



**In re Estate of the Late Dr Kiptui Kandie (Deceased) (Succession Cause E1338 of 2023) [2024] KEHC 13834 (KLR) (Family) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13834 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E1338 OF 2023  
HK CHEMITEI, J  
NOVEMBER 7, 2024  
IN THE MATTER OF THE ESTATE OF THE LATE DR KIPTUI  
KANDIE (DECEASED)**

**BETWEEN**

**CONSTANTINE JELIMO SERONEY KANDIE ..... 1<sup>ST</sup> ADMINISTRATOR**

**ALLAN KIPROP KANDIE ..... 2<sup>ND</sup> ADMINISTRATOR**

**AND**

**KIGEN KANDIE ..... OBJECTOR**

**JUDGMENT**

1. There were 5 applications filed by the Applicants in quick succession herein. The same are dated 26<sup>th</sup> February 2024, 11<sup>th</sup> March 2024 24<sup>th</sup> April 2024 and 9<sup>th</sup> May 2024. All these applications were seeking various but similar orders. The court after perusing the same and after directing the parties to file their written submissions is of the view that the main application for confirmation of grant once dealt with shall answer all these other prayers sought by the Applicant.
2. For the above reason I shall proceed to consider the same and hopefully and largely deal with all the interim prayers the Applicants were seeking in the above applications.
3. In their application dated 15<sup>th</sup> April 2024 the Applicants are asking for the following orders:-
  - a. That the grant of letters of administration intestate made to the Applicants on 13<sup>th</sup> February 2024 be confirmed and the estate be divided or distributed in the manner proposed in the supporting affidavit.



4. The application is supported by the grounds thereof and the sworn affidavit of the 1<sup>st</sup> Applicant sworn on the same date.
5. The said affidavit contains the names of the deceased beneficiaries as well as the list of assets left behind by the deceased. The 1<sup>st</sup> Applicant who is the widow of the deceased has deponed that the properties devolve to her on behalf of the deceased children.
6. Kigen Kandie the brother to the deceased opposed the application vide the affidavit of protest dated 6<sup>th</sup> May 2024 on the several grounds. The most fundamental ground being that the deceased estate owed Nora Properties Limited, a company which the deceased owned 25% shares a sum of Kshs 16 million or thereabouts which was paid to Nairobi Hospital being medical charges when the deceased was alive and after he passed on.
7. The said amount was well within the knowledge of the Applicants and despite several efforts to reclaim the same it had proved futile and thus the objection herein.
8. In another affidavit of protest dated similar date the objector deponed that there were properties left behind or included in the application for confirmation which did not form part of the deceased estate. These included
  - a. Miotoni West property which belonged to the deceased but was left out.
  - b. LR NO 9276/1 which was awaiting determination of case No 252 of 2007 in the high court at Nakuru.
  - c. LR NO 209/14366 Gigiri which the deceased had 50% shares.
  - d. Centum and Middle East Bank which the deceased ought to have had 25% only.
  - e. Residual estate in Kabarnet ancestral home. The deceased had 1/3 of the share thereof.
  - f. Moloi Enterprises did not belong to the deceased herein.
9. It was his prayer that the above properties be removed from Form P & A 5.
10. The Applicant in her response to the contention that the estate owed Nora Properties Ltd a sum of Kshs 16 Million in her affidavit sworn on 11 July 2024 argued that there were no conclusive figures either done by a professional accountant and that all that the Applicant had been doing was shifting the figures.
11. She said that she was aware that the dividends from Braeburn Ltd which the deceased held 25% shares paid out quarterly dividend to Nora Properties which amount had been utilized in violation of the law and in essence intermeddling with the estate.
12. She blamed the Respondent of blocking the progress of his brother's family by delaying and ensuring that they do not get adequate provisions in form of school fees and other upkeep.
13. The court directed the parties to file written submission which they complied.
14. The Applicant submitted that the Respondents claim that the estate owed Nora Properties Ltd a sum of Kshs. 16,685,407 has not been substantiated and in particular how the amount was reached. The amount therefore remains a mere allegation.
15. The same ran foul Section 83 of the Succession Act which expected the administrators of an estate to produce inventory of the assets and liabilities.



16. The Applicant relied on the case of Kibowen Komen (2019) eKLR among others.
17. On his part the Respondent submitted that the estate owed Nora Properties the amount which it paid on behalf of the deceased to Nairobi hospital. That it was the duty of the Applicants to ascertain the deceased assets and liabilities and he relied on the case of *estate of Barrack Deya Okul* (2018) eKLR among others.
18. The Respondent urged this court to disallow the application till the amount of Kshs 16 million is taken into consideration and or the said company continue receiving the dividends due to the estate herein

### **Analysis and Determination**

19. I have perused the application herein and the respective responses. From the outset it is fair to state that the relationship between the parties herein is not in dispute. The deceased was a brother to the Objector.
20. The main issue in essence is the debt which the deceased estate owed Nora Properties Limited which ordinarily receives dividends from Braeburn Limited. The deceased it is not in dispute had 25% shares at the said Nora Properties limited.
21. The plethora of paper trail indicating that Nora Properties paid the medical bills of the deceased at Nairobi hospital where the deceased had been hospitalized and where he eventually died cannot be wished away by the Applicants. There is sufficient evidence that the Objector as a person guaranteed the said liability including surrendering his assets as security.
22. The only issue which the Applicants are disputing is the total amount claimed by the Objector on behalf of Nora properties limited. What the Applicants are saying in my humble view is that they need proper accounts to ascertain the real figures and in particular from a professional accountant.
23. The Braeburn Limited and Nora Properties are going concerns and it appears that Braeburn makes a quarterly payment of dividends to Nora Properties limited which is then shared out between the four members of the family including the estate of the deceased herein.
24. If that is the case, does the said liability warrant the Objector to object to the confirmation of grant? I don't think so. In any event this is a company and ordinarily the provisions of *Company's Act* Cap 486 kicks in.
25. At the same time this court will not turn a blind eye to the fact that the deceased estate herein has a liability of about Kshs. 17 million though it is yet to be professionally ascertained. This has been so admitted by the parties in their various affidavits on record and string of correspondences.
26. Consequently, it is my finding that form P & A 5 must include the above liability. The estate herein must settle the same once the full amount is ascertained.
27. There are also further properties which the objector raised issues which have been cited above. The above contested properties emanate from the estate of the late Rhoda Chelagat Kandie in Succession Cause No 960 of 2011 in Nairobi. There are several grants dated 4<sup>th</sup> December 2017, 30<sup>th</sup> April 2019 and one rectified on 21<sup>st</sup> July 2021.
28. The said grant indicates the deceased entitlement in various properties as hereunder:-
29. Property number 209/14366 Gigiri indicates that the deceased was entitled to 50% thereof.
30. Centum and Middle East Bank he was given 25%.



31. The Kabarnet residual ancestral home he was placed as joint tenant.
32. The property LR No. 9276/1 was to await the outcome of the case No. 252 of 2007 (OS).
33. Miotoni property and Moloi enterprises limited has been clearly explained by the Applicant in the supporting affidavit.
34. In view of the above observations, I agree that the above properties must reflect that which is contained in the grant in the estate of the late Rhoda Kandie especially the noted percentages.
35. The Middle East bank account was mentioned in the Rhoda Kandie grant contrary to what the Objector is alleging and the same indicates that the deceased was entitled to 25%.
36. Having arrived at the above findings I think it is necessary that the grant be confirmed taking into consideration the above changes. I have also indicated that the amount due to Nora properties limited in which the deceased held 25% must be professionally computed and the amount recovered from the deceased dividend and or the Applicants find a way of repaying the same.
37. In view of the period the parties have taken haggling over the figures it is necessary that a determinate period be granted to the parties to have an appropriate amount known. Thirty days would be appropriate in the circumstances.
38. On the same note the Applicants must also be responsible enough to have the estate settle the debt seeing that the Objector in particular was magnanimous enough to sort out their liability which enabled them receive the deceased body from the Nairobi hospital.
39. The property namely LR NO 9276/4 as found in the consent dated 26<sup>th</sup> January 2018 will have to await the determination of the suit number 252 of 2007 (OS) for now.

### **In conclusion**

- I. The grant issued on 13th February 2024 be confirmed as hereunder and the properties be registered in the names of the Applicants who shall hold them in trust for the rest of the beneficiaries namely Agnes Chepkoech, Melisa Cheruto Kandie, Timothy Chebon Kandie And Diana Cheronno Kandie.
- II. The said properties are:-
  - a. 50% Of Lr No. 209/14366 Gigiri.
  - b. LR No. 10682 Mambroi ..... Malindi.
  - c. LR NO. 209/14389(1R 75169)
  - d. Nakuru Municipality Block 23/317
  - e. Nakuru Municipality Block 4/170
  - f. 25% Shares At Centum & Middle East Bank
  - g. Moloi Enterprises Ltd
  - h. Owashika Avenue Lr No 9276/4
  - i. Joint Tenant At Kabarnet Ancestral Home (residual)
  - j. 50% AT LR NO 61/216..... Kibera



- k. Miotoni West Property
  - l. LR NO 209/14389 Africa Windows.
  - m. Middle East Bank A/C xxxxx
  - n. Cooperative Bank A/C xxxxxx
  - o. 25% At Nora Proiperties Middle East Bank A/C xxxxxx
  - p. 25% Shares At Nora Properties Ltd.
- III. The P & A form 5 is hereby amended to include a liability due to Nora Properties Limited to be ascertained professionally and the same to be paid by the estate herein either through the periodical dividends due to the estate from Nora Properties limited or in such other manner that the Applicants may deem appropriate.
- IV. The ascertainment in (III) above shall be carried out within 30 days from the date herein and the payments (if any) shall be paid to Nora Properties limited within six (6) months or such other shorter period as the Applicants may deem necessary.
- V. The above ascertainment shall be at the costs of the estate herein.
- VI. Parties be at liberty to apply.
- VII. Costs of this cause shall be in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 7th DAY OF NOVEMBER 2024.**

**H K CHEMITEI**

**JUDGE**

