



REPUBLIC OF KENYA



**In re Estate of AAS (Deceased) (Succession Cause 262 of 2009)
[2025] KEHC 13907 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13907 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 262 OF 2009
WM MUSYOKA, J
OCTOBER 3, 2025
IN THE MATTER OF THE ESTATE OF AAS (DECEASED)**

RULING

1. According to the ruling, delivered herein on 7th June 2022, the original grant, in this matter, made herein on 3rd December 2009, and confirmed on 6th October 2010, had been revoked, by a consent order of 2nd March 2016. The court proceeded to appoint new administrators, and to direct them to file for distribution of the estate.
2. 2 of the 3 new administrators, KTM and JGW, filed a summons for confirmation of grant, dated 1st March 2023. I shall refer to the 2 as the applicants.
3. In compliance with section 71 of the *Law of Succession Act*, Cap 160, Laws of Kenya, and Rule 40 of the Probate and Administration Rules, they disclose that they have ascertained the survivors of the deceased to be 4 sons, 1 daughter and 1 adopted daughter, and that there are other survivors from 2 dead sons of the deceased. The surviving sons are said to be KTM, JGW, NROS and VMM. The biological daughter is identified as GLS, while the adopted daughter is said to be CMN. The 2 dead sons of the deceased are ascertained as the late CT and the late FO.
4. The applicants also disclose that they have ascertained the assets, that the deceased died possessed of, as Marachi/Esikoma/XXX; and Bukhayo/Mundika/XXX, 3XXX, 3XXX, 3XXX, 3XXX, 3XXX, 7XXX, 7XXX, 7XXX, 7XXX, 8XXX, 8XXX, 8XXX, 8XXX, 8XXX, 8XXX, 8XXX, 8XXX, 8XXX, 8XXX, 8XXX, 8XXX, 8XXX, 8XXX, 8XXX, 8XXX, 8XXX and 8XXX. A bundle of green cards and certificates of official searches are attached, on the status of ownership of the said assets. It is also disclosed that there is a school, known as [Particulars Withheld] Secondary School. They further disclose that some of the assets had been sold by the other administrator, NROS, being Bukhayo/Mundika/XXX, 3XXX, 3XXX, 3XXX, 3XXX, 3XXX, 8XXX and 8XXX.
5. The applicants propose distribution as follows:
 - a. the late FO - Marachi/Esikoma/XXX (0.35), and Bukhayo/Mundika/7XXX (0.36), 8XXX (0.1667) and 8XXX (0.033), all totalling 0.9097 hectares;



- b. VMM - Marachi/Esikoma/XXX (0.35), and Bukhayo/Mundika/7XXX (0.33) and 8XXX (0.2501), all totalling 0.9301 hectares;
 - c. The late CT- Marachi/Esikoma/XXX (0.35), and Bukhayo/Mundika/3XXX (0.36), 8XXX (0.1667) and 8XXX (0.0305), all totalling 0.9072 hectares;
 - d. GLS - Marachi/Esikoma/XXX (0.39), and Bukhayo/Mundika/8XXX (0.05), 8XXX (0.1), 8XXX (0.1945) and 8XXX (0.03), all totalling 0.7645 hectares;
 - e. KTM - Marachi/Esikoma/XXX (0.3711), and Bukhayo/Mundika/7XXX (0.09), 8XXX (0.1945), 8XXX (0.051) and 8XXX (0.045), all totalling 0.7516 hectares;
 - f. CMN - Marachi/Esikoma/XXX (0.4), and Bukhayo/Mundika/8XXX (0.063), 8XXX (0.054), 8XXX (0.056) and 8XXX (0.062), all totalling 0.6340 hectares;
 - g. JGW - Marachi/Esikoma/XXX (0.36), and Bukhayo/Mundika/7XXX (0.09), 8XXX (0.1945), 8XXX (0.045) and 8XXX (0.048), all totalling 0.7375 hectares; and
 - h. NROS - Marachi/Esikoma/XXX (0.464), and Bukhayo/Mundika/XXX (0.041), 3XXX (0.041), 3XXX (0.041), 3XXX (0.041), 3XXX (0.041), 8XXX (0.06), 8XXX (0.045) and 8XXX (0.045) all totalling 0.7375 hectares.
6. The other administrator, NROS, filed an affidavit of protest, sworn on 2nd May 2023. I shall refer to him, hereafter, as the protestor. He protests about some of the assets allocated to him, that is to say Bukhayo/Mundika/XXX, 3XXX, 3XXX, 3XXX, 3XXX, 3XXX, 8XXX and 8XXX. He explains that Bukhayo/Mundika/XXX, 3XXX and 3XXX, were sold by the administrators, in office at the time of the sales, to defray costs of the succession and conveyance, and, therefore, they were no longer in the name of the deceased. He further explains that Bukhayo/Mundika/3XXX, 3XXX, 3XXX, 8XXX and 8XXX, were disposed of by the administrators, who were in office then, to put up houses for him, VMM and the late FO Sikhukhulo. He argues that he was being allocated assets which did not exist in the estate. The protestor has not attached any documents to his protest.
7. He has made his own proposals on distribution, as follows:
- a. the late FO Sikhukhulo - Bukhayo/Mundika/7255, 3XXX and 7XXX;
 - b. VMM - Bukhayo/Mundika/8XXX, 8XXX and 8XXX;
 - c. The late CT- Bukhayo/Mundika/8XXX and 8XXX;
 - d. GLS - Bukhayo/Mundika/8XXX, 8XXX, 8XXX, 8XXX and 8XXX;
 - e. KTM - Bukhayo/Mundika/7XXX, 7282 and 8XXX; and
 - f. JGW – as per sketch;
 - g. NROS - Bukhayo/Mundika/7XXX and 8XXX;
 - h. [Particulars Withheld] Secondary School - Bukhayo/Mundika/XXX;
 - i. Marachi/Esikoma/XXX – be shared equally between KTM, JGW, NROS, VMM, GLS, and the estates of the late CT and the late FO; and
 - j. Shares held by East Africa Breweries Bank of Kenya and Barclays Bank of Kenya – equally amongst all the beneficiaries.



8. The applicants have responded to that protest, vide their affidavit of 19th January 2024. They assert that Bukhayo/Mundika/XXX, 3XXX and 3XXX were not sold by the previous administrators, as there never was an agreement, amongst them, that the same be sold. They also assert that it was the protestor who sold the lands, for his sole purposes. They aver that they had to seek court intervention, to restrain wastage of the estate by him. They ask the court to ask the protestor to account for the rents he was collecting, from some of the assets that he had leased out. They accuse the protestor of selling many assets of the estate, without involving the other administrators and beneficiaries. They state that one of them, KTM, had even to report a matter of forgery of his signature, by the protestor, to the police. They assert that there was no justification for the sales. They also state that none of the sales were meant to raise money to build houses for the 3 individuals named. As the protestor had already benefited from the estate, they argue, he should only get a share from Marachi/Esikoma/XXX and Bukhayo/Mundika/XXX, which are the only assets being shared equally amongst all the beneficiaries.
9. The applicants have attached documents in support of their case. They include orders made by the court, targeting wastage of the estate by the protestor. There are also copies of various leases that the protestor entered into with third parties, as well as sale agreements for the assets that he purportedly sold.
10. The protestor subsequently filed what he called evidence affidavit, sworn on 1st March 2024. In that affidavit, he alleges that the deceased held a number of bank accounts, which he has listed in that affidavit. He also contests the status of CMN, arguing that she was not a daughter of the deceased, and was never adopted by her. He also mentions landed assets allegedly not listed by the applicants, being Bukhayo/Mundika/8XXX, 8XXX and 8XXX. He also makes a fresh proposal on distribution. He proposes that accounts be rendered of the shares in the 2 firms, NSSF contributions, and school income, and the same be deemed as inheritance by the applicants. He has attached a bundle of documents to support his case.
11. A number of further filings were done by both sides, thereafter.
12. Directions, were given, on 21st November 2023, for disposal of the summons for confirmation, by way of viva voce evidence. Oral hearings were conducted, on 6th February 2024, 6th March 2024 and 13th May 2025. Both the 2 applicants and the protestor testified, and breathed life to their respective affidavits and other filings, and were cross-examined on them. At the close of the oral hearings, the parties filed written submissions, which I have perused, and noted the arguments made.
13. When I settled to compose this ruling, I established that the only parties who were heard were the administrators, that is to say the 2 applicants and the protestor. Yet, they are not the only survivors and beneficiaries of the estate of the deceased, nor the only persons entitled to a share in it. Apart from the 3 of them, the deceased had 4 other biological children. There is allegation that there was a fifth, adopted, which is contested. All these are stakeholders in the estate.
14. The purpose of the confirmation proceedings is not just to distribute the assets. There is also the matter of rendering accounts. Section 79, of the *Law of Succession Act*, vests the assets of the deceased in the administrators, and confers upon them the powers set out in section 82 of the Act, and imposes duties upon them by virtue of section 83 of the Act. The very clear language of the Act is that administrators are personal representatives of the deceased. They do not hold the property of the estate as absolute owners, but as trustees, on behalf of the ultimate beneficiaries. They hold the property for the purpose of managing it, in preparation for its distribution to those entitled to it. They stand in a fiduciary position, with regard to the assets and the beneficiaries.



15. Since the fiduciary manages that which does not belong to him, he is under an obligation to account for it, and for how he has handled it. That duty is statutory, and, for our purposes, it is provided for under sections 71(2)(a), 76(d)(iii) and 83(e)(g). Under section 83(e), that account is rendered by the administrators, within 6 months of appointment, which coincides with the time at which confirmation is sought, and, therefore, accounts are rendered simultaneously with application for confirmation.
16. The account is made to the court, as the appointing authority, for the purpose of assessing, under section 71(2)(a), whether the estate has been properly administered, so that the court can consider whether or not to confirm the grant, and, upon confirming the grant, whether to confirm the administrators, and allow them to be the ones responsible for distribution.
17. The account is also to the other survivors and beneficiaries of the estate. The assets are held on their behalf, by the administrators, and, therefore, the administrators, as trustees, have an obligation to account to them, the beneficiaries, on how they, the trustees, have managed and handled the assets entrusted upon them by the court. The beneficiaries would be the survivors of the deceased, dependants, creditors and others who have a beneficial interest of some form or other. The account, although filed in court, is meant to be an account to both the court and the beneficiaries.
18. In this case, the applicants and the protestor have proceeded as if the assets, that they administer, are only meant to be distributed to them. From the material that I have seen in the file before me, there is a bigger constituency of beneficiaries and stakeholders, larger than the 3 administrators. That large constituency must be involved in the confirmation process.
19. The applicants did not comply with Rule 40(8), of the Probate and Administration Rules, which requires that where a beneficiary does not wish to file a protest, under Rule 40(6), like the one filed by the protestor, then he or she should sign a consent in Form 37, which should then be filed in court, contemporaneously with the summons for confirmation. No consent, in Form 37, under Rule 40(8), was filed on 1st March 2023, contemporaneously with the summons of even date, nor subsequently, duly executed by all the beneficiaries who were not protesting to the confirmation application.
20. The consent in Form 37 serves various purposes. It informs the court that the other beneficiaries are aware of the proposals that the court is being invited to confirm, so that the court can proceed to confirm them, without having to hear those beneficiaries, if need be. It would be an indication of who would not be protesting. That is what Rule 40(8) says.
21. Additionally, Rule 41(1), of the Probate and Administration Rules, requires the court to “hear the applicant and each protestor,” where there is a protest filed, “and any other person interested, whether such persons appear personally or by advocate.” The other children of the deceased, or their descendants or personal representatives, and any other claimant, like Consolata, are persons interested in the estate, who the court should have heard, and, therefore, who the parties hereto should have availed at the oral hearings, for the court to take their views on the matter.
22. Proceeding to determine the matter, without first taking their views, and considering them, would expose the proceedings to being quashed or set aside, for having been conducted in a non-inclusive manner, and failing to conform or comply with Articles 50 and 159 of the *Constitution*, with respect to access to justice and fair hearing. This is about the estate of their mother, they have to be seen and heard, on the distribution proposed. These proceedings cannot be conducted as if these other individuals do not exist or matter.
23. Before I proceed, to consider the material before me, on its merits, I will have to comply with Rule 41(1), by hearing all those other persons, that is to say the other 2 surviving biological children of the



deceased, the alleged adopted child of the deceased, the descendants of the 2 dead sons of the deceased or their personal representatives, and any other person. The applicants shall arrange to ensure that they attend court, for me to see them and hear their views, on 19th November 2025. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED, IN CHAMBERS, AT BUSIA, ON THIS 3RD OCTOBER 2025.

W. MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Betty Achala, instructed by Abalo & Company, Advocates for the applicants.

Mr. Noel Sikhukhulo, the protestor, in person.

