



REPUBLIC OF KENYA



In re Estate of the Late Francis Kahenya Mbugua (Deceased) (Succession Cause 2359 of 2010) [2024] KEHC 15264 (KLR) (Family) (5 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15264 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2359 OF 2010
HK CHEMITEI, J
DECEMBER 5, 2024
IN THE MATTER OF THE ESTATE OF THE LATE
FRANCIS KAHENYA MBUGUA (DECEASED)

BETWEEN

HARRISAON THUKU KAHENYA APPLICANT

AND

PETER MBUGUA KAHENYA 1ST RESPONDENT

MONICAH MBUGUA KAHENYA 2ND RESPONDENT

MR WARANI T/A CASTLELAND PROPERTIES CONSULTANTS 3RD RESPONDENT

RULING

1. Before this court are four sets of applications which the court shall endeavor to deal with them simultaneously.
2. The first application is dated 17th April 2023 in which the Applicant Harrison Thuku Kahenya is seeking orders that:-
 - (a) Summons be issued for personal attendances of the Respondents Peter Mbugua Kahenya, Monica Mbugua Kahenya and Mr. Warani t/a Castle land property consultants to appear before court on the hearing date and to continue attending court during the hearing of this application until this court specifically discharges/ dispenses with his attendances after the ruling on this application is delivered.



- (b) The Respondents be committed to civil jail for a term of six months for contempt of court blatantly disobeying and or defying court orders issued on 25th November 2022.
 - (c) The Respondents to pay for damages and loss suffered by the Plaintiff/Applicant as a result of failure of compliance of the order by the defendants/ Respondents.
 - (d) Costs of the application be borne by the Respondents.
3. The application is based on the sworn affidavit by the Applicant dated 6th April 2023 and the grounds thereof.
 4. The 1st and 2nd Respondent opposed the said application vide the joint replying affidavit sworn on 3rd May 2023.
 5. The second application dated 14th August 2023 by Peter Mbugua Kahenya and Monica Nyiha Kahenya seeks orders that:-
 - (a) The court be pleased to sanction the Respondent's Stephen Kahenya and James Mwaura from intermeddling with the estate and to issue appropriate sentences befitting of their various illegal actions as provided under Section 45 of Cap 160.
 - (b) The court be pleased to issue permanent injunction against the Respondent's their agents and servants restraining them from further interference, disruption or revocation of any contract and in any way intermeddling with the management of the estate of Francis Kahenya deceased.
 - (c) Costs be provided for.
 6. The application is based on the sworn affidavit of the Applicants dated the same day.
 7. The application is opposed by Stephen Kahenya and James Mwaura vide their joint affidavit sworn on 28th August 2023.
 8. The third application dated 4th October 2023 by Harrison Thuku Kahenya is seeking orders that:-
 - (a) The 1st and 2nd Respondent be called to render accounts on income and expenditure based on rent collected from the deceased commercial properties on LR NO. 13527/29 and LR NO. 13527/31 or any property of the deceased during their tenure as administrators.
 - (b) The grant of representation issued to Eunice Wanjiru Kahenya, Peter Mbugua Kahenya and Monicah Mbugua Kahenya on 24th May 2011 be revoked.
 - (c) Upon granting prayer No. 3 above we propose that James Mwaura Kahenya, Jane Nduta Murithi and Lucy Wanjiku Kahenya be made as administrators of the estate of the late Francis Kahenya Mbugua.
 - (d) The court be pleased to order for redistribution of the estate of the late Francis Kahenya in respect of the family home and the rental houses which were meant to be registered and transferred in a family company where all the family members would have equal shares so as to remove the management difficulties expresses herein and give each beneficiary his/her shares.
 - (e) Costs in the cause.
 9. The application is premised on the Applicant's sworn affidavit dated 4th October 2023.
 10. The Respondents vide a replying affidavit sworn on 31st January 2024 have opposed the above application.



11. The third application is by Stephen Kahenya and James Mwaura dated 11th October 2023 seeking orders that:-
 - (a) The 1st and 2nd Respondents be called upon to render accounts on income and expenditure based on rent collected from the deceased's commercial properties on LR NO. 13527/29 and 13527/31 or any property of the deceased during the tenure as administrators.
 - (b) The bank managers ABSA Thika be ordered to produce statement of Account number 20325885135 in the name Hebron Kenya limited and a similar order be directed at branch manager ABSA Juja to produce statement of account number 2039515833 in the names of Eunice Wanjiru Kahenya (deceased), Peter Mbugua Kahenya and Monicah Mbugua Kahenya from the dates those accounts were opened to current which statements to be certified and handed over to the Applicants for tallying in court.
 - (c) The grant of representation issued to Eunice Wanjiru Kahenya (deceased) Peter Mbugua Kahenya and Monicah Mbugua Kahenya on 24th May 2011 be revoked.
 - (e) Upon granting prayer 3 above we propose that Stephen Kiarie kahenya, James Mwaura Kahenya and Jane Nduta Murithi be named as administrators of the estate of the late Francis Kahenya Mbugua.
 - (f) The court be pleased to order for redistribution of the estate of the late Francis Kahenya Mbugua in respect to the family and rental houses being title numbers LR 13527/29 and 13527/31 which were meant to be registered and transferred in a family company where all the family members would have equal shares so as to remove the management difficulties expresses herein and give each beneficiary his/her share.
 - (h) Costs in the cause
12. The application is based on the grounds thereof and the sworn affidavit of James Mwaura Kahenya and the supporting affidavit of Stephen Kiarie Kahenya both dated 11th October 2023.
13. The court directed the parties to file written submissions in respect to all the four applications. Some of the parties complied while I believe the rest relied on the affidavits on record. I have perused the same extensively together with the cited authorities.
14. The history of this matter in a nutshell is not difficult to understand.
15. All the parties, that is the Applicants or the Respondents are beneficiaries of the estate herein and in particular the children of the deceased. A grant of letters of administration was issued and confirmed to Peter Mbugua, Monicah Kahenya and their late mother Eunice Wanjiru Kahenya.
16. The Applicant Harrison Kahenya on 15th December 2016 made an application that accounts be rendered by the administrators of the estate. The court vide a ruling dated 25th November 2022 directed the administrators within 60 days to deliver the accounts as from 24th May 2011 to the present period.
17. It appears that they were not able to comply and sought an extension of time which the court granted.
18. The application dated 17th April 2023 therefore is seeking to punish the administrators for failing to comply with the above orders.
19. In their replying affidavit dated 3rd May 2023 they have explained themselves giving reasons for the delay and further attaching accounts prepared by one Muigai Ikame & Associates, Certified Public Accountants.



20. These accounts are for the years between 2018 and 2019. I have not seen the accounts of the other period as directed by the court.
21. The subtotal of the applications herein is total mistrust between the siblings. They had agreed that properties comprised in LR No. 13527/29 and 13527/31 be registered in a company which they incorporated known as Hebron limited. The CR12 on record shows that they are all directors/ shareholders.
22. The administrators on the other hand proceeded to open accounts at ABSA bank limited Thika and Juja branches and again it appears the operations of the same has not been satisfactory as far as the Applicants are concerned.
23. The three namely, Harrison Thuku Kahenya, Stephen Kahenya and James Mwaura by their applications have expressed their displeasure hence the prayers that the grant in favour of the administrators be revoked. Their dissatisfaction is to the effect that despite agreeing to have the two properties namely the commercial and the homestead be registered in the company the management of the same has been problematic.
24. The main, mistrust in my analysis is the opaque manner the administrators have controlled and managed the proceeds accruing from the rental premises. This was the reason the court ordered accounts to be provided.
25. The court has weighed in on this matter and the history of mistrust between the beneficiaries. In such a situation I do not find it prudent for the court to be used as a micro manager of the estate. From 2011 the parties ought to have settled this matter and in particular on the management of the commercial property.
26. I do not find the explanations by the administrators that the accounts have had problems because the bank unilaterally closed it. That does not take away the responsibility of providing the accounts as directed by the court. As it is there are no current accounts as such from the period directed by the court to date.
27. The provisions of Section 83(e) of Cap 160 are imperative. The same goes on to state 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;”
28. It is not possible to ascertain how much income the properties have yielded from the period they took over the administration to date. In this regard therefore, I find the argument and or the complaint by their siblings plausible.
29. Just as they produced the accounts for the period 2018 and 2019, they must also provide the accounts for the other period as ordered by the court. The argument that their late mother at some point managed the estate is too shallow to be believed as the two were also administrators of the estate. I even doubt whether in her age she was in a better position to comprehend what was going on.
30. At the same time, I do not agree with the Applicants that the grant be revoked. The estate has come very far to order such a drastic action for now. The safest way is to appoint another administrator to replace their late mother and a fourth administrator so that they can team up with the two and ensure the estate is properly managed and or finalised.



31. The prayer for redistribution of the two remaining assets in my view is the only way to go. The court however will not dictate to the parties on how to deal with this issue. They need to agree within a specified period and in the event of any disagreement on how to share them out the parties be at liberty to apply.
32. Coming back to the issue of the accounts and now that the administrators have opened proper accounts they still must comply with the orders of 25th November 2022. The accounts must be rendered and they must be up to date.
33. In the premises and in making a Global Ruling on the four applications the court directs as follows:-
 - (a) Harrison Thuku Kahenya is hereby appointed as a joint administrator of the estate herein in place of Eunice Wanjiru kahenya, deceased.
 - (b) Stephen Kahenya is hereby appointed as a fourth administrator of the estate herein so that the joint administrators of the estate are Peter Mbugua Kahenya, Monicah Mbugua Kahenya, Harrison Thuku Kahenya and Stephen Kahenya.
 - (c) The administrators are hereby directed to provide an up-to-date account as per the ruling of this court dated 25th November 2022 within the next 60 days from the date herein.
 - (d) The parties/beneficiaries are hereby directed within the next 60 days from the date herein to agree on the mode of distribution of the remainder of the properties namely LR No. 13527/29 and 13527/31 and in the event of such disagreement the parties be at liberty to apply.
 - (e) Costs in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 5TH DAY OF DECEMBER 2024.

H K CHEMITEI

JUDGE

