



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Joseph Mwangi Itegi (Deceased) (Succession Cause
21 of 2019) [2024] KEHC 13831 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13831 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 21 OF 2019
HM NYAGA, J
NOVEMBER 5, 2024
IN RE ESTATE OF JOSEPH MWANGI ITEGI (DECEASED)**

BETWEEN

ELIJAH MAINA MWANGI APPLICANT

AND

NAOMI WANGUI MAINA RESPONDENT

RULING

1. The matter before me is the application dated 28/11/2023 which seeks the following orders:-
 - a. The Application herein be Certified as most urgent due to the reasons given in the Certificate of Urgency.
 - b. The respondent/administrator be compelled to give accounts of all rental monies received from Macdays Agencies emanating from property No. Nakuru Municipality Block 2/240 from the demise of the former grant holder Miriam Muthomi Mwangi to date.
 - c. The rent collection agents being Macdays Agencies be ordered to give account of all rent collected from the property known as Nakuru Municipality Block 2/240 and how they disbursed of the same.
 - d. The respondent/administrator be compelled to account for all the recipients of proceeds of sale of property no. Nakuru Municipality Block 29/34 (Rhonda).
 - e. The Respondent/administrator be removed from being a co-administrator and substituted for frustrating the operation of the rectified certificate of confirmed grant dated 6th December, 2022.
 - f. Costs of this application be provided for;



2. The application is premised on the grounds set out on the face of it and is supported by the affidavit of the applicant. The gist of the Application is that despite the rectified grant having been issued on 6/12/2022, the co-Administrator/respondent has frustrated all efforts to act upon the grant. It is also averred that the co-administrator has been collecting rent from the estates' properties and applied the same to her own use to the detriment of the other beneficiaries.
3. The Applicant further avers the Co-administrator has misappropriated the proceeds from the sale of the property known as LR No. Nakuru Municipality Block/29/34 by carrying out unequal distribution amongst the beneficiaries. The particulars are as set out in paragraph 9 of his affidavit. He avers that some payments have been made to unknown persons without involving the other beneficiaries. That the respondent has also made payments to a purported family lawyer from the estate despite the fact that each party ought to cater for their individual costs.
4. The applicant thus sought that the Respondent be removed as an administrator and that she tenders accounts for all the rent that she has been collecting.
5. It is important to note that when the matter came for directions, I allowed prayers 2,3 and 4 of the application. The court left prayer 5 for determination.
6. Pursuant to the said orders, the Respondent filed accounts to which the Applicant filed an affidavit in response thereto. In a nutshell the Applicant states that after doing his calculations he was able to deduce that the rent collected from 2022 to 2023 amounted to Ksh 1,266, 825 and the same ought to be shared equally, each beneficiary getting Ksh 253,365/-
7. The applicant further avers that the Respondent has still not accounted for other rent collected. That Reuben occupies the main house whose rent is Ksh 80,000/- per month which should also be shared out. It is further averred that the property known as Nakuru Municipality Block 2/240 which was to be sold is valued at Ksh. 32,000,000/- and his efforts to get a buyer for it have been thwarted by the respondent in collusion with Reuben. That the other beneficiaries namely the respondent and Reuben opted to buy his share of the said house amounting to Ksh 6,500,000/- but this amount is supposed to come from the beneficiaries not the estate. That to date he has not received payment.
8. The applicant also avers that he is unaware of the medical expenses paid for Reuben and he was not consulted. He also raises an issue as to why Reuben's vehicles are being funded from the estate and he should reimburse all money paid to him.
9. The Applicant further stated that there is no need for payments for a caretaker as Reuben lives in the plot in question and ought to act as the caretaker. That payments made to Mina Insurance and Golden Motors are unlawful as the 2 entities belong to the Respondent and her husband and no explanation has been made for them.
10. The Applicant states that being a Co-administrator he ought to be consulted whenever such payments are done but this has not been happening. He thus asks the court to order the Respondent to reimburse all these unauthorized expenses.
11. The Application was opposed by the Respondent Co-Administrator who filed a replying affidavit.
12. It is the Respondent's averment that she has faithfully administered the estate. She referred the court to the statements that she filed.
13. In addition to the Respondents affidavit, Jane Wangari, Joyce Wambui, Naomi Wangui and Reuben Maina Mwangi swore a joint affidavit.



14. In a nutshell the deponents aver that all the acts done by the Respondent have been with their full knowledge and authority. They confirm that property known as Nakuru Municipality Block 29/34 (Rhonda) was sold and the proceeds shared out between all the beneficiaries by their late mother before the Respondent became an administrator.
15. It is further averred that Reuben is occupying one of the houses as allowed by their deceased parents herein he is not meant to pay any rent.
16. As regards instructions to Ms Ikua & Co Advocates, the respondent avers that the said advocate has been acting for the family all through and the applicant has even signed documents drawn by him.
17. The Respondent further avers that in order to have peace, they had decided to pay the Applicant Ksh 6,500,000/- being his rightful entitlement to which he had initially agreed only to file the present application. They are in agreement that the house can be put up for sale with participation of all the parties. They added that their parents had stated that the matrimonial home should not be sold under any circumstances but should be maintained for them and their future generation.
18. As regards payment for Reuben treatment, they aver that this was agreed after he was involved in an accident but the Applicant who has always been uncooperative did not agree.
19. As regards the expenses pointed at by the applicant, the respondent aver that the same are normal expenses which have been made with the approval of the other parties and all withdrawal from the bank account have been made with full knowledge.
20. The respondent states that should the court find that any sums are unexplained she is willing to take responsibility thereof.
21. I have considered the application, the response thereto and all the documents filed herein.
22. There is no dispute that Elijah and Naomi are the Co-administrators of the estate of their late father having become so after their mother passed away.
23. It is very obvious that Elijah is perceived to be a lone ranger in the family pitying him against the other siblings.
24. The duties of administrator are well spelt out under Section 83 of the [Law of Succession Act](#) as follows;
Duties of personal representatives
83. 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 may be;
- (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.

25. Being co-administrators Elijah and Naomi have a duty to ensure that there is proper administration of the estate. Unfortunately, it seems like there is no unity of purpose between them. It seems like they cannot agree even on very simple things.
26. As regards Nakuru Municipality Block 29/34 (Rhonda), it is quite clear that the same was sold by their mother who was the previous administrator. The rectified grant issued on 6/12/2022 clearly states that the property was given to their mother and was to be sold.
27. Of course, questions may be asked as to whether leave of the court was obtained to sanction the sale by a spouse but it is not proper to ask the Respondent to account for acts done by the previous administrator. Her mandate commenced on 6.12.2022 just like that of the applicant himself.
28. In respect to the property known as Nakuru Municipality Block 2/240 the confirmed grant states that the same is to be sold and the proceeds thereof be shared among the beneficiaries equally. Therefore, the administrator have to abide by the provisions in the said grant.
29. However, in the event that the other beneficiaries feel that the sale of the property to outsiders may be inappropriate, they have the option of giving Elijah a sum equal to what he would be entitled to if the house was sold and they be deemed to have become the buyers. There is nothing stated that decrees that the property out to be sold to outsiders only.
30. To end the debate and the said property, it is only proper that the same be valued by a reputable firm then either sold off or the said Elijah be given an equivalent of his share. That will extinguish all his rights over the said property and the other beneficiaries be deemed as the purchasers. The said sale ought to be conducted within the next 120 days.
31. As regards the accounts, I find that the same have been adequately explained. It is common knowledge that there would be normal expenses for maintenance of the house/property. The Applicant cannot adopt a hands-off approach to the maintenance of such property and then come and demand accounts. He is a co-administrator with rights and duties like those of the respondent, the co-administrator.
32. On the issue of rents, I believe that the best way is that in the *interim*, the expenses ought to be deducted and the remainder be shared out equally.



33. The thorny issue of Reuben's occupation of one of the house has been sufficiently explained. It would be unreasonable to ask him to pay rent. It is apparent from the court record that even the applicant has been deriving benefits from the estate, which was the reason the application dated May 25, 2022, filed by the other beneficiaries. If it is to account, he should be the first to do so. Be it as it may, I think that trying to address the issue will just open a can of worms and will delay the completion of the administration of the estate herein.
34. Having looked at the matter, I am of the view that the failure to complete administration of the estate herein is largely because of the position that the applicant has taken. It is very clear that while the other siblings are always in agreement, he is the one taking a different stance. He could not therefore come to court and seek the removal of the co-administrator, who as is seen from their joint affidavit, has consulted the other beneficiaries.
35. In fact, it is the Applicant who seems to be making it difficult to administer the estate and the one likely to be removed if matters continue in this manner. I would advise him to adopt a reconciliatory approach to the matter so that the parties can conclude this cause. In the event that he does not cooperate, the court can and exercise its powers to remove him.
36. I therefore, direct that the co-administrators proceed to give effect to the grant as confirmed. The cost of transmission will be borne by the estate and if possible by the proceeds of the rent collected. The co-administrators should account for such costs to the other beneficiaries.
37. That said, I find that the application is devoid of merit and is dismissed.
38. Being a family matter, there shall be no orders as to costs.

DATED AND DELIVERED VIRTUALLY AT MERU THIS 5TH DAY OF NOVEMBER 2024.

H.M. NYAGA

JUDGE

