



**In re Estate of IAAH (Deceased) (Succession Cause E068 of 2022)
[2022] KEKC 156 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEKC 156 (KLR)

**REPUBLIC OF KENYA
IN THE KADHI'S COURT AT UPPER HILL (NAIROBI MILIMANI LAW COURTS)
SUCCESSION CAUSE E068 OF 2022
AH ATHMAN, SPK
OCTOBER 27, 2022**

BETWEEN

SAA CITOR

AND

FSS CITEE

RULING

1. The petitioner is a brother to the deceased, a banker, who died sometimes in July 2022 at Nairobi aged 42 years old. She was married to the respondent and lived in their 8th Floor Almas towers apartment in the upmarket Kilimani estate, Nairobi within the Republic of Kenya. The monthly rent for the apartment is Kes 120,000.00. The respondent has a business and is mostly based in Mombasa. Upon her death, the respondent gave notice to vacate the premises. The family had unsuccessfully engaged him to ascertain the properties of the estate. The petitioner moved and obtained interim preservation orders from this court. The respondent moved the Chief Magistrates Court at Mombasa in Civil Case No 1219 of 2022 and obtained interim injunctive and restraining orders against the petitioner from preventing him from leaving the apartment with his belongings. He has apparently already vacated the apartment.
2. The citor's application dated August 3, 2022 seeks the following orders:
 - i. spent
 - ii. That an injunction do issue restricting the respondent from dealing in any way with the properties of the deceased pending hearing and determination of this application
 - iii. That an injunction do issue restricting the respondent from dealing in any way with the properties of the deceased pending hearing and determination of this suit
 - iv. Costs



3. The applicant deposed that he is a brother to the deceased who was survived by four siblings and a widower and left a car, a Suzuki swift registration No xxxx (hereinafter referred to as the ‘motor vehicle’), personal effects and jewelry. He stated that the citee / respondent has not taken out letters of administration and is removing furniture and personal effects from the deceased’s house to an unknown destination.
4. The respondent opposed the application and although directed his advocate on record more time to file the reply on-line and in the physical record. He did not. He had though served the applicant’s advocate with his reply and had been allowed to argue his reply.
5. Mr Yusuf for the applicant submitted that the heirs had a meeting to ascertain the properties of the estate but the respondent refused to participate and has been actively intermeddling. He argued the motor vehicle was bought by the deceased but unfortunately, she died before completion of its transfer to herself. He further submitted the personal effects were bought by the deceased using her own funds. He argued that the court has powers under rules 115 (1) and (3) to make orders for preservation of estates to make orders of injunction and inherent powers to prevent injustice and abuse of court process under rule 116 KCPPR. If the orders are not granted, he submitted, there will be no estate remaining for distribution to heirs.
6. I have perused the suit file, the respondent on the issue of the estate contends only two properties as constitute the estate: Ruiru / Ruiru East Block xx/ xxxx (jointly with another) and 54 ordinary shares with Chasi investment. He denied the motor vehicle and household goods belonged to the estate.
7. The applicant has filed bank statements and receipts indicating monies were withdrawn by the deceased to purchase beds, Mattresses, bed set fabric, blenders, mixers, toasters, kitchen utensils, pressure cookers, juice blenders, sandwich maker and paid rent for the apartment. On his part the respondent filed invoices indicating the household goods were bought by his company, ‘Hypro Construction supplies.’ A careful study of the items in the invoice and those in cited by the applicant indicate they are different household items, although all were delivered to the matrimonial home, the Kilimani apartment. Some of the receipts filed by the respondent also bear the name of the deceased. Prima facie, the household goods belong to the estate. All properties in the name of the deceased are prima facie, part of his or her estate. Accordingly, order restraining the respondent from dealing and / or disposing same pending hearing and determination of this suit is hereby granted under rules 115 (1) and (3) as read together with rule 116 KCPPR (2020).
8. The ownership of the motor vehicle is disputed. The applicant admits it is not registered in the name of the deceased. This is a succession court and has to deal with determination of estates which are free properties of a deceased for distribution to heirs. Disputes on ownership have to be resolved before distribution at the appropriate forum of competent jurisdiction. In the case of *Jibril Gollo Duba v Asli Gollo Duba* (2021) eKLR, E.M. Muriithi J, held:

‘It is clear that a dispute regarding ownership in respect of a deceased person negates the concept of free property of a deceased person and the dispute should be determined by a court with jurisdiction to determine ownership disputes before distribution by a succession court and if necessary, the court may set apart the share or property in dispute to await the outcome of the resolution of the dispute.’



9. In the case of *Fatuma Mohamed Shariff v Principal Magistrate Court, Kajiado & 2 others* (2014) eKLR, Mumbi Ngugi J (as she then was), stated:

‘it is also possible that the Kadhi’s court was mistaken in concluding that it had jurisdiction to deal with issues under article 40 and 162 especially given that article 170 (5) gives the Kadhi jurisdiction where all parties submit to such jurisdiction, and that the magistrates court was mistaken in issuing an injunction in the matter. On the face of it and as the interested party tacitly concedes, as the property is registered in the petitioner’s name, the proper forum for determining such claim as he may have would be the Environment and Land Court in which the constitution vests jurisdiction to hear and determine questions relating to title to land.’

10. We decline to issue restraining order on the motor vehicle. Parties to prosecute this issue at the right forum. It may be added for distribution if found to belong to the deceased.
11. For clarity and avoidance of doubt, there was no prayer and none has been issued, for restricting the respondent from leaving the apartment. Considering he or the estate would have to shoulder the burden of rent payment, there is was no basis to stop him from vacating the expensive rented apartment. He is however, faulted for refusing discussions on ascertainment of the estate properties with the deceased’s siblings and shall be held accountable for any loss thereof.

The application is partly granted. Orders accordingly.

DATED, DELIVERED VIRTUALLY AT NAIROBI ON 27TH OCTOBER, 2022.

HON. ABDULHALIM H. ATHMAN

SENIOR PRINCIPAL KADHI

In the presence of

Mr. Suleiman A. Mohamed, Court assistant

Mr. Yusuf for the citor / applicant

Respondent (Mr. Magolo absent due to bereavement)

