



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 13 OF 2017**

**IN THE MATTER OF THE ESTATE OF MAKOKHA IDRIS KHASABULI (DECEASED)**

**RULING**

1. The application that I am called upon to determine is the summons dated 23<sup>rd</sup> April 2020. The applicant, Fami Idris, one of the administrators, seeks orders that the other three administrators be ordered to release to him a sum of Kshs. 1, 500, 000.00 for rent, fees and upkeep of Sharif Idris, Razia Idris and Shamim Idris. He also seeks orders that a preservative order be issued with respect to an account No. 0110xxxxxxxx Cooperative Bank, Bungoma, operated by the other administrators of the estate, to have them restrained from withdrawing, accessing, transferring or dealing with funds held in that account. He would also like the other administrators directed to have him incorporated into that account as a signatory. Finally, he would like the other administrators render an account with respect to their operation of the said account.

2. In the affidavit that the said administrator swore in support of his application, he avers that the said bank account was opened contrary to orders that the court made on 20<sup>th</sup> December 2019, as he was not involved. He avers that there were dependants of the estate, yet funds were not being released for their upkeep, and they were stranded as they had no money for their upkeep, fees and rent. To that affidavit, he has attached copies of the certificates of birth for the four applicants, a fee structure from the Technical University of Kenya for Idris Sharrif Musindalo, there are two other documents that are illegible, there is a letter dated 17<sup>th</sup> February 2020 written by Fami Idris to one of the other administrators with respect to the opening of the bank account.

3. The other administrators responded to the application, through an affidavit, sworn on 18<sup>th</sup> May 2020, by Hanifa Idris Musindalo. The deponent accuses the fourth administrator of not cooperating with the rest of administrators, and argues that the application, dated 23<sup>rd</sup> April 2020, was more of an application for review or appeal of the orders that this court made on 20<sup>th</sup> December 2019, that the fourth administrator appears to be unhappy with. She avers that the estate bank account was not opened surreptitiously or stealthily, for the three administrators had notified the fourth administrator, but he did not cooperate. With regard to maintenance of the applicants, she avers that the fourth administrator has never approached them over the same, and in any event the persons whose maintenance was sought were adults who needed no maintenance from the estate. She further avers that the amounts of rent collected into the estate account have not even reached Kshs. 1, 500, 000.00, and, therefore, the order for payment of that amount of money to the fourth administration could not be supported. She further avers that the fourth administrator forcibly took control of named vehicles belonging to the estate, which he hires out and makes income out of. She accuses the fourth administrator of having secretly opened bank account number 1006216826 with NIC Bank, where he deposits the income he earns from the hire of the subject vehicles. He is accused of not accounting for the said moneys. She discloses that so far the estate account with the Cooperative Bank, Bungoma, had collected Kshs. 428, 500.00. She further avers that the fourth administrator had collected a sum of Kshs. 7, 060, 800. 00 since the deceased died, being rental income. She states that the said fourth administrator has remained hostile to them, and has even blocked some of them from communicating with him over mobile telephony. The rest of the lengthy affidavit is more of arguments rather than presentation of facts. She has attached a bundle of documents to her affidavit to support the case of the three administrators.

4. The fourth administrator has responded to the replying affidavit through the affidavit that he swore on 5<sup>th</sup> June 2020. He denies that he had failed to cooperate with his co-administrators, and accuses them of ganging up on him. Much of what he says in that affidavits are more of arguments rather than presentation of facts.

5. I directed that the application be canvassed by way of written submissions, in view of the Covid-19 pandemic protocols. The parties have complied, for both sides have filed their respective written submissions. I have read through them and noted the arguments made.

6. The application is fairly straightforward. It relates to the opening of the estate bank account in question, the operation of that account and payment of a sum of Kshs. 1, 500, 000.00 for maintenance.

7. On 20<sup>th</sup> December 2019, I directed that the four administrators open and operate a joint estate bank account. What I understand the fourth administrator to say is that such an account was opened by three of the administrators without involving him. The account was opened on the strength of a court order, so the very fact of its opening cannot be faulted. What should happen is that the fourth administrator should get together with the other administrators and have his name incorporated as a signatory. That should not be a difficult thing that should require a court order. The administrators must learn to act together. They should understand that failure to act together or corporately can only slow down things, and in the end the court may have no option but to remove any administrator who will appear or be shown to be uncooperative.

8. The applicants ask me to restrain the account holders from operating the account. As stated above, the said account was opened on the strength of the order that I made on 20th December 2019. In that order I directed that rents be paid into that account. Restraining the account holders would amount to saying that rents ought not be paid into that account. The estate has to be administered, and that includes having the income and revenue of the estate being collected and held somewhere where those collecting and holding it can then account for it. There can be no case for restraining administrators from discharging their statutory duty as administrators, unless that is evidence of maladministration, which has not been demonstrated here.

9. The only remedy available to beneficiaries is to ask for accounts. The account holders have been collecting moneys and paying them into the bank account. I have seen annexures to the affidavit in reply which seek to render an account on the operation of the said bank account. The account rendered in the affidavit displays good faith on the part of the three administrators, but they will have to render a more structured account, properly prepared in accounting standards.

10. On the prayer for release of a sum of Kshs. 1, 500, 000.00 to the fourth administrator, I note that the same is said to be for rents, fees and upkeep. Other than the averment in paragraph 18 of the affidavit about rents, upkeep and fees, no basis has been laid. Who stays in a rental house? How much rent does he pay? Is he in arrears of rent, and if so far how much? Where is the rental house? Why has it become necessary for that person to rent the house instead of living at home? With respect to fees, the applicants have attached a fees structure. Such a fees structure is not adequate evidence. There is need to attach an admission letter, so that the court can gauge when the person was admitted to the school or college, and the year of study that he is at. Has the student ever paid any of the fees due? When did he commence studies? Is there evidence of what is due as fees? Is there a demand note on the arrears? The fee structure attached is for September 2019, the application was filed in March 2020, that would beg the question whether the amount in that fee structure was paid? Is the student still in college, or has he dropped out due to lack of fees? Is there evidence that he dropped out? These are the questions to ask. With respect to upkeep, the question would be, whose upkeep? What is the level of upkeep for each of the applicants? Where are they being maintained at? Why is it necessary for them to be maintained? The last question is critical, since it is suggested that all four applicants are not minors. What do they do for a living? Are they not able to provide for themselves? A huge sum of money as Kshs. 1, 500, 000.00 cannot surely be paid out without any sort of justification. Secondly, the fourth administrator has not explained why the money should be paid to him, and not to each of the applicants separately.

11. I note that the administrators keep accusing each other of this or that. That would suggest that they are working at cross-purposes. It should be emphasised that the office of administrator is one of trust. It should be taken seriously. The counter-accusations with respect to mismanagement or mal administration, without the court being moved with concrete evidence for redress serves no purpose. The alternative, regarding accounts, and mismanagement is that the same can be raised and addressed at the hearing of the confirmation application, as envisaged in section 83(e) of the Law of Succession Act, which would obviate the need for the filing of multiple applications on the matter of accounts and general maladministration. The administrators should eschew the spirit of competition and rivalry that they are displaying, and get on with the task of administration of the estate of their late father. They hold office on appointment by the court. They do not hold it as a matter of right. They are accountable to the appointing authority, the court. Should it appear to the court that they are unable to discharge their duties as such, for among other reasons, failure to cooperate, hostility, hatred, etc., the appointing authority retains the power to remove them or any of them through revocation of their grant or appointment. Section 76(1) of the Law of Succession Act, Cap 160, laws of Kenya, allows the court to act *suo moto*, to remove an administrator. They must, therefore, cooperate with one another, and respect one another. There is no shortage of persons to appoint as administrators. The Public Trustee is the administrator of last resort, and, should the administrators herein fail to do what is expected of them under the law, the Public Trustee is always available for appointment, to take their place.

12. The other thing, administration of estates does not last forever. Administration should be for a limited period of time. Under the Law of Succession Act, it should last for not more than one year. The duty of the administrators is to ascertain the assets and the beneficiaries, as well as debts and liabilities. That should not be an impossible task. Section 83(e) envisages that that should be done within six months of the making of the grant or appointment of the administrators, during which period debts and liabilities should be settled, so that after the six months the administrators should file for confirmation of grant, in terms of section 71 of the Law of Succession Act, to distribute the net intestate estate. The exercise of administration should, therefore, not last forever. The administrators should be keen on their duties as set out in section 83, in preparation for a confirmation of their grant. Interlocutory applications, such as the instant one, only serve to delay and complicate the matter. The administrators herein should, by now, be thinking of filing a confirmation application, since six months have expired since the date of their appointment. Once each beneficiary gets their share of the estate, the fights, characterised by such applications as the instant one, would be needless, since each of them would then have property of their own to use for their own upkeep, if they do not have independent means already.

13. I believe that I have said enough. The final orders that I am disposed to make are as follows:

**(a) That the four administrators shall get together and cause Fami Idris to be incorporated as a signatory to account No. 0110xxxxxxxxx, Cooperative Bank, Bungoma, within the next thirty (30) days of the date of this order;**

**(b) That the respondents are hereby directed to prepare and place on record herein an accurate account of their dealings with account No. 0110xxxxxxxxx, Cooperative Bank, Bungoma, from the date they opened the said account to the date of this ruling;**

**(c) That the four administrators are hereby given forty-five (45) days, from the date of this ruling, to, jointly or severally, file an application for confirmation of their grant;**

**(d) That the matter shall be mentioned after 45 days to confirm compliance with the orders made above, and for further directions on the disposal of the confirmation application to be filed under (c) above;**

**(e) That any default, with respect to the above orders, shall leave the grant, made on 20<sup>th</sup> December 2019, exposed to revocation or any of the administrators open to removal as administrators, without any recourse to them; and**

**(f) That the administrators are hereby barred from filing any other or further applications in this matter, except for the confirmation application contemplated in (c) above, without leave of the Judge.**

14. It is so ordered.

**PREPARED, DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 3<sup>RD</sup> DAY OF JULY 2020**

**W. MUSYOKA**

**JUDGE**