



In Re Estate of Mohamed Idris Ahmed (Deceased) (Succession Cause E053 of 2020) [2022] KEKC 3 (KLR) (Family) (8 June 2022) (Ruling)

Neutral citation: [2022] KEKC 3 (KLR)

REPUBLIC OF KENYA
IN THE KADHIS COURT AT NAIROBI (MILIMANI COMMERCIAL COURT)
FAMILY
SUCCESSION CAUSE E053 OF 2020
AH ATHMAN, SPK
JUNE 8, 2022
IN THE MATTER OF THE ESTATE OF MOHAMED IDRIS AHMED (DECEASED)

BETWEEN

MOHAMED ABUBAKAR IDRIS RESPONDENT

AND

NUNUA TAIBA MOHAMMED OBJECTOR

RULING

1. This summons for revocation of grant dated February 11, 2022 filed on February 15, 2022 seeks orders for inter alia:
 1. Stay of the grant issued on March 2, 2021.
 2. The grant issued be revoked.
 3. A declaration that the grant of probate issued by this court and any act or process initiated or undertaken on the basis of the said grant is ineffective, invalid and of no consequence.
 4. The petitioner / respondent be ordered to surrender the original grant to the court for safe custody.
 5. Pending hearing and determination of this application conservatory orders directed to the respondent his servants, agents and employees from charging, sale, transfer, partition, subdivision and or any dealings on Land title No Mavoko Town Block xx/ (GLMU)/xxx to issue.
 6. The OCS Athi River Police station be directed to ensure compliance of the orders



2. The court (Hon SH Omar, DCK) granted interim orders in the application on February 15, 2022.
3. The application was opposed.
4. The applicant deposed that she is a daughter of the deceased herein and therefore a beneficiary of the estate of the deceased and that she had neither been consulted nor gave her consent for the grant of letters of administration and is likely to suffer irreparable damage if the application is not granted. She attached a copy of her birth certificate and sworn affidavit of deceased's siblings to support her claim.
5. The respondent deposed that he is the only son and heir of the deceased herein and that the applicant is not familiar to him. He further stated that he is not intermeddling in the estate and the grant was issued legally.
6. Prayers 1,2,4, and 5 are spent. The issues remaining for determination are whether or not the grant issued on March 2, 2021 should be revoked and conservatory orders issued.
7. The application was disposed by way of written submissions.
8. Mr Yusuf for the applicant submitted that rule 73 of the *Probate And Administration Rules* gives the court inherent powers to make necessary for the ends of justice and 68(1) *Land Registration Act*, empowers the court to grant inhibition in land matters. He submitted further that the applicant demonstrated she is a daughter of the deceased that the respondent concealed material facts on the heirs and that she will suffer irreparable damage if the orders sought are not granted.
9. Mr Dagaye for the petitioner / respondent submitted that the applicant is a stranger to the estate property in this matter as she had never set foot on the land and the chief had not listed her as a beneficiary. He further submitted that the birth certificate is unverified and should not be considered.
10. Upon reading the depositions of the parties herein and upon reading the submissions of parties on record the issue for determination in this application is whether or not the letters of grant issued by this court on March 2, 2021 to should be revoked.
11. The record shows the petitioner/respondent followed due process to obtain the letters of administration. Likewise, the applicant is applying the law to have it revoked. In contention is whether or not the applicant is a legal heir of the deceased herein. The applicant is not saying that the listed beneficiaries are not heirs, merely that she was left out of the list. On the other hand, the petitioner/respondent still contends he is not aware the applicant is a daughter of the deceased. This is an issue of fact that needs of necessity to be established. The applicant relied on birth certificate and affidavits of deceased's siblings while the respondent relied on chief's letter, lack of knowledge and the fact that allegedly the applicant never set foot to the estate property. Critical to any inheritance proceedings under Islamic law is the establishment of the legal heirs of the deceased. It is material information that must be fully disclosed in a succession petition. Section 713 of the *Kadbi's Court Bench Book, 2020* (KCBB) provides:

"There are four conditions of inheritance:

- a) Death of the person from whom the estate emanates.
- b) The existence of legal heirs must be proved. They must have survived the deceased even if by a short interval
- c) The existence of property to be inherited



- d) The nexus (relationship) between the deceased Muslim and heir (s) apparent sufficient to qualify the latter to inherit from the former must be established."
12. *Prima facie*, the applicant has an arguable case to entitlement to the estate. The respondent however, is entitled to test such evidence. Affidavit and even documentary evidence may not, in such circumstances, be sufficient to make a considered and fair finding on the issue. The application of part VII of the *Law of succession Act*, cap 160 laws of Kenya in estates of deceased Muslims only apply if they are not consistent with Islamic law. In the instant case there is no inconsistency between the laws. There are adequate safeguards within the law to ensure rightful heirs are considered. Further section 73 of the *Probate And Administration Rules* confers to the court powers to make any orders in the interests of justice. It states:
- ‘Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court’.
13. Provisions of the *Law of Succession Act* allow for revocation on grounds of defective proceedings, if it were obtained on the basis of false statement or concealment of material facts or an untrue allegation of fact essential in point of law. Section 76 of the *Law of Succession Act*, cap 160 laws of Kenya provide:
- ‘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 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...’
14. Strictly under Islamic law a person alleging legal entitlement to an estate must be given audience to give his or her evidence. Denial of opportunity to establish such entitlement offends both the constitutional right to fair trial under articles 25 (c), 48 and 159 (2) of the *Constitution of Kenya, 2010* and Islamic law of inheritance provisions. The fact deposed by the respondent that the deceased was only survived by one widow and one son (the respondent) is, on the face of the applicant’s claim, untrue until the issue of the legal heirs of the deceased herein is established with finality on the merit.
15. Allowing the grant to remain in force on the face of such glaring gaps offends the rules of natural justice. Accordingly, the grant issued by this court on March 2, 2021 be and is hereby revoked. Conservatory orders restricting respondent, his servants, agents and employees from charging, sale, transfer, partition, subdivision and or any dealings on Land title No Mavoko Town Block xx/ (GLMU)/xxx are hereby issued.
16. Proceedings in this matter are re-opened for presentation and testing of the applicant’s evidence on her status as legal heir of the deceased herein.
17. Application granted as prayed.

DATED, SIGNED AND DELIVERED IN NAIROBI ON 8TH JUNE, 2022.

HON ABDULHALIM H. ATHMAN



SENIOR PRINCIPAL KADHI

In the presence of

Ms Judith Ndori, Court assistant.

Mr Yusuf for the applicant.

Mr Dagaye for the respondent.

