



In re Estate of Swaleh Karama Hantoosh (Deceased) (Succession Cause E012 of 2023) [2024] KEHC 16353 (KLR) (6 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16353 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE E012 OF 2023**

G MUTAI, J

DECEMBER 6, 2024

IN THE MATTER OF THE ESTATE OF SWALEH KARAMA HANTOOSH (DECEASED)

BETWEEN

KHALID SWALEH KARAMA HANTOOSH PETITIONER

AND

MOHAMED SWALEH KARAMA HANTOOSH RESPONDENT

RULING

1. The application before me is dated 26th June 2024. Vide the said application, the Respondent/Applicant seeks the following orders:-
 1. Spent;
 2. Spent;
 3. That this honourable court be pleased to enlarge the time for the Applicant to file the objection proceedings out of time and the annexed objection proceedings herein be admitted out of time upon payment of the requisite Court fees and be deemed served to the Respondent;
 4. That this honourable court be pleased to strike out these proceedings for being sub judice and res judicata, frivolous, fictitious, vexatious, scandalous and an abuse of the due process of the Court.; and
 5. That the costs of this application be borne by the Petitioner.
2. The Interested Party/Applicant avers that he and other family members were not involved in the process leading to the filing of the Petition for letters of administration intestate dated 24th October 2023. He stated that there exists another succession cause, to wit, Succession Cause No. 180 of 2019, before the Kadhi's Court in respect of the estate of Swaleh Karama Hantoosh (deceased).



3. The application is opposed. Khalid Swaleh Karama swore an affidavit on 9th July 2024 in which he stated that the Respondent/Applicant did not explain why he wanted the time to be extended, as no reason was given for failing to file objection proceedings within time. In his view the application before the Court was made in bad faith to cause confusion. He, therefore, prayed that the application be dismissed.
4. The Respondent/Applicant filed a further Supporting Affidavit sworn on 29th July 2024, in which he reiterated the contents of his earlier affidavit.
5. The Respondent/Applicant filed Written Submissions dated 4th October 2024, in which he argued that the Petition was subjudice and/or res judicata and that the petition was admissible as the consent of all the beneficiaries was not obtained.
6. Petitioner/Respondent filed submissions dated 25th October, 2024, in which it was urged that the application be dismissed with costs.
7. I have considered the application, the response, and the parties' submissions.
8. It would appear to me that there are two pending Petitions regarding the estate of the deceased person, one before this Court and the other before the Kadhi.
9. I have previously dealt with the claim that this matter is res subjudice and or res judicata. In the ruling I delivered on 24th May 2024, I dismissed the same. I am unable to grant it at this point, either.
10. The Respondent avers that the Petition in this file was filed pursuant to the directions of this Court issued on 21st March 2023. Those directions were issued after the Court considered the petition for limited grant ad litem and were intended to ensure that the grant wasn't abused. In issuing the grant, the Court was unaware of the Petition before the Kadhi's Court as the Petitioner herein made no such disclosure.
11. In the interest of justice, I allow the application in terms of prayer 3 of the Notice of Motion dated 26th June 2024. The Interested Party is given leave to file the objection proceedings within 30 days of the date hereof.
12. I make no orders regarding costs as this is a succession dispute between close family members.
Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 6TH DAY OF DECEMBER 2024. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:

Mr Mangaro, for the Respondent/Applicant;

No appearance for the Respondent; and

Arthur - Court Assistant.

