



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 190 OF 2007

**IN THE MATTER OF THE ESTATE OF THE LATE NATHAN WASHIKO FEDHA -
DECEASED**

FRED CHIBEU FEDHA.....1ST PETITIONER/RESPONDENT

PETER WASHIKO FEDHA.....2ND PETITIONER/RESPONDENT

AND

JANET KHEVALI FEDHA.....1ST APPLICANT

ZAKAYO MASINDE MUTORO & 155 OTHERS.....2ND APPLICANT

RULING

Nathan Washiko Fedha, the deceased to whose estate these proceedings relate died intestate on 11th October 2007. On 30th October 2007, the six (6) members of the family present i.e Dorcas Fedha, Getrude Fedha, Fred Fedha, Peter Fedha, Rose Fedha and Mary Fedha met and agreed that Fred Fedha and Peter Fedha would petition the court, on behalf of the beneficiaries, for the grant of letters of administration intestate. The minutes of meeting indicated that Janet Fedha, a beneficiary, was absent with apologies because she was at the time in the United States of America. The properties that comprised the estate of the deceased is included in the minutes.

On 6th November 2007, Fred Fedha and Peter Fedha (Petitioners) petitioned the court to be issued with a grant of letters of administration intestate to administer the estate of the deceased. The consent by the beneficiaries allowing the two to petition the court was duly signed and filed in court. The grant of letters of administration intestate was issued on 23rd January 2008. It was instructive that in Form P & A 5, the petitioners did not indicate whether the estate had liabilities. This aspect of these proceedings shall become significant later in this ruling. On 31st July 2008, the Petitioners made an application for the grant that was issued to them to be confirmed. They attached a consent in which it is stated that the beneficiaries listed therein had consented to the proposed mode of distribution. Crucially, the actual mode of distribution was not annexed to the application for confirmation of grant. A further discrepancy is that the signatures of some of the beneficiaries in the said document were not similar to the signatures indorsed to the earlier consent filed in court on 6th November 2007. This is an issue that will become pertinent later in the proceedings.

When the certificate of confirmation of grant was issued on 30th October 2008, the schedule indicated that **“all the properties that compromised the estate of the deceased to be registered and transferred jointly in the names of Fred Chibeu Fedha and Peter W. Fedha.”** This was not obviously what had been agreed on by the beneficiaries. It became apparent to this court that that is where all that could possibly go wrong, started going wrong. The cardinal principal that all the beneficiaries of the estate of the deceased ought to consent to any proposed distribution or transfer of the properties that comprised the estate of the deceased to any of the beneficiaries was ignored with impunity. This started a trend where the administrators of the estate of the deceased, without consulting other beneficiaries, made applications before court, with a view of obtaining the transfer of the properties that comprised the estate of the deceased either to themselves or to third parties.

For instance on 31st October 2014, the administrators made an application before this court seeking rectification of grant as to include a property known as LR No. N/ Kabras/Kiliboti/480 measuring 6.4 Hectares as part of the properties that comprised the estate of the deceased and thereafter have the same transferred to themselves. Again, the administrators did not obtain the consent of the other beneficiaries before they made this proposal. The justification for this position is not obvious from the application. But what is clear is that the administrators were continuing with a trend that began in 2008 when they failed to seek the consent of the other beneficiaries before distributing or transferring the properties that comprised the estate of the deceased.

When the other beneficiaries discovered what the administrators had done, they filed an application dated 14th September 2020 seeking to have the grant that was issued and confirmed to the administrators revoked. The application was amended on 25th October 2020. The

applicants, Janet Khevali Fedha and Dorcas Ilamwenya Fedha sought to have the said grant revoked, inter alia, on the grounds that: the administrators had caused the properties that comprise the estate of the deceased to be transferred to themselves and to third parties without their consent as beneficiaries of the estate of the deceased. They further sought orders from the court to compel the administrators to provide to the court a full and accurate inventory of all the asset and liabilities of the deceased including all the dealings that they had undertaken without the consent of the other beneficiaries. The Applicants are, respectively, daughter and widow of the deceased. The application is supported by the annexed affidavit of the applicants.

The Administrators filed replying affidavits in opposition to the application. They contended that the estate of the deceased was distributed to the beneficiaries upon the grant being confirmed after they had consented to the same. They averred that the beneficiaries of the estate of the deceased, who are daughters, were entitled to inherit three (3) acres each which they had later sold. They averred that some of the properties that applicants wish to have restored to the estate of the deceased do not exist because they have been transferred to third parties. The administrators contended that the application did not have merit and should be dismissed.

In a further affidavit sworn by the applicants, they contended that they had not benefitted at all from the properties that comprised the estate of the deceased. They urged the court to allow their application in its entirety.

During the hearing of the application, this court heard oral rival submissions made by Mr. Ndegwa for the Applicants and Ms Munialo for the administrators. This court has carefully considered the said submission in light of the pleadings filed in court. The court shall not rehash the arguments made but observes that learned counsel basically reiterated the position taken by the parties to this application as set out above. Having so considered, this court makes the following findings:

- i) The administrators made an application for confirmation of grant without obtaining the consent of all the beneficiaries of the estate of the deceased as is required by the law.
- ii) The administrators did not comply with the requirements of the proviso of **Section 71(1)** of the **Law of Succession Act** that require that “..... **in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares**”.
- iii) The administrators failed to disclose all the properties and liabilities of the deceased thus creating confusion as regards alleged creditors of the estate of the deceased.
- iv) The administrators made further applications seeking to affect the status of the properties that comprise the estate of the deceased without seeking the consent of the other beneficiaries of the estate of the deceased.
- v) It was evident from the affidavit evidence placed before the court that the administrators had intermeddled with the properties that comprise the estate of the deceased as provided under **Section 45(1)** and **2(b)** of the **Law of Succession Act**.

From the above findings, it is clear that the applicants have made a case for this court to revoke the grant issued to the administrators under **Section 76** of the **Law of Succession Act** in that

- (a) They failed to disclose to the court material facts that would have enabled the court to reach a just distribution of the properties that comprise the estate of the deceased to the beneficiaries and the creditors.
- (b) They obtained confirmation of grant without obtaining the necessary consent of all the beneficiaries.
- (c) They failed to disclose the shares due to each beneficiaries as required under **Section 71(1)** of the **Law of Succession Act**.
- (d) They caused the properties that comprise the estate of the deceased to be transferred to themselves and later to third parties without the consent of all the beneficiaries.

This court noted that the administrators in furtherance of their maladministration of the estate of the estate of the deceased, may have transferred part of the properties that comprise the estate of the deceased to third parties. The administrators claimed that they undertook the said transfers so as to settle creditors of the estate of the deceased. In essence, this court understood the administrators to say that they transferred the said propertied to persons who the deceased had sold the properties to. This claim, as earlier indicated in this ruling, is not obvious from the pleadings filed in court by the administrators.

This court formed the view that there may be a valid case, that indeed the administrators may have transferred the properties to third parties that were creditors to the estate of the deceased. However, this court is not in a position to make final orders before a full inventory of all the properties that comprise the estate of the deceased and these transferred to the creditors of the deceased is availed to the court. This inventory shall include, in a separate list, the properties that the administrators have transferred to third parties (without the consent of the other beneficiaries) so as to enable this court determine the validity of such transfers.

In that regard, affected third parties shall be at liberty to make their representation before the court to determine the validity of the transfer of the properties that comprise the estate of the deceased to their names.

In the premises therefore this court issues the following orders:

- 1) The grant of letters of administration issued and confirmed to Fred Chibeu Fedha and Peter Washiko Fedha is hereby revoked on the grounds that they failed to obtain the consent of all the beneficiaries of the estate of the deceased before purporting to distribute the estate of the deceased.
- 2) A new grant shall be issued to the widow, Dorcas Ilamwenya Fedha and Janet Kevali Fedha.
- 3) Fred Chibeu Fedha and Peter Washiko Fedha shall provide an inventory all properties that they transferred to the creditors of the estate of the deceased. Such inventory shall include agreements entered between such creditors and the deceased. They shall also provide an inventory of all the properties, they themselves transferred to third parties (including the agreements that they entered into) for the purpose of the court determining the validity of such transfers.
- 4) The inventory ordered under (iii) above shall be provided to the court within sixty (60) days of today's date.
- 5) Any third party that may be adversely affected by the order of this court is at liberty to make appropriate representations to the court.
- 6) The new administrators shall be required to apply for confirmation of grant within ninety (90) days after the full inventory has been filed in court by the said Fred Chibeu Fedha and Peter Washiko Fedha.
- 7) Parties shall be at liberty to apply
- 8) Fred Chibeu Fedha and Peter Washiko Fedha shall pay the costs of this application.

It is so ordered.

DATED AT KITALE TIS 14TH DAY OF DECEMBER 2021.

L. KIMARU

JUDGE

14/12/2021

Coram: Before Kimaru J

Court Assistant – Kirong

Ms Mumialo for the Administrators

Also holding brief for Karanja Mbugua Advocates

Ndegwa for the Applicants

Janet Fedha }

Dorcas Fedha } – present

Peter Fedha }

Order – Ruling read and delivered in court.

L. KIMARU

JUDGE