



**Public Trustee v Kamina & 3 others (Probate & Administration  
34 of 2014) [2024] KEHC 15900 (KLR) (13 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15900 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
PROBATE & ADMINISTRATION 34 OF 2014**

**G MUTAI, J**

**DECEMBER 13, 2024**

**IN THE MATTER OF THE ESTATE OF WILHELMINA RAYMOND KARAU (DECEASED)**

**BETWEEN**

**PUBLIC TRUSTEE ..... APPLICANT**

**AND**

**AUGUSTINE JOHANNES KAMINA ..... 1<sup>ST</sup> RESPONDENT**

**ROBERT JOHANNES KITUNGA ..... 2<sup>ND</sup> RESPONDENT**

**MAGDALENA MKONDE ASMANI ..... 3<sup>RD</sup> RESPONDENT**

**JOSEPH MATEO BANNTEGA ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The deceased herein died on 12<sup>th</sup> September 2007. At the time of her death, she was 83 years old. The cause of her death was given as hypertension.
2. The deceased had five issues, namely:-
  1. Augustine Johannes Kamina;
  2. Robert Johannes Kitunga;
  3. Magdalena Mkunde Asmani;
  4. Lawrence Ajuae Efumbi; and
  5. Joseph Mateso Bantega.



3. As the said five issues could not agree on who among them could be the administrator or the estate of the deceased herein, Thande, J issued the grant to the Public Trustee on 13<sup>th</sup> March 2017 and ordered him to file a Summons for Confirmation of Grant within 60 days of the date thereof.
4. Pursuant to the directions of the Court, the Public Trustee filed summons for Confirmation of Grant dated 31<sup>st</sup> May 2017. In the Affidavit in Support of the Petition for Letters of Administration Intestate, Jafred E. Maliro identified 19 properties which he reckoned belonged to the estate.
5. On 14<sup>th</sup> April 2021, Magdalena Mkonde Asmani filed an Affidavit of Protest against the Confirmation of Grant. In the said Affidavit, Magdalena stated that “prior to her death, my mother had expressed her wishes and in fact distributed her property among her children and grandchildren, some were transferred to the beneficiaries in her lifetime while others subsequent to her death”.
6. It isn't at all clear how the properties of the deceased were transferred after her death. As this matter is not in contention, I will let it rest without further enquiry.
7. Magdalena went on to list to whom each of the 19 properties belonged. She provided 14 annexures to support the contention, which I have perused.
8. On 14<sup>th</sup> April 2021, the grant was partially confirmed with respect to the property agreed by all parties as belonging to the deceased, that is, Title No. Soweto A House on Plot No 1420.
9. The Court referred the matter to Court Annexed Mediation on 19<sup>th</sup> April 2021. The mediation was, however, unsuccessful.
10. After several failed attempts to have the matter heard, this Court, on 29<sup>th</sup> October 2024, directed the parties to file Written Submissions regarding the issues remaining in contention.
11. The submissions of the Public Trustee are dated 8<sup>th</sup> October 2024. In his submissions, Mr Jafred Erimo Maliro stated that he had not found evidence that the deceased had other properties apart from Title No Soweto A House on Plot No 1420. He submitted that:-

“The other properties are in the names of third parties, and there is no evidence to contradict the same. It, therefore, follows that they do not form part of the estate of the deceased herein”
12. Mr. Maliro proposed that the said property be distributed to the 5 beneficiaries equally.
13. The submissions of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents are dated 6<sup>th</sup> November 2024. In their submissions, counsels for the said parties agreed with the Public Trustee that the sole asset of the deceased was the Soweto A House on Plot No 1420 and further that the same be divided equally among the beneficiaries.
14. The 1<sup>st</sup> Respondent filed no submissions with respect to the Protest.
15. I have considered both submissions, the Affidavit of Protest and the Summons for Confirmation of Grant. Since both parties agree and there being no contestation, I find and hold that the sole asset of the deceased is Soweto A House on Plot No 1420.
16. Since the Protest has, for all intentions and purposes, been compromised, what happens next? WN Musyoka, J, In his book *Law of Succession*, 2<sup>nd</sup> Edition, states in page 335 as follows:-

“the so-called protest hearings are nothing more than a hearing of the confirmation application, and the same ought to be determined in the manner envisaged in section 71 (2) of the *Law of Succession Act* and Rule 41 (2) of the *Probate and Administration Rules*,



where the court may confirm the grant if satisfied that the personal representatives had been properly appointed, had administered the estate in accordance with the law and were poised to continue to do so to completion, and the proposed distribution confirmed with the relevant law”.

17. In the circumstances, I confirm the grant issued to the Public Trustee on 13<sup>th</sup> March 2017. I order that the said property shall devolve to the issues of the deceased, namely:-

1. Augustine Johannes Kamina;
2. Robert Johannes Kitunga;
3. Magdalena Mkunde Asmani;
4. Lawrence Ajuae Efumbi; and
5. Joseph Mateso Bantega.

Equally, that is to say, they will each get 1/5 share of the property.

18. As the property may not be capable of division, I order that the same be sold by public auction and the proceeds therefrom distributed in the ratio I have identified within 90 days of the date hereof.

19. The matter will be mentioned on 8<sup>th</sup> April 2025 to confirm compliance and for further directions.

20. Orders accordingly.

**DATED AND SIGNED AT MOMBASA THIS 13<sup>TH</sup> DAY OF DECEMBER 2024. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Mr Onduso for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Objectors;

No appearance for the Public Trustee;

No appearance for the 1<sup>st</sup> Objector; and

Arthur - Court Assistant.

