



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 2433 OF 2009**  
**IN THE MATTER OF THE ESTATE OF ACHILLE FRISANI (DECEASED BANKRUPT)**  
**LORICA MARTURANO.....APPLICANT**  
**VERSUS**  
**PIETRO FRISANI .....RESPONDENT**  
**RULING**

1. Before Court is the Ex parte Summons dated 23<sup>rd</sup> July 2020 by which **LORICA MARTURANO (the Applicant)** seeks the following orders:-

**“1. SPENT**

**2. SPENT**

**3. This Honourable Court be hereby pleased to restrain the Administrator PIETRO FRISANI appointed by a Grant of Letters of Administration Intestate issued on 10<sup>th</sup> July 2009 in Italy and resealed by the High Court of Kenya on 22<sup>nd</sup> April 2010 from forthwith administering the estate of the Deceased Bankrupt Achille Frisani.**

**4. Pursuant to granting prayer (3) herein above, the Official Receiver LORICA MARTURANO be hereby granted authority to forthwith deal with the Estate of the Deceased Bankrupt, Achille Frisani.**

**5. Costs in favour of the Applicant.”**

2. The Application was premised upon **Section 95(1) (d) of the Law of Succession Act, Sections 57, 267(2) (b) of the Insolvency Act No. 18 of 2015 and Rule 73 of the Probate and Administration Rules.** The same was supported by the Affidavit of even date sworn by the Applicant. The application as canvassed ex-parte before the Court via the online platform on **9<sup>th</sup> March 2021.**

#### **BACKGROUND**

3. The matter relates to the estate of **ACHILLE FRISANI** (hereinafter the ‘**Deceased Bankrupt**’) who passed away on **30<sup>th</sup> March 2009 in Rome, Italy.** The Court was told that during his lifetime the Deceased Bankrupt had been declared bankrupt vide a Judgment delivered by the Court of **Taranto, Apostelle in Italy on 1<sup>st</sup> March 1988.** That at the time of his death the Deceased was still a bankrupt. That the Applicant was appointed as the Official Receiver of the Deceased Bankrupt’s Estate vide a Grant issued on **15<sup>th</sup> October 2017.**

**4. PIETRO FRISANI** the Deceased bankrupt’s son (hereinafter ‘the Administrator’) sought and obtained the resealing of the Grant of Letters of Administration Intestate issued in Italy on **10<sup>th</sup> July 2009** in the **High Court of Kenya.**

5. It is alleged that the Administrator obtained the Resealing of Grant with full knowledge of the fact that the Deceased had died as a bankrupt in breach of **Section 95(d) of the Law of Succession Act Cap 160, Laws of Kenya.** Hence the present application.

**ANALYSIS AND DETERMINATION**

6. The Applicant has told the Court that when the Deceased was declared bankrupt on **1<sup>st</sup> March 1988** he was appointed as Official Receiver of the Deceased Bankrupt’s Estate vide a Grant issued on **25<sup>th</sup> October 2017**. Annexed to the Summons (Annexure ‘**LMI**’) is the Order of the Bankruptcy and the copy of the Grant appointing the Applicant as Official Receiver (Annexure ‘**LM 2**’).

7. The Administrator who is the son of the Deceased sought to reseal the Grant issued to him in **Italy on 10<sup>th</sup> July 2009** in the High Court in **Nairobi Kenya**. A copy of the Resealed Grant is annexed to the Summons (Annexure ‘**LM4**’). The Estate of the Deceased Bankrupt which was valued at **\$210,000** included the following assets in Kenya:-

- i. 999 Shares in Danrille Limited.**
- ii. Bank Account held at Barclays Bank, Malindi Branch.**
- iii. Security Deposit Box at Barclays Bank, Malindi Branch.**

8. The Applicant avers that he contacted **Barclays Bank, Malindi Branch**, who informed him that the Administrator had **not** notified the bank of the death of the Deceased Bankrupt. Consequently standing orders put in place by the Deceased continued to be in force thereby depleting the said Account. The Applicant therefore seeks orders to collect and conserve the Estate of the Deceased Bankrupt to prevent any further wastage of the Estate.

9. **Section 57 of the Insolvency Act, 2015** provides as follows:-

**“If a bankrupt dies after being adjudged bankrupt, the bankruptcy continues in all respects as if the bankrupt were still alive.”**

10. **Section 367(2) (b)** of the same Act provides:-

**“The Court may, as part of its original order on the application or by any subsequent order, make an order directing-**  
**(b) the Official Receiver or the Public Trustee to assume responsibility for its administration.”**

11. It is clear therefore that where a Deceased dies having been declared bankrupt, and where the bankrupt order had not been lifted during his lifetime, then that bankruptcy order will continue to have effect as if the Deceased Bankrupt were still alive. In that case the Official Receiver may be directed to assume responsibility for the administration of the Estate.

12. It is clear to me that the Administrator secured the Resealing of the Grant in Kenya, through non disclosure of a material fact to wit that the Deceased was a Bankrupt at the time of his demise. **Section 95(d)** of the **Law of Succession Act** provides that:-

**“95(1) Any personal representative who, as regards the the estate in respect of which representation has been granted to him**  
**—**

- a. ...**
- b. ...**
- c. ...**
- d. knowing or having reason to believe that the estate will prove to be insolvent, continues to administer it without petitioning for administration thereof in bankruptcy, shall be guilty of an offence, and shall be liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.”**

13. I am satisfied that in the circumstances the estate of the Deceased Bankrupt is exposed to potential loss and damage. I am satisfied that the orders sought in this Summons are merited. Accordingly I grant prayers **(3)** and **(4)** of the Summons dated **23<sup>rd</sup> July 2020**. I make no orders on costs.

**DATED IN NAIROBI THIS 12<sup>TH</sup> DAY OF MARCH, 2021.**

.....

**MAUREEN A. ODERO**

**JUDGE**