determination is the summons dated 14th September 2021 filed by the petitioner/Applicant where he seeks orders that; the Objector/Respondent be directed to give accounts of rents collected over Plot No 123 Mutituni Market since May 1999 to date. The application is supported by the Supporting Affidavit of the Applicant dated on the even date and he depones that the said Plot 123 is part of the estate property and it comprises 2 shops and a pit latrine with an open ground on the rear side.
2. From the time of the demise of the deceased herein on 8th April 1999, the respondent had been collecting rent from the said property, which rents constituted estate income. It was therefore important that she accounts for the same and that total rents collected be factored in the distribution of the estate.
3. The respondent did oppose this Application by filing her replying Affidavit dated 18th October 2023 and Supplementary Affidavit dated 1st November 2023. She stated that the estate comprised of the following properties; Mavoko Town Block 2/83, Mavoko Town Block 2/117, Mitamboni/Mitutini 793, and PLOT 123 Mitutini Market and this court vide its ruling dated 22nd November 2020 had directed that the properties of the deceased be valued and subsequently be distributed in accordance with Section 40 of the *law of Succession Act*.



4. Plot 123 Mutituni had been valued at Kshs.1,200,000/= but has accrued outstanding land rate of Kshs.148,671/= and land rent of Kshs.792,000/=, which were liabilities attached to the estate. On the said plot, the deceased had constructed two shops but from time to time, she had challenges attracting consistent tenants. Accumulatively between the period between the years 2000 to 2024 she had managed to collect approximately Kshs.400,000/= as rent or thereabouts, which she used for her upkeep and also undertook repairs to keep the property in good habitable condition. Distribution of the estate, therefore, should not be held back by issues regarding accounts as the court had capacity to determine the same.
5. The respondent further filed her supplementary affidavit and did aver that the deceased had two families and was blessed with ten children. Her co-wife had also passed on and by law as the surviving widow, she held a life interest in the estate of the deceased which could only be determined upon her death or remarriage. Accordingly, she had a right to manage her husband's estate. She urged the court to also note that the Applicant and his siblings, were also exclusively managing properties known as Mavoko Town Block 2/83, Mavoko Town Block 2/117 to her exclusion and also to the exclusion of her children.
6. She therefore urged the court to dismiss the said Application and the issue of distribution be determined.

Determination

7. I have perused and considered the pleadings and submissions filed by both parties and find that the only issue that arises for determination is whether the objector/respondent should give accounts of rents collected from Plot 123 Mutituni Market.
8. Section 83 of the *law of Succession Act*, Cap 160 provides for the duties of the administrator(s);
Duties of personal representatives' Personal representatives shall have the following duties—
 - (a) to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;
 - (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
 - (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
 - (d) to ascertain and pay, out of the estate of the deceased, all his debts;
 - (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
 - (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case maybe
 - (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 court, 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 dealings 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.
9. It is obvious that the powers of the administrators under the *law of succession Act* are vast, but he/she must ensure that the estate of the deceased is well looked after, collect and collate the assets of the estate, and after confirmation of the grant, to the vest a specific legacy in the legatee thereof. He/she must also complete administration within six months from the date of confirmation of the grant, or such longer period as the court may allow, in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
10. Specifically, Section 83 (e), of the *Law of Succession Act*, provides that,
- “within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
11. Without doubt the aforesaid provision puts a clear obligation on both the administrators herein to provide accurate accounts of all dealings concerning the estate properties/assets. The respondent by her replying affidavit admits to collecting rent from Plot 123 Mitutini Market and also gave the pending liabilities accruing therefrom. The Applicant has not filed any affidavit challenging the accounts provided by the Objector/Respondent, through her Replying Affidavit and though her accounts are not detailed, I do find that the same is sufficient given the background of all issues which have been determined herein.
12. I do therefore find that the prayers sought in the Notice of Motion dated 14th September 2021 have been overtaken by events and dismissed the same with no orders as to costs.
13. This matter is referred to Court annexed mediation to specifically deal with the pending issue of distribution of the Estate.
14. It is so ordered.

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 14TH DAY OF NOVEMBER 2024.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 14TH DAY OF NOVEMBER, 2024.

In the presence of;

No appearance for Petitioner/Applicant

No appearance for Objector/Respondent

Susan/Sam Court Assistant

