



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
SUCCESSION CAUSE NO. 39 OF 1943
IN THE MATTER OF THE ESTATE OF KHATOR BIN SALIM (DECEASED)

1. NAZRA SAID SEIBAN
2. HASHIM AHMED KHATOR
3. KHATOR RASHID KHATOR
4. KHATOR MOHAMED KHATOR
5. OMAR MOHAMED SAID.....APPLICANTS

VERSUS

1. ABDULRAZAK KHALIFA
2. TEOPISTA MKIWA MWAZIGHE
3. MUNAWERALI JAFFER NOORALI DHANJI
4. MUNIRA MOHAMED ABDALLA.....RESPONDENTS

RULING

By way of the Summons dated 30-4-2014 the Applicant/Respondent prays inter alia that

“Time to comply with the order of court made on 12-2-2014 with regard to consensual appointment and preparation of audited accounts as per order III is enlarged by such time as the court may order, not being less than six(6) months from the date of this order, to facilitate conclusions of criminal proceedings instituted against the applicant in Shanzu Criminal Case No. 721 Of 2014 REP-VS-ABDULRAZAK KHALIFA, allow for a building on consensus amongst family members allow time to identify an accountant/auditor acceptable to all or a majority of the beneficiaries, and allow such accountant/auditor enough time to collect dated and prepare accounts for the estate”

The application was disposed of by way of oral submissions. **MR. S.M. KIMANI ADVOCATE** appeared for the Applicant/Respondent whilst **MR. HAYANGA ADVOCATE** acting for the Respondent/Applicant strenuously opposed the same.

This application arises from a Ruling of the court dated 17-3-2014. In that Ruling the court made *inter*

alia the following order

“THAT an independent accountant/auditor to be appointed with consent of all parties to prepare accounts and submit the same to court within forty (40) days from today’s date. Such accountant/auditors fees to be paid from the estate”

Once again this court can only but lament that despite having given clear directions the way forward, the beneficiaries of the estate of the late **KHATOR BIN SALIM** are still unable to work as a team to achieve the distribution of this estate, a full 70 years after the death of the deceased.

The Applicant/Respondent is one of the administrators of the estate and it is he to whom the order in question was directed. The Applicant/Respondent submits that despite his best efforts he has been unable to comply with the court order to avail and submit accounts for the administration of the estate so far for the following reasons:-

1. Failure to reach consensus amongst the beneficiaries on an independent accountant/auditor to prepare their accounts.
2. His arraignment before Shanzu Law Courts in Criminal Case No. 271 of 2014 instigated by some of other beneficiaries.

Due to this arraignment he was held in custody for a period of one week thereby making it impossible for him to comply with the court orders.

The Applicant/Respondent now seeks an extension of time for a period of not less than six (6) months to enable him complete the task. Mr. Hayanga for the Applicant/Respondent submitted that the Applicant/Respondent has had ample time to prepare and submit the audited accounts. He asks the court to dismiss the reasons cited for delay as ‘blanket reasons’. Counsel further submits that the Applicant/Respondent has been indolent in waiting for a full 27 days before filing this application for an extension. He submits that this present application is nothing more than a delaying tactic and urges the court to dismiss the same or if the court is inclined to allow an extension, that a period of one (1) month would in his view suffice.

The Applicant/Respondent has relied on Rule 67 of the Probate and Administrative Rules which provides as follows:-

“Where any period is fixed or granted by these Rules or by an order of the court for the doing of any act or thing, the court upon request of its own motion may from time to time enlarge such period notwithstanding that the period originally fixed or granted may have expired”.

I have carefully considered the submissions made by both counsels, I have also carefully perused the affidavits on record. I am satisfied that the Applicant/Respondent did indeed as per the court’s order need to seek consensus from the other beneficiaries regarding which auditor/accountant to carry out the exercise. This consensus seeking was necessary. However, it appears that the parties have now settled upon an accountant/auditor as per the submissions of Mr. Hayanga Advocate. Again it is a fact that on 14/03/2014 the Applicant/Respondent was arraigned at Shanzu Court on charges related to his duties as an administrator of this estate. His one week incarceration no doubt hindered his ability to get on with the task at hand. However, I do not accept the submissions of Mr. Kimani that is necessary to await the conclusion of this criminal case before the court orders of 17-3-2014 can be complied with. To so hold would amount to granting an open ended extension since there is no way to predict when the criminal case will come to an end or indeed what its outcome will be. The fact is that the Applicant/Respondent is now a free man and has capability to conclude the audit. Taking all factors into account I am persuaded that some extension is merited though not six months extension requested by the Applicant/Respondent. I hereby grant an extension of time to comply with my orders of 17/3/2014 for a further three (3) months from today’s date. Costs of this application to be met by the Applicant/Respondent.

Dated and Delivered in Mombasa this 13th day of October, 2014.

M. ODERO

JUDGE

In the presence of;-

Mr. Hayanga for Respondent

No Appearance for Applicant.

M. ODERO

JUDGE

13/10/2014

Court

Mention on 17/12/2014. The application for revocation of Grant to be heard by way of Vive Voce Evidence. Hearing dates to be taken in the Registry.

M. ODERO

JUDGE

13/10/2014