



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**(Coram: Odunga, J)**

**SUCCESSION CAUSE NO. 897 OF 2010**

**IN THE MATTER OF THE ESTATE OF PETER NGUMBI MULEI (DECEASED)**

**BETWEEN**

**1. JENNIFER MUTHUE NGUMBI.....1<sup>ST</sup> APPLICANT**

**2. KATHEKA-KAI**

**CO-OPERATIVE SOCIETY LIMITED.....2<sup>ND</sup> APPLICANT**

**=AND=**

**KEVIN MULEI NGUMBI .....1<sup>ST</sup> RESPONDENT**

**STEPHEN KYALO NGUMBI.....2<sup>ND</sup> RESPONDENT**

**ERIC NDONYE NGUMBI .....3<sup>RD</sup> RESPONDENT**

**RULING**

1. On 24<sup>th</sup> September, 2020, I delivered a ruling in this matter regarding the Summons for Revocation or Annulment of Grant dated 29<sup>th</sup> July, 2019, in which the 1<sup>st</sup> Applicant herein was seeking the following orders:

**a) THAT that the grant of letters of administration to Kevin Mulei Ngumbi, Stephen Kyalo Ngumbi and Eric Ndonge Ngumbi made on the 12<sup>th</sup> day of April 2011 and confirmed on the 30<sup>th</sup> day of April 2013, be revoked.**

**b) THAT conservatory orders be and are hereby issued prohibiting Kevin Mulei Ngumbi, Stephen Kyalo Ngumbi and Eric Ndonge Ngumbi from interfering with, disposing, transferring, alienating, sequestering, attaching, levying distress, levying execution or dealing in any way prejudicial to the interest of the Applicant herein with any of the assets that are the subject of this Application pending the hearing and determination of this Application.**

**c) THAT conservatory orders be and are hereby issued prohibiting Kevin Mulei Ngumbi, Stephen Kyalo Ngumbi and Eric Ndonge Ngumbi or any person or entity herein from interfering with any of the assets that are the subject of this Application by way of using them as collateral or security to obtain or continue obtaining any financial accommodation from anyone or any financial institution which financial accommodation includes but is not limited to overdrawing accounts, borrowing new loans or topping up existing loans pending the hearing and determination of this Application.**

**d) THAT cost of this application be in the cause.**

2. In the said ruling I found inter alia as follows:

**“Based on the material on record I find that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently. That may constitute a ground for revocation of a Grant...The second ground relied upon by the 1<sup>st</sup> Applicant was that the Respondents**

have never complied with the mandatory provisions of Section 83(e) and (g)...It is clear that the Respondents have not complied with these provisions. However, it is not in every situation where transgressions are alleged that the grant must be revoked...In my view where there is an alternative to revocation or annulment of a Grant, the Court ought not to resort to the revocation or annulment. In this case, it is clear that some beneficiaries are happy with the manner in which the Estate is being administrated. To annul or revoke the grant would have the effect of throwing the estate into disarray which would be detrimental to the interests of the beneficiaries. In the premises, the process of distribution of the estate ought to be moved forward rather than backwards... It is my view that parties ought to be given a time frame within which to comply with section 83(e) of the *Law of Succession Act* and to show commitment towards diligently administering the estate of the deceased for the benefit of all the beneficiaries, failure to do which this Court would be left with no alternative but to replace the administrators. In the premises while I disallow the instant application, I hereby direct the Co-administrators of the estate of the deceased herein to put their act together and comply with section 83(e) of the *Law of Succession Act* within sixty days. During that period the said administrator must take concerted efforts directed at progressively and lawfully administering the estate of the deceased.”

3. By a further Summons dated 18<sup>th</sup> December, 2020, expressed to be brought under Sections 45, 76, 83 and 84 of the *Law of Succession Act*, Cap 160, Rule 44(1) of the *Probate and Administration Rules*, Sections 4 and 56 of the *Trustees Act*, Cap 167, Sections 3 and 3A of the *Civil Procedure Act* and any other enabling provisions of the law, the same applicant in a record 23-prayer application seeks the following reliefs:

1. THAT this application be certified urgent in the first instance.
2. THAT Peter Mulei and Sons Limited be enjoined in these proceedings in the first instance.
3. THAT Kevin Mulei Ngumbi, Stephen Kyalo Ngumbi and Eric Ndonge Ngumbi file further and complete inventory of the estate within a period determined by the court pending the hearing and determination of this application which inventory should be in strict compliance with Section 83(e) of the Law of Succession Act including:
  - a. Detailed financial statements of Peter Mulei and Sons Limited for the period in question together with supporting documentation.
  - b. All bank statements of Peter Mulei and Sons Limited for the period in question.
  - c. All bank statements for all accounts that the administrators have used to handle trust funds.
  - d. All bank statements for the accounts of the deceased for the period in question.
  - e. Accounts of all transactions undertaken, payments made, and funds received and expenditures incurred on behalf of the estate.
  - f. All transaction documents for the disposal of any property belonging to the estate including agreements for sale and transfer documents.
  - g. All documents containing consents by beneficiaries for disposal and mortgaging/charging or otherwise encumbering property belonging to the estate.
  - h. All loan agreements/documents used to obtain financial accommodation secured by the estate or any portion thereof together with attendant statements.
  - i. Schedules of all rental income from the entire estate for the period in question noting to include any tenancies/occupations that did not attract rental income.
  - j. Detailed inventories and accounts of movement of farm produce in livestock and crops for the period in question.
  - k. Details of all property of the deceased which were not subjected to the administration process including his motor vehicle noting to attach a copy of the logbook.
  - l. Copies of all title documents for the properties of the estate and trust noting to avail the originals for verification by this court at an appointed time.
  - m. Copies of applications made to court under Section 56 of Trustee Act Cap.167 to authorize sale of trust property.
  - n. Any other document required in order to comply with Section 83(e) of the Law of Succession Act.
4. THAT save for complying with any interim orders granted by this court Kevin Mulei Ngumbi, Stephen Kyalo Ngumbi and Eric Ndonge Ngumbi be and are hereby suspended from acting as administrators of the trust arising from the confirmation of grant made on the 12<sup>th</sup> day of April 2011 pending the hearing and determination of this application.
5. THAT there be a declaration that the interests of the beneficiaries of the estate of the deceased would be served best by the

removal of Kevin Mulei Ngumbi, Stephen Kyalo Ngumbi and Eric Ndonye Ngumbi as administrators of the estate of the deceased and the trust arising therefrom;

6. THAT Kevin Mulei Ngumbi, Stephen Kyalo Ngumbi and Eric Ndonye Ngumbi be and are hereby permanently removed and barred from acting as administrators of the trust arising from the confirmation of grant made on the 12th day of April 2011.

7. THAT the applicant Jennifer Muthue Ngumbi be and is hereby appointed to act as an administrator of the trust arising from the confirmation of grant made on the 12th day of April 2011, pending the hearing and determination of this application.

8. THAT the applicant, Jennifer Muthue Ngumbi together with a nominee of the other beneficiaries be and is hereby appointed to act as an administrator of the trust arising from the confirmation of grant made on the 12th day of April 2011.

9. THAT in the alternative the court do appoint an administrator of the estate of the deceased together with the trust arising from the confirmation of grant made on the 12th day of April 2011.

10. THAT the administrators being directors of Peter Mulei and Sons Limited be and are hereby ordered to take all necessary action to have Jennifer Muthue Ngumbi be appointed as observer at all meetings and decisions the Board of Directors of Peter Mulei and Sons Limited in order to safeguard the unlawful investments made by the administrators in the said entity pending the hearing and determination of this application.

11. THAT the financial institutions holding bank accounts of Peter Mulei and Sons Limited wheresoever situate, be and are hereby ordered to mark those accounts for no debits pending the hearing and determination of this application.

12. THAT the financial institutions holding bank accounts of Kevin Mulei Ngumbi, Stephen Kyalo Ngumbi and Eric Ndonye Ngumbi, wheresoever situate, be and are hereby ordered to mark those accounts for no debits pending the hearing and determination of this application.

13. THAT all third parties including Peter Mulei and Sons Limited be barred from continuing to use the estate of the deceased as listed on the certificate of confirmation of grant herein for any purpose including obtaining financial accommodation of any kind from anywhere pending the hearing and determination of this application.

14. THAT all third parties including Peter Mulei and Sons Limited be barred from continuing to use the estate of the deceased as listed on the certificate of confirmation of grant herein for any purpose including obtaining financial accommodation of any kind from anywhere.

15. THAT NCBA Bank PLC, Standard Chartered Bank, Diamond Trust Bank Kenya Limited, Kenya Commercial Bank, Bank of Africa, Equity Bank Limited and any other financial institution whatsoever be and are hereby ordered not to grant any third-party including Peter Mulei and Sons Limited any new, continuing or additional financial accommodation secured by any property identified in the certificate of confirmation of grant herein, pending the hearing and determination of this application.

16. THAT NCBA Bank PLC, Standard Chartered Bank, Diamond Trust Bank Kenya Limited, Kenya Commercial Bank, Bank of Africa, Equity Bank Limited and any other financial institution whatsoever be and are hereby ordered not to grant any third-party including Peter Mulei and Sons Limited, any new, continuing or additional financial accommodation secured by any property identified in the certificate of confirmation of grant herein.

17. THAT NCBA Bank PLC, Standard Chartered Bank, Diamond Trust Bank Kenya Limited, Kenya Commercial Bank, Bank of Africa, Equity Bank Limited and any other financial institution whatsoever be and are hereby ordered not to grant Kevin Mulei Ngumbi, Stephen Kyalo Ngumbi and Eric Ndonye Ngumbi any new, continuing or additional financial accommodation secured by any property identified in the certificate of confirmation of grant herein, pending the hearing and determination of this application.

18. THAT conservatory orders be and are hereby issued prohibiting Kevin Mulei Ngumbi, Stephen Kyalo Ngumbi and Eric Ndonye Ngumbi from interfering with, disposing, transferring, alienating or dealing in any way prejudicial to the interest of the Applicant herein with any of the assets that are the subject of this Application pending the hearing and determination of this Application.

19. THAT a forensic audit by the firm of Charles & Company be conducted and concluded on the entire estate of the deceased including the entity known as Peter Mulei and Sons Limited pending the hearing and determination of this application and the current administrators facilitate the same to the fullest extent.

20. THAT this Honourable Court do find Kevin Mulei Ngumbi, Stephen Kyalo Ngumbi and Eric Ndonye Ngumbi personally liable to indemnify the estate of the deceased and the trust arising therefrom for losses and damages suffered and/ or incurred by the estate and trust arising from their acts and actions as trustees and further direct them to indemnify the estate and trust for all such losses.

21. THAT the grant of letters of administration to Kevin Mulei Ngumbi, Stephen Kyalo Ngumbi and Eric Ndonye Ngumbi

made on the 12th day of April 2011 and confirmed on the 30<sup>th</sup> day of April 2013, be revoked.

22. **THAT the Certificate of Confirmation of Grant to be and is hereby amended/rectified to reflect the final orders of this court.**

23. **THAT this Honourable Court do issue such further orders as it deems fit based on the hearing of this application.**

24. **The Administrators do pay the costs of this application.**

4. The summons were supported by an affidavit sworn by the applicant on 11<sup>th</sup> December, 2020. According to the Applicant, a daughter of the deceased, the administrators have failed to comply with the said ruling and have also actively alienated her from the affairs of the estate whilst maliciously and inordinately withholding her inheritance.

5. It was averred that the Administrators filed an inventory with this court on 23<sup>rd</sup> November 2020 which inventory revealed how they had been lying to her that the estate of the deceased was intact whilst knowing full well that they had fraudulently sold off portions aggregating approximately Kshs. 250,000,000/= in value, fact only revealed through the inventory filed in this court.

6. It was averred that the Administrators have failed to account for all the proceeds from the sale and have also refused to file agreements for sale for all of the transactions contrary to the law. Further, the Administrators perjured themselves when they misled this court into believing that the portion of the estate sold by themselves was actually in existence and charged to financiers and also purported to distribute an estate whose extent has not been established on account of their negligence, action and omissions in complying with the law.

7. Based on legal advice, the applicant deposed that the Administrators have unlawfully and illegally mortgaged a large part of highly valued assets of her late father's estate to financial institutions in order to illegally avail a third-party entity namely **Peter Mulei and Sons Limited** of credit facilities thereby exposing the estate and resultant trust to untold risk. The applicant asserted that the said company does not form part of the estate but the estate holds shares in it whilst the remainder of the said company is owned by third parties. It was her contention that the said company has not paid the trust any value in order to be availed of the said mortgage facilities underwritten by the estate nor was there consent sought from her for the said mortgage arrangements to be entered into.

8. The applicant further averred that the Administrators have also sold properties belonging to the estate in a manner contrary to the law and that the ownership of the properties under mortgage to financial institutions is unknown and the administrators have refused to disclose the information despite my insistence and an order of this court to file a detailed inventory.

9. The applicant averred that based on legal advice, the administrators are forbidden under the **Trustee Act** from making investments of trust property into an entity such as **Peter Mulei and Sons Limited**. According to her, the Administrators have engaged in deception during engagement over distribution of property by knowingly undervaluing them to her detriment.

10. Therefore, the applicant argued, the administrators, being directors and shareholders in **Peter Mulei and Sons Limited** should be compelled to appoint her nominee and herself onto the board of directors of the said entity so as to safeguard the investment of the estate which likely exceeds the investment of all the existing shareholders in the said entity. She lamented that the Administrators have demonstrated a catastrophic conflict of interest between the roles they play as interested members of **Peter Mulei and Sons Limited** as well as Administrators of the trust over her late fathers' estate as they have always sought the best interests of the said company before and to the detriment and expense of the trust. The said administrators, it was averred, have broken the trust bestowed upon them by the law, this court and the beneficiaries and as such are unfit to continue to hold the said offices.

11. The Applicant urged that it is important for an independent audit to be conducted by an auditor appointed herself being the one who is dissatisfied by the management of the estate and the estate bearing the cost of the said exercise. This Court was urged to urgently intervene and give directions on the preservation of the estate which is at risk of further unlawful depletion by its present custodians due to the actions and failures by the Administrators.

12. The application was opposed by a replying affidavit sworn by **Stephen Kyalo Ngumbi**, one of the three administrators of the estate of Peter Ngumbi Mulei whose estate these proceedings relate who swore the said affidavit on behalf of his other co-administrators namely **Kevin Mulei Ngumbi** and **Eric Ndonye Ngumbi**.

13. According to him, the applicant withdrew prayer number 2 of the application in which she had sought the joinder of Peter Mulei & Sons limited in these proceedings hence in his response he would not deal with the aspects touching on the said company or its operations save as may be necessary.

14. According to the deponent, the issues raised by the applicant in the application are mainly overtaken by events for the reasons that by its ruling delivered on 24/9/2020, this court declined to revoke the grant on the grounds sought by this same applicant hence it is an abuse of the court process for the applicant to keep burdening the court and the rest of the beneficiaries with the same plea. Secondly, it has never been lost upon them as administrators that they are trustees, and they swore to that duty vide their affidavit of 11/6/2014. Thirdly, this being an application made post the confirmation and the filing of accounts by the administrators, the applicant is out of order and she can only approach the court either by Protest or by an application for sufficient provisions as a dependant. It was therefore contended that this application is incompetent and ought to be struck out.

15. The deponent averred that the applicant is evidently abusing the court process, as of 14<sup>th</sup> December, 2020, the applicant was in court on allegation against the administrators, it is evident that by 11<sup>th</sup> December, 2020 when she signed the affidavit in support she was already preparing to file the current application and that it seems the applicant will stop at nothing to keep this issue in court as long as it serves her

unknown interests.

16. It was deposed that the deceased's estate and the Company known as Peter Mulei & Sons Limited (henceforth the "Company") which Company is exclusively owned by the family of the deceased, have had an intertwined relationship and that the Company is the lifeline of the beneficiaries and has been so even during the deceased life time. The deponent disclosed that having been involved for decades, in the running of the Company and the affairs of the deceased even when he was alive until his appointment as one of the administrators of his estate, since the Company acquired properties on the behest of the deceased and vice versa, it would not serve the interests of the estate or justice for one to sacrifice that shared fact to obfuscate and constrict facts in a bid to achieve a selfish end.

17. While appreciating the legal position relating to Companies and the issues relating to the succession herein, as administrators and shareholders /directors of the Company as well as the beneficiaries in both the Company and the estate, they saw no reason why they could not continue operating the two the way their father (the deceased) did in his lifetime. The deponent averred that it was in recognition that the business wing of the estate which is represented by the Company, was reliant on the property owned by the estate for operations that the beneficiaries agreed to have the immovable property registered in the names of the three administrators to facilitate the operations of the later, and it is surprising that the applicant suddenly wishes to renege on that pact. Nevertheless, he deposed, they have sought to as much as possible isolate what is separable between the company and the estate.

18. As regards the allegation of non-disclosure of proper information regarding the application for grant the subsequent confirmation of the grant and filing of the accounts by us, the administrators, it was averred that;

- a) The accounts filed on 23<sup>rd</sup> November, 2020, contained all the information known about the estate as of that date and any subsequent developments are shared in this affidavit.
- b) When the application for letters of administration was made, the inventory of all the properties was disclosed and shared with the beneficiaries who agreed to that list, hence he was not aware of any crops, livestock or vehicles belonging to the estate that were not included, in any event the applicant never raised any issue on the inventory from the onset.
- c) He averred that he was equally unaware of the alleged Kshs 1,500,000,000 belonging to the estate.
- d) The applicant has variously complained of mismanagement and losses to the estate without providing the basis for such allegations.

19. Regarding the applicant's allegations on the issues of sale of some of the properties it was the deponent's averment that the same are legally and factually untenable and that;

- a) There is nothing barring a trustee under succession to sell or convert property after confirmation of grant if the action is justified and adds value to the estate.
- b) The properties which were sold have been disclosed in the accounts filed in court and there is nothing to hide, none of the proceeds were wasted, as they have shown how the money was applied by annexing the sale agreements and the accounts on how the proceeds were applied.
- c) Since the applicant herself benefited from the sale of Machakos/Kathekai/Block 5/120 and 123, it is a flat contradiction in terms for her to allege that the powers of the administrators to sale/.
- d) Since the properties various described as Machakos/Kathekai/Blocks 4 & 5 have had checkered history, it took quite some time to isolate the various positions of the properties when we were filing the Accounts, the Society which originally owned the property was un co-operative and has sued them on some of them while other parties have also sued them on some of the properties which they had already distributed and these issues have been disclosed just as they continue making others as they unfold due to the volatile nature of the ownership of the said properties.
- e) The administrators managed as much as possible to collate and state the position of the various properties in their accounts, and as demonstrated, had nothing to hide either from the court or the beneficiaries and they are ready and willing to continuously do so as and when all issues relating to the estate are settled.
- f) The beneficiaries, including the applicant have been involved in all major decisions as can be seen in the various meetings in which issues were discussed. Unfortunately, the applicant has taken a belligerent approach to all matters of the estate and is bound to renege on every decision as has been demonstrated variously.

20. While conceding that there were various meetings between the beneficiaries involving the advocates for the various parties, consultants and even relatives in a bid to resolve and distribute the estate, the deponent stated that the failure to follow up on the resolutions and information contained in the various meetings have been thwarted by the recalcitrant approach by the applicant who selectively relies on the communications and deliberations in the said meetings which she chose to trash earlier on.

21. It was averred that as directed by the court on 24<sup>th</sup> September, 2020, they had a duty to allocate the free properties of the estate, the applicant had indicated (even before the court) that she was not willing to talk anymore and upon consulting the rest of the beneficiaries, they came up with the distribution which was equitable hence the complaint by the applicant that she was not involved is not *bona fides* as she has not shown how she was prejudiced by the proposed distribution as borne out in the accounts filed in court and the basis of her incessant complaints is hard to fathom.

22. According to the deponent, they availed all the information they could as of the time they filed they Accounts in court, and have since obtained the Bank statements of the deceased accounts from the Bank's archives which he exhibited for completeness of our record.

23. It was disclosed that as far as rental income is concerned, most of the properties are occupied by the businesses owned by the Company and any rents due have been disclosed in the Company's account which collects them and the applicant is privy to that information.

24. The deponent however, had no issue with the applicant being involved in meetings of the Company and transmitting her rightful shares for her to participate as a shareholder but stated that it is impractical to have her as an administrator given the day to day issues that arise yet she is far away and has shown unwillingness to cooperate with the rest of the beneficiaries. It was his position that they have never had the intention of depriving any of the beneficiaries their share and it would have been easier if the applicant stated with clarity what she doesn't like about the share marked out for her; that would be easily dealt with, the blanket condemnation of the administrators is not easily discernible on what is her exact problem.

25. Regarding the prayers for injunction on disposal of properties, it was his position that it is unnecessary at this stage because they have no intention to do so and in any event they have marked out all the free properties for distribution. According to him, as administrators there is nothing to hide and are open to any audit, though it would be a waste of the estate's resources and unnecessary. However, should the court find it necessary, an agreed process and personnel by all the beneficiaries would be necessary as opposed to the proposal by the applicant which could possibly lead to a conflict of interest. The deponent averred that it has always been their desire to see equitable and fair administration of the estate of the deceased and as administrators they are ready and willing to table any information that they have regarding the affairs of the estate and to their best of knowledge being cognizant of their duty even to indemnify the estate of any omission or commission on their part. He however averred that it is outside the province of this court to invite or involve their personal affairs as individuals in the affairs of the estate. He asserted that as administrators, they have exercised all due diligence within a very difficult environment to preserve and improve the estate as was the collective intention of all the beneficiaries from the beginning.

26. He therefore prayed that the court dismisses this application and allows for completion of the administration as quickly as possible.

27. In a rejoinder, the applicant reiterated the averments in her supporting affidavit and added that:

a) On diverse dates between 27<sup>th</sup> November 2017 and 3<sup>rd</sup> April 2019 the Administrators/Trustees sold the following properties without the knowledge or consent of the beneficiaries:

- 1 Machakos/ Katheka Kai/ Block 4/193
- 2 Machakos/ Katheka Kai/ Block 4/194
- 3 Machakos/ Katheka Kai/ Block 4/196
- 4 Machakos/ Katheka Kai/ Block 4/246
- 5 Machakos/ Katheka Kai/ Block 4/247
- 6 Machakos/ Katheka Kai/ Block 4/265
- 7 Machakos/ Katheka Kai/ Block 4/266
- 8 Machakos/ Katheka Kai/ Block 4/267
- 9 Machakos/ Katheka Kai/ Block 4/195 Part
- 10 Machakos/ Katheka Kai/ Block 4/197
- 11 Machakos/ Katheka Kai/ Block 4/196

b) At the meetings that the Administrators have held with the beneficiaries, meetings that would not have happened without her insistence, the Administrators updated beneficiaries that the aforesaid properties were part of the estate and would not be sold as prices were unfavourable whilst knowing full well that they have sold at least 4 of the aforesaid properties 7 months earlier according to the sale agreements filed with the accounts.

c) The advocates on record emailed the minutes of a meeting held on 22<sup>nd</sup> July 2020 with the beneficiaries and my advocate on record at which meeting the Administrators reported to the beneficiaries that the aforesaid properties were all charged to various financial institutions to secure loans for **Peter Mulei & Sons Limited** whilst knowing full well that they had now completed the sales of all the aforesaid properties with the last batch having been sold about 14 months prior to the said meeting according to the agreement for sale filed in the accounts of the Administrators.

d) This amounts to fraudulent misrepresentation which are grounds for revocation of a grant or at least substitution of the offending Administrators.

28. It was deposed that the Replying Affidavit betrays what appears to have been a ploy by the Administrators to distribute a portion of the estate (to the exclusion of my participation) after the ruling of this court of 24<sup>th</sup> September, 2020 so that they could later (now presently) force her to file a protest or application for provision; and because of a) avoid their obligation to account and have their accounts scrutinized by this court and remove the purportedly distributed properties from the jurisdiction and reach of this court.

29. The Applicant conceded that she had signed the application currently before this court on 11<sup>th</sup> December, 2020 through on the advice of counsel decided to seek the direction of this court on how to move forward and the court issued directions that it would need an application filed in order for it to act. She insisted that she will not stop seeking redress from this court until the estate is safeguarded and its stewardship is in trusted hands.

30. While partly conceding that there was a relationship between **Peter Mulei & Sons Limited** as her late father owned all the real estate and as such it was well within his right to use the said property as he pleased, in contrast, the Administrators are just that; Administrators with no comparable right to utilize estate property as they so wish. According to her, the Administrators have chosen to conveniently feign ignorance of the legal tenets that govern their role in that:

a) they have misguided themselves and are seeking to mislead the court into looking at the Company as an amorphous entity called a 'family business' totally disregarding its corporate entity, identity and composition.

b) it is not true that the Company is a lifeline for the beneficiaries as there has never been a declaration of any dividend or payout in the last 10 years since the Administrators took over its management from my deceased father.

c) it is absurd that when the Administrators wish to fraudulently sell properties belonging to the estate or take loans secured by the estate and give the money to the Company, they hold the view that the estate and the Company are intertwined. However, when the Administrators are required to comply with the provisions of Section 83 (e) they hold the view that the Company and the estate are two separate legal entities and thereby hide the books of the Company from this court.

31. In her view the funds of the estate and those of the Company have been so co-mingled that it is impossible to tell where the estate begins and ends within the Company and as such it is impossible to completely account for the estate without laying the books of the Company bare before this court and to the extent of the provisions of Section 83(e) of the **Law of Succession Act**. While admitting that the Administrators are the only shareholders and directors of the Company (the Estate is a 50% shareholder in the Company), the applicant contended that they have no barrier prohibiting them from tabling the books of the Company before this court. By admission of the Administrators that they operated the Company and the rest of the estate as one and the same thing it follows that the financial statements of the Company should have formed a significant part of the account filed in this court by the Administrators seeing as there has been no separation in the eyes or actions of the Administrators. She insisted that

32. After setting out the particulars of the properties which in her view belonged to the estate and charged to financial institutions secure KShs. 1,471,952,486/=, it was her view that the Administrators have unlocked the equity in those properties and moved the value elsewhere hence those properties are valueless until the loans they secure which the estate has underwritten are paid off and the properties discharged. If the borrower defaults the estate stands to lose Kshs. 1,471,952,486/= in value through financiers realizing their securities by exercising a statutory power of sale. The value in the charged properties belongs to the estate but instead the Administrators have given it to a third party, the Company, for free, and refused to account for its whereabouts. According to her, the amount of Kshs. 1,471,952,486/= is a rough and ready measure of the loan exposure on the estate as an accurate determination is impossible because of the manner in which the Administrators have done the accounts filed in this court.

33. The applicant averred that the properties belonging to the estate which were sold by the Administrators allegedly realized Kshs. 156,000,000/= which added to the loan exposure on the estate comes to Kshs. 1,627,952,486/= which money belongs to the estate and which has not been accounted for in the manner prescribed under section 83(e) of the **Law of Succession Act**.

### **Determination**

34. I have considered the application, the affidavits both in support of and in opposition to the application and the submissions filed.

35. In this court's ruling dated 24<sup>th</sup> September, 2020, the court expressly stated that **parties ought to be given a time frame within which to comply with section 83(e) of the Law of Succession Act and to show commitment towards diligently administering the estate of the deceased for the benefit of all the beneficiaries, failure to do which this Court would be left with no alternative but to replace the administrators.**

36. Section 83 of the **Law of Succession Act** provides a hereunder:

***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.

37. It is therefore clear that the administrators are under legal obligation to 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. This is an automatic legal requirement that does not require either an application or an order from the court. However, they are also obliged in any other case 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. In either case, the catch phrase is **full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith**. Any inventory or accounts that is not full and accurate cannot therefore be said to be in compliance with the law.

38. One of the grounds for seeking to have a grant revoked or annulled under section 76(d)(iii) of the **Law of Succession Act** is that the person to whom the grant was made has failed, after due notice and without reasonable cause to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular.

39. From a reading of the applicant's affidavit, it seems that the contention is that the inventory and accounts produced is false in material particulars. If that is the case, then the said applicant is at liberty to move the court for revocation of the grant. The mere fact that her earlier application seeking those same orders was disallowed does not bar her from seeking the same orders based on the allegation that the alleged accounts furnished by the Respondents are false. As was held in **Sardar Khan vs. Gulam Fatuma and Public Trustee (1931) 13 LRK 3**, the absence from the country of the executor; delay in the administration of the estate; improper keeping of accounts; maladministration and jeopardy of the interests of the minor children constitute a just cause for the purposes of probate and administration.

40. I have perused the application and a consideration of the reliefs sought leads me to the conclusion that the grant thereof would have the effect of either revoking and/or annulling the grant or rectifying the same. That is a prayer that ought to have been sought expressly and not by implication. The procedure for doing so is by way of summons for the purpose under the relevant provision of the law.

41. Having considered the material placed before me, it is my view that mere revocation of the grant will not resolve the dispute herein unless the state of accounts is regularised.

42. In the premises, I hereby direct the parties herein to within 30 days of the date of delivery of this ruling agree on a qualified accountant to undertake the audit of the books of accounts relating to the estate of **Peter Ngumbi Mule** (deceased). In the event that the parties are unable to agree, the Chairperson of the Institute of Certified Public Accountants of Kenya (ICPAK) shall nominate a duly qualified accountant to undertake the same. The costs of the said accountant shall be borne by the Estate.

43. Orders accordingly.

**READ, SIGNED AND DELIVERED ONLINE AT MACHAKOS THIS 2ND DAY OF JUNE, 2021.**

**G V ODUNGA**

**JUDGE**

**In the presence of:**

**Mr Kioko for the Administrator/Respondent**

**Miss Chelangat for Mr Nzavi for the1st Applicant/Interested Party**

**CA Geoffrey**