



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

(Coram: Odunga, J)

SUCCESSION CAUSE NO. 169 OF 2004

IN THE MATTER OF THE ESTATE OF JOEL MAITHYA KIKOSI (DECEASED)

MONICAH MUKULU KIILU.....1ST APPLICANT

ELIZABETH NTHENYA KIMEU.....2ND APPLICANT

AGNES MUTHIO MAITHYA.....3RD APPLICANT

REBECCA NGILE MUASA.....4TH APPLICANT

VERSUS

JOHN MWAKE MAITHYA.....1ST RESPONDENT

JOSEPH MUTHINI MAITHYA.....2ND RESPONDENT

AND

MUTUNGA KASOA.....INTENDED 3RD RESPONDENT

RULING

1. On 23rd day of October, 2018, this court delivered a ruling in this Cause in which it found that the Administrators were guilty of dereliction of their statutory duty. The Respondents were therefore, directed to within 30 days from the date of the ruling render an account of the estate, showing the assets which have come to their hands, and the manner in which they have been applied or disposed of, including their values and the amount at which they were disposed and the particulars of the persons to which they were disposed of as well as those assets which remain undisposed of and the manner in which they intend to dispose of the same.

2. Pursuant to the said ruling, the Respondents, on 18th December, 2018 filed what in their view was a full and accurate account of the estate of **Joel Maithya Kikosi**. Unimpressed by the said statement, the 1st applicant filed an affidavit challenging the said statement.

3. 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.

4. 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.

5. 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. From a reading of the 1st 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. 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.

6. The procedure for doing so is by way of summons and not by way of an affidavit. Although the said applicant at the end of the said affidavit deposes that the grant herein ought to be revoked, it is my view that that is not the correct procedure. Let the said the necessary application be made should the applicant be minded to do so.

7. Orders accordingly.

Read, signed and delivered in open Court at Machakos this 11th December, 2019.

G V ODUNGA

JUDGE

In the presence of:

Mr Langalanga for Mr Tamata for the applicant

Respondent present in person

CA Geoffrey