

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
(FAMILY DIVISION)
SUCCESSION CAUSE NO. 2 OF 2020
IN THE MATTER OF THE ESTATE OF DAVID PATRICK
MITCHELL(DECEASED)**

**NICOLE LOVECE MITCHELL1ST APPLICANT
ERICA MITCHELL.....2ND APPLICANT
GAYLE MITCHELL3RD
APPLICANT**

VERSUS

**TUSHAR RAMNIKLAL THAKERSHI
PUJARA.....EXECUTOR
AND
SIMONA LONGONI MITCHELL.....WIDOW/INTERESTED
PARTY**

RULING

1. The deceased, **David Patrick Mitchell**, died testate in Malaga, Spain, on **23rd September 2019**. He was survived by his wife, **Simona Longoni Mitchell**, their son, **Thomas David Mitchell**, and three daughters from his previous marriage to **Rosa Maria Mitchell: Nicole Lovece Mitchell, Erica Mitchell, and Gayle Mitchell**. The will of the deceased is dated **25th April 2019**.
2. In the said will, the deceased appointed Mr Tushar Ramniklal Thakershi Pujara as the executor. He stated therein that in the event of Mr Pujara's death, Mr **Saleem Ghalia**, advocate, would step into his shoes as the trustee. Mr Mitchell bequeathed his entire real or

personal estate, within Kenya or elsewhere, to his wife, **Simona Longoni Mitchell**, subject to payment of all his debts, together with funeral or testamentary expenses.

3. The will of the deceased was challenged by his daughters, Nicole, Erica and Gayle Mitchell (who I shall hereafter refer to as either “the objectors” or “the protestors”) on the grounds that at the time of the execution of the will the testator, their father, lacked testamentary capacity, by reasons of grave illness, and that the deceased was under the control of, and or was subject to the undue influence of Ms Simona Longoni Mitchell, and thus lacked agency. They also stated that they had not been provided for.
4. In a judgment delivered on **24th July 2024**, this court, per Onyiego, J, dismissed the objection to the making of the grant. The court found as follows in respect of the three issues it had framed:-
 - a. On whether the deceased executed a valid will, the court found that no evidence was adduced, proving that the deceased suffered from a mental incapacity. For that reason, it found that the will was valid;
 - b. On whether the will was executed under influence, the court held that the allegation that Simona exerted undue influence on the deceased was not proved and was, in essence, pure speculation, not based on cogent evidence; and
 - c. On whether Nicole, Erica, and Gayle were entitled to a share of the estate, the court found that no prayer for reasonable

provision was made. The court gave the objectors the liberty to apply a reasonable provision.

5. This court subsequently issued a grant of probate of the written will of the deceased on 17th September 2024 to **Tushar Ramniklal Thakershi Pujara of P O Box 53457 – 00200 Nairobi.**
6. Through his counsel, Mr Pujara filed the summons for confirmation of the grant dated **13th December 2024**, through which he sought to have the grant of probate issued to him on **17th September 2024** confirmed. The said summons has not been heard to date.
7. Nicole, Erica, and Gayle Mitchell, on the other hand, filed a summons dated 12th February 2025 seeking to have a reasonable provision made out of the estate of the deceased and for the costs to be provided for.
8. Before both summons could be heard, the executor renounced the right to probate of the written will vide a notice issued on **19th February 2025**. The executor expressly indicated that he had not intermeddled with the estate of the deceased, and that he would not thereafter do so, with intent to defraud the estate. The reason Mr Pujara gave for renunciation of executorship was that there had been a fracture in the relationship between the widow and the executor, and that he could no longer be the executor of the estate.

9. When this matter was mentioned on 17th March 2025, Ms Ndirangu, counsel for the objectors, Nicole, Erica, and Gayle Mitchell, raised a question as to whether, under section 59 of the Law of Succession Act, an executor who has been issued with a grant of probate could renounce executorship. The need for Mr Pujara to provide accounts was also raised. Upon considering the matter, this Court ordered that:-

- a. The firm of **Triple OK Law LLP** does provide a statement of account in respect of share sales to the firm of Daly & Inamdar LLP within 7 days thereafter;
 - b. The executor was granted 14 days, from the date of receipt of the statement heretofore mentioned, to file a statement of account
10. Upon compliance with the said directions by Mr Pujara, the counsel for the objectors applied to have the executor cross-examined. The executor was cross-examined on 30th May 2025.
11. Mr Pujara testified that he had provided 3 sets of statements of account. He averred that he had no intention of raising a fee note in respect of his work as an executor. He testified that he didn't handle the advocates' fees, as Simona herself handled them. Regarding Vipingo House, he stated that Simona's parents lived in it. Mr Pujara said he couldn't confirm or deny whether Simon had repaired the Vipingo House or the car. He admitted not having paid the service charge for Vipingo House. That said, he averred that he had done his

best and that he should thereby be discharged from his responsibilities as an executor of the estate of the deceased.

12. When cross-examined by Ms Ndirangu, Mr Pujara stated that he listed the properties of the deceased in the petition for the grant of probate of the written will of the deceased. It was his evidence that US\$330,000 was held by the firm of Triple OK Law Advocates LLP, at the request of the firm of Judy Thongori and Co. Advocates. He testified that he was unaware that the said law firm would charge for custody of the funds. He also stated that he didn't know whether the Vipingo House had been renovated. He categorically stated that he had only paid bills supported by documentary evidence.

13. When re-examined by Mrs Akwana, Mr Pujara reiterated that he had done everything to the best of his ability to safeguard the interests of the estate. It was his evidence that the parties had not expressed dissatisfaction with his conduct. He expressed his wish to step down as an executor, as the sole beneficiary had lost confidence in him.

14. Parties filed written submissions, which were highlighted on 28th July 2025.

15. Mrs Akwana, learned counsel for the executor, submitted that they had, on behalf of Mr Pujara, filed written submissions dated 12th June 2025 and 25th July 2025. It was urged that neither the widow nor the protestors had alleged any intermeddling by the executor. Ms

Akwana submitted that all issues had been addressed in the statements of accounts filed in this cause and that there was no breach of trust. She urged that the widow's only objection to the statement of account was that not all expenses had been reflected. She submitted that all substantiated expenses were reflected in the statement of account.

16. Mrs Akwana submitted that it wasn't true that an executor could renounce executorship only before the grant of probate was issued. In support of that contention, she relied on the case of **In re Estate of Lucy Akuku Maingey (Deceased) [2018] KEHC 4860 (KLR)**. She distinguished the case of **in re Estate of Susan Warima Ng'ang'a (Deceased) [2024] KEHC 11632 (KLR)** on the grounds that in that case the executor had collected rent and had not submitted statements of account, unlike in this case. She urged that there was no more than a bare allegation of a lack of proper accounting without evidence. Mrs Akwana submitted that the executor could not be forced to proceed with the administration of the estate when he had renounced executorship. She urged the court to allow the application.

17. Mrs Oduor, learned counsel for the widow, Simona Longoni Mitchell, relied on her written submissions dated 10th July 2025. While conceding that a recalcitrant executor could not be forced to continue administering an estate against his wishes, she submitted that he must, however, be made to provide proper accounts prior to exiting. It was her view that the liabilities should be properly accounted for, as the estate consists of both assets and liabilities. She further

submitted that Mr Pujara's discharge be conditional on the provision of full accounts.

- 18.** Ms Ndirangu, learned counsel for the protestors, relied on the written submissions dated 10th July 2025 and the authorities attached thereto. She urged that under section 59 of the Law of Succession Act, a renunciation of probate could not be made after the grant of probate was issued. Which, conceding that Mr Pujara can't, as a matter of fact, be forced to continue being an executor, she urged that he had a duty under section 83 of the Law of Succession Act to provide a full and accurate inventory of the assets and liabilities of the estate and a full and accurate account of his dealings herewith. He accused the executor of not having followed up on the accounts of Vipingo Ridge House and the funds held at Triple OK Law Advocates LLP. She urged that a comprehensive inventory of the estate's assets, income, expenses, and liabilities be prepared to obtain a clear picture of the estate.
- 19.** In that response, Mrs Akwana submitted that there was no proof of the expenses allegedly incurred and paid for by the widow, as she had not provided supporting documents. She defended the use of Form 101, saying that it was the correct form. She reiterated that there had been a full accounting. She thus prayed that the executor be discharged.
- 20.** Can the executor be discharged after the grant of probate is issued? As far as I can tell, the only provision of the Law of

Succession Act that addresses renunciation of executorship is section 59. It states that:-

“Any person who has been appointed by a will as an executor thereof may, either by oral declaration before the court or by writing under his hand, renounce executorship, and shall thereafter be finally precluded from applying for grant of probate of that will.”

21. As earlier indicated, the grant has already been issued. The same is dated 17th September 2024. The executor thereafter filed a summons for confirmation of the grant, which is still pending.

22. Can the executor renounce the executorship at this point? The answer, to me, would seem to be in the affirmative.

23. In the case of the rest of **In re Estate of Fr. Joseph Kariuki Njino (Deceased) [2023] KEHC 3307 (KLR)**, Nyakundi, J, when considering a similar matter, stated as follows:-

“The applicant is well within his rights and the provision of the law to renounce executorship.”

24. Similarly, the court of **In re Estate of Lucy Akuku Maingey (Deceased) [2018] KEHC 4860 (KLR)** recognized the right of an executor to renounce executorship when it held as follows:-

“In filing the renunciation of probate, the Executors have therefore abandoned their rights in relation to the will. The

court notes that the Executors did not, however, render accounts as ordered prior to filing the renunciation.”

25. The foregoing is echoed in the decision of Muya, J, in the case of **in re Estate of Susan Warima Ng'ang'a (Deceased) [2024] KEHC 11632 (KLR)**, wherein the learned Judge, who thought declining to allow renunciation, had the following to say:-

“By reason of the foregoing, it is patently clear that an executor who wishes to renounce his position as an executor should not expect the court to allow him to casually walk away but is required under section 83 of the Law of Succession Act to file a full and accurate account of the estate.”

26. The parties agree that it may not be feasible to have the executor compelled to administer the estate of the deceased when he has renounced executorship. What the widow and protestors want is for the executor to provide a full and accurate inventory of the estate's assets and liabilities, and an account of his dealings therewith, before he does so.

27. Based on the foregoing and the facts in issue, should I discharge Mr Pujara as the executor of the subject estate? Is it necessary for him to provide further accounts?

- 28.** My understanding of the foregoing is that a renouncing executor should not have intermeddled with the estate and must provide a statement of account.
- 29.** It has not been stated by any of the parties that Mr Pujara intermeddled with the estate of the deceased. What the widow of the deceased and the protesters contest is the adequacy of the three statements of account he provided. They seek to have his discharge conditional on the provision of full accounts.
- 30.** As an executor, Mr Pujara was under a fiduciary duty to act in the best interest of the widow and her son, who are the beneficiaries named in the will of the deceased. Simona contends that the statements of account do not properly set out the estate's liabilities. In response, Mr Pujara stated that he had settled only those liabilities that he could ascertain from the receipts provided and that Simona had failed to provide them. This explanation appears reasonable to me. Having purportedly undertaken repairs of the house and car at Vipingo, it was within Simona's ability to provide documentary evidence so that the executor could account. To ask the executor to account for claims without documentary evidence would, to me, appear unreasonable.
- 31.** Although the executor could possibly have been more engaged with the finer details of the administration of the estate, I do not think that it would have been reasonable to expect him to be aware of the renovation of the house in Vipingo, which was under the occupation

of Simon's parents, or the car that was in the exact location. In a similar vein, whereas he should have been aware whether Triple OK Law LLP was entitled to charge for holding the funds in its custody, I am of the view that this is a minor infraction.

32. Executorship is a personal obligation; it would be unreasonable for this court to order Mr Pujara, whose relationship with the sole beneficiary is broken, to continue being the executor. The court must recognize the fact that the relationship is broken and not be tempted to issue orders in vain.

33. The upshot of the foregoing is that I find merit in the renunciation of the executorship by Mr Pujara. I discharge Mr **Tushar Ramniklal Thakershi Pujara** as an **executor of the estate of David Patrick Mitchell (deceased)** forthwith.

34. I order that the person(s) entitled under the will to take out a petition for the grant of probate of the written will of the deceased, or for letters of administration with a written will annexed, within 30 days of the date hereby.

35. As this is a family matter, each party shall bear his/her/their own costs.

36. Orders accordingly.

Dated and signed in Mombasa, this 31st day of October 2025.

Delivered virtually through **Microsoft TEAMS.**

Gregory Mutai

JUDGE

In the presence of: -

Mrs Akwana, for the Mr Tushar Ramniklal Thakershi Pujara;

Mrs Oduor, for Ms Simona Longoni Mitchell;

Ms Ndirangu, for Nicole, Erica, and Gayle Mitchell; and

Arthur – Court Assistant.

Original