



**REPUBLIC OF KENYA**

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

**SUCCESSION NO. 7 of 1997**

**IN THE MATTER OF THE ESTATE OF ADAM HAJI ALI TALIB (DECEASED)**

**RULING**

1. Adam Haji Ali Talib (the deceased), the deceased died intestate on 31.12.93. The record shows that he was survived by Sakinabai Adam Haji Ali his widow, 3 daughters, Bilkish Adam, Najma Adam and Tazim Nizam Y. Sidik and 2 sons, Mohamed Adam and Mustafa Adam. Grant of letters of administration (the Grant) was issued to the widow of the deceased, (the Administrator), on 14.7.97. The Grant was confirmed on 27.4.98 and the estate of the deceased was distributed to his heirs in accordance with Islamic law.

2. On 6.7.17, Bilkish Adam Haji (the Applicant) one of the daughters of the deceased filed this summons for revocation of the Grant dated 3.7.17 (the Application). The grounds are that the Administrator has after due notice failed to proceed diligently with the administration of the estate. The Applicant further accuses the Administrator of failing to complete the administration of the estate and produce an inventory and accounts in respect of the administration of the estate within 6 months from the date of confirmation of the Grant. The Applicant prayed that the Administrator produce full accounts within 30 days of the revocation of the Grant. She also prayed that all the Administrator's actions relating to the estate including the conveyance of Subdivision 815 of Section I Mainland North (the property) be nullified. The Applicant's complaint is that the Administrator is dealing with the estate at her whims to the prejudice of the Applicant who has not benefitted at all from the estate yet she is a beneficiary.

3. The Administrator opposes the Application and avers in her affidavits filed herein that prior to the demise of the deceased, he had made provision by way of inheritance to his children, Tazim, Mohamed and the Applicant who were married, in the form of cash, jewellery and related items. The deceased had set aside the property for Najma and Mustafa who were then unmarried. She averred that upon the demise of the deceased it was agreed by all the beneficiaries that she obtain the Grant and transfer the property to herself and Najma and Mustafa. The Applicant neither filed an objection when the application for the Grant was made nor a protest when the application for confirmation of the Grant was made. The Applicant has therefore brought the Application in bad faith as she is aware that she has no claim in the estate. She has been indolent and cannot bring the Application 20 years after the alleged infringement on her rights. According to the Administrator, the Application is intended to settle a score between the Applicant's husband and her younger brother Mustafa. Her sentiments were echoed by Mohamed, Najma, Mustafa and Tazim in their respective affidavits, who all oppose the Application.

4. I have considered the application, the affidavit and oral evidence as well as the rival written submissions. The issues for determination in this matter are:

- i) Whether the Administrator has diligently administered the estate of the deceased.**
- ii) Whether the administrator should produce accounts of the estate**
- iii) Whether the conveyance of the property should be nullified.**
- iv) Whether the grant should be revoked.**

**Whether the administrator has diligently administered the estate of the deceased and whether she should produce accounts of the estate**

5. Due to their conceptual similarities, these 2 issues will be dealt with together. The duties of a personal administrator are set out in Section 83 of the Act as follows:

*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.*

6. The Administrator was required under Section 83(f) to distribute all assets remaining after payment of expenses and debts and the income therefrom, according to the respective beneficial interests therein in accordance with the certificate of confirmation of grant issued on 29.4.98. Under the said certificate of confirmation of grant, the Applicant was to get 1/8 share of the estate of the deceased. The Applicant has stated that she is yet to receive her share of the estate since the confirmation of the Grant. Worse still, a copy of a Conveyance exhibited by the Applicant shows that the Administrator has transferred the Applicant's share of the estate to herself, Mustafa and Najma. This transfer was done contrary to what was clearly set out in the certificate of confirmation of grant issued on 29.4.98.

7. Section 83(e) requires an administrator to within six months from the date of the grant, 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. Under Section 83(g) an administrator is obligated to complete the administration of the estate in respect of all matters within six months from the date of confirmation of the grant and to produce to the court a full and accurate account of the completed administration. There is no evidence that the Administrator completed the administration of the estate within the period specified by law. The Administrator has also not filed accounts 6 months from 14.7.17 when the Grant was issued or within 6 months from 27.4.98 the date of confirmation of the Grant. Section 83(e) and (g) have therefore not been complied with.

8. The production of accounts is a key component of the administration process of a deceased person's estate. From the moment a grant is used to a personal representative of a deceased person, the grant holder becomes responsible to the Court in the carrying out of the duties of administrator. Accounts are an accountability tool that will tell the Court whether the administrator has been faithful to the role entrusted to him or her. When an administrator fails to file accounts as required, questions as to the integrity of the process are bound to arise as in the present case. The law has empowered the Court on either of its own motion or on the application of any interested party in the estate, to order an administrator to produce 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.

9. To this extent therefore I am satisfied that the Administrator has not diligently proceeded with the administration of the estate. The Administrator is also liable to produce full and accurate account of her dealings with the estate as required by law.

#### **Whether the conveyance of the property should be nullified.**

10. The certificate of confirmation of grant dated 29.4.98 set out the mode of distribution of the estate of the deceased. Among the assets listed for distribution is the property. The administrator and the 3 daughters of the deceased were to get 1/8 share of the estate each while the sons of the deceased were to get 2/8 share of the estate each. The Court notes however that the Administrator transferred the property to herself and her children Najma and Mustafa in blatant disregard of the certificate of confirmation of grant issued to her. The Court is not persuaded by the argument by the Administrator and her other children who support her that prior to his demise of the deceased, had made provision by way of inheritance to his children, Tazim, Mohamed and the Applicant who were married, in the form of cash, jewellery and related items. They also claim that the deceased had set aside the property for Najma and Mustafa who were then unmarried. If this were the position, the Administrator would have stated so in her affidavit in support of the summons for confirmation of the Grant. In paragraph 5 of her said affidavit sworn on 12.2.98, she stated:

*According to the deceased the properties are to be distributed as under:*

*a) Sakinabai Adam Haji Ali - widow -1/8 share*

*b) Bilkish Adam -daughter -1/8 share*

*c) Mohamed Adam -son -2/8 share*

*d) Najma Adam -daughter -1/8 share*

*e) Tazim Nizam Y. Siddik -daughter -1/8 share*

*f) Mustafa Adam -son -2/8 share*

11. Having stated the foregoing on oath and having obtained the certificate of confirmation of grant reflecting the said distribution, the Administrator was legally bound to transfer the property to the stated beneficiaries in the stated proportions. The Conveyance of the property to any other person was therefore done in defiance of a Court order. It is not clear the circumstances under which the Registrar of Titles, Mombasa agreed to register a Conveyance that did not conform to the certificate of confirmation of grant being a key supporting document. The Conveyance registered contrary to the order of this Court cannot therefore stand.

#### **Whether the Grant should be revoked**

12. The grounds upon which a grant may be revoked are stipulated in Section 76 of the Law of Succession Act (the Act) which provides:

***76 A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—***

***(a) that the proceedings to obtain the grant were defective in substance;***

***(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case.***

***(c) 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;***

***(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either –***

***(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or***

***(ii) to proceed diligently with the administration of the estate; or***

***(iii) 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; or***

***(e) that the grant has become useless and inoperative through subsequent circumstances.***

13. The Court has found that the Administrator has failed to proceed diligently with the administration of the estate and also failed 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. These are some of the statutory grounds set out in Section 76(d) of the Act upon which the grant may be revoked. The Court notes the submission by the Administrator that the Applicant neither filed an objection prior to the issuance of the Grant nor an affidavit of protest at confirmation. For this reason and for her indolence, waiting for over 20 years before filing the Application, the Applicant is undeserving of the orders sought. When I look at the record, I find that there was no reason for the Applicant to object to the issuance of the Grant or confirmation of the same. All beneficiaries were included at every stage right up to confirmation of the Grant. It is the administration of the estate that the Applicant has a problem with and the reasons are manifest. Further, a summons for revocation may be filed at any time before or after confirmation. Section 76 of the Act does not set any time limit. The argument by the Administrator therefore lacks basis.

14. An order for revocation of a grant is discretionary. Having considered all the circumstances herein, I find that no useful purpose will be served by revoking the Grant. However, in order to remedy the injustice visited upon the Applicant and in exercise of the powers conferred upon this Court by Section 47 of the Act I do make the following orders which are necessary for the ends of justice:

i) The Conveyance in respect of Plot No. 815/I/MN between Sakinabai Adam Haji Ali and Sakinabai Adam Haji Ali, Najma Adam Haji Ali and Mustafa Adam Haji Ali and registered in Volume LT6 Folio 20/10 File 455 is hereby nullified.

ii) Sakinabhai Sakinabai Adam Haji Ali shall within 30 days that is to say by 3.6.19 execute and cause to be registered a fresh Conveyance/Assent in favour of all the beneficiaries of the estate of the deceased in accordance with the certificate of confirmation of grant issued to her on 29.4.98.

iii) Any beneficiary wishing to renounce their interest in the estate of the deceased may file a renunciation to that effect within 14 days that is to say by 17.5.19.

iv) Sakinabhai Sakinabai Adam Haji Ali shall on or before 3.7.19 produce 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.

v) Mention to confirm compliance and for directions on 8.7.19.

vi) This being a family matter there shall be no order as to costs.

**DATED, SIGNED and DELIVERED in MOMBASA this 3<sup>rd</sup> day of May 2019**

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**M. THANDE**

**JUDGE**

**In the presence of: -**

..... **for the Applicant**

..... **for the Administrator**

..... **Court Assistant**