

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO. E003 OF 2024

IN THE MATTER OF THE ESTATE OF BENSON NG'ANG'A NDIRANGU
(DECEASED)

RULING

1. I am called upon to determine an application, dated 24th July 2025. It primarily seeks that the applicant, Samuel Wainaina Tira, be listed as a creditor of the estate, and the administratrix be directed to pay him before confirmation of grant. There is an ancillary prayer that the court consider ordering sale of an estate asset, to meet the claim by the applicant.
2. The background is that the applicant has obtained a decree against the deceased herein, in Busia ELC No. 7 of 2014. The estate appealed against that decree, in Kisumu CACA No. 135 of 2017, but the appeal was unsuccessful. The decretal amount now stands at about Kshs. 23,002,375.00, according to the applicant. The deceased died before settling the decree, or paying any part of it. The applicant would like to be listed, in this cause, as a creditor of the estate, and provision be made for him, before confirmation of the grant, even if it will require disposal of an estate asset.
3. The administratrix has responded to the application. Her affidavit is dated 22nd September 2025. She avers that debts, such as the instant one, should be paid after confirmation of grant. She states that there is no pending summons for confirmation of grant, as the estate is involved in litigation, at the Busia Environment and Land Court, for the purpose of recovering and collecting some assets, being Busia/Municipality/532, 533 and 535. She raises some issues with the computation of the decretal amount. She also questions how the applicant came to be entitled to claim the amount that he now claims. She asks the court to make some orders, directed at Ecobank Limited, for filing of statements of accounts.
4. The parties briefly addressed me, on the application, on 23rd September 2025.

5. The application is premised on sections 83(d) and 86 of the Law of Succession Act, Cap 160, Laws of Kenya.
6. Section 83 is on the duties of a personal representative. Section 83(d) imposes a duty *“to ascertain and pay, out of the estate of the deceased, all his debts.”* It should be read together with section 83(e), which is on rendering of accounts, and which states that, *“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.”* Section 86 provides that, *“Debts of every description enforceable at law and owed by or out of an estate shall be paid before any legacy.”*
7. What is the purport of these provisions? Section 83(d) declares that it is the duty of the personal representative, of which the administratrix herein, is one, is to ascertain and pay the debts of the estate. Section 83(e) is also on debts and liabilities. It requires that an account be rendered to court, and to stakeholders, being survivors and creditors, by the personal representatives, of the assets and liabilities that they have ascertained. Section 86 gives settlement of debts priority, over distribution of the estate, amongst survivors and beneficiaries.
8. It should be notable, that the exercises, in sections 83(d)(e), precede the exercise provided for under section 83(f), of distribution of the balance of the assets, after payment of administration expenses and debts. That exercise of distribution is undertaken after the grant has been confirmed, under section 71, which should be done after expiration of 6 months. That would mean confirmation of grant should follow completion of the exercises envisaged in section 83(a)(b)(c)(d), that of meeting funeral expenses, getting in and collecting the estate, settling administration expenses, and ascertaining debts and liabilities. After the activities in section 83(a)(b)(c)(d) are completed, the account, in section 83(e), is then rendered, of all the assets and liabilities ascertained, and of the dealings of the personal representatives, with respect to the estate, up to that point, in preparation for the confirmation of the grant and distribution of the estate, under section 83(f).
9. Probate practice, in Kenya, has been to combine the activities envisaged in section 83(e)(f), so that the account, expected in section

83(e), of the assets and liabilities ascertained, is rendered simultaneously with confirmation of the grant and distribution of the estate, under section 83(f). So that, the account on the assets and liabilities of the estate is rendered in the application for confirmation of grant, simultaneously with the making or presentation of proposals, on how the debts and administration expenses are to be settled, and the balance of the assets of the estate distributed amongst the survivors and beneficiaries.

10. There is prudence in doing so. So that at the hearing of the confirmation application, there is a disclosure or an account on the assets that are available for distribution, and the debts and liabilities of the estate, which have to be settled first before distribution. There would be proposals on how the debts and liabilities identified are to be settled, from the assets ascertained as available and belonging to the estate. The proposals on distribution would then be on the assets remaining after the debts and liabilities have been provided for. The orders that the court would make, at confirmation, on the assets, would be first to direct on how the assets would be utilised to settled debts, liabilities and administration expenses, after which it will direct on how the balance of the assets, that is what remains after settlement of debts and liabilities have been provided for or settled, is to be shared out or distributed, amongst the survivors and beneficiaries.
11. It would be imprudent, to settle debts and liabilities piecemeal, to individual creditors, prior to completion of collection and getting in of the entire estate. The administratrix herein reports that there is a pending suit, for collection or getting in of 3 assets of the estate. Settlement of liabilities should await confirmation of the grant, except for statutory ones, like any owing to the Kenya Revenue Authority, if at all. For now, the applicant should only be treated as a creditor, who has been ascertained, given that he holds a valid court decree, and who should be provided for at confirmation of grant.
12. The administratrix invites me to make certain orders against Ecobank Limited. That would require a formal application.
13. I, therefore, dispose of the application, dated 24th July 2025, in terms of prayer 11 hereabove. I direct the administratrix to ensure that the applicant herein is served with the summons for confirmation of grant, once one is filed, and the applicant shall be at

liberty to file a protest to it, in terms of Rule 40(6) of the Probate and Administration Rules, if the proposals made therein shall not be accommodative of his interests. As this matter should not remain without a date, it shall be mentioned on 18th December 2025, for updates, by the administratrix, with respect to the suit at the Environment and Land Court, and possible directions on the filing of a summons for confirmation of grant. It is so ordered.

**DELIVERED, DATED AND SIGNED, IN OPEN COURT, AT BUSIA ON THIS
3RD DAY OF OCTOBER 2025.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Gachuna, instructed by Stanley Henry, Advocates for the applicant.

Mr. Gatundu, instructed by Gatundu & Company, Advocates for the administratrix.