

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**(FAMILY DIVISION)**

**SUCCESSION CAUSE NO. E012 OF 2023**

**IN THE MATTER OF THE ESTATE OF SWALEH KARAMA HANTOOSHI**  
**(DECEASED)**

**KHALID SWALEH HANTOOSH .....**  
**.....PETITIONER**

**VERSUS**

**MOHAMED SWALEH KARAMA**  
**HANTOOSH....OBJECTOR/APPLICANT**

**JUDGEMENT**

1. Before this court is objection proceedings to the making of grant dated 19<sup>th</sup> December 2024 as sought in the petition of Khalid Swaleh Karama Hantoosh filed in Mombasa registry on the 24<sup>th</sup> October 2023 on the grounds that no consent for filing or making of the grant was sought by the petitioner from the objector and that there was material non-disclosure of the fact that there are pending succession petitions before a competent court of equal jurisdiction. It was also contended that the petition was premature, as there is a pending suit in which the petitioner and others fraudulently transferred part of the deceased's properties to themselves without the knowledge of other beneficiaries, and the said properties have not been disclosed in this petition.
2. He stated that the petitioner did not seek consent for the making of a grant before filing the petition as required by the law. The petitioner

also failed to disclose that there are other properties not included in the petition and that no reasons were given for the material non-disclosure. It was further averred that the petitioner failed to disclose to this court that he together with other beneficiaries transferred Plot No.11209/1/MN Title CR 35607 and have also collected and shared the proceeds of rent without the family's consent or knowledge and that they have also collected pension funds of the deceased and have failed to distribute the same to the beneficiaries resulting to the filing of petition no.18 of 2019 and CMCC ECC No. E161 of 2021, which are still pending.

3. He urged the court to allow the objection proceedings and dismiss the petition for being premature, frivolous, vexatious, and an abuse of the law and for lack of consent.
4. The petitioner filed a further affidavit and stated that he was directed to file for letters of administration following the ruling of High Court Case No. E012 of 2023 through the ruling dated 24<sup>th</sup> May 2024, within a period of 60 days, and that all the family members were aware of the same and approved the filing of these proceedings, except the respondent, who refused to cooperate. No objection was raised within the stipulated time.
5. He stated that their late father wrote a will on 28<sup>th</sup> June 2004 stating that the share in one of his estate properties, Title No Mombasa/Block XV11/1539, be distributed to his sons, Mohamed Swaleh Hantoosh, Awadh Swaleh Hantoosh, and Khalid Swaleh

Hantoosh. However, the same has a pending suit in the Mombasa High Court, Civil Suit No. 113 of 2001. The only person enjoying the proceeds from the said estate is Mohamed Swaleh Hantoosh.

6. The matter was canvassed by way of viva voce evidence and written submissions. I shall summarize the evidence of the witnesses below.
7. Mohamed Swaleh Hantoosh (OW1) stated that the petitioner excluded the following properties from the list of the properties of the deceased: 1540, 1539, and plot 11209/1/MN (CR No.35607), Plot No. MN/1/84, Swahili house, plus rent collected since 2018, and money in the bank and pension from KPTC. He testified that the matter should be referred to the Kadhi for hearing and determination. He stated that there is a matter pending before the Kadhi's Court, namely Kadhi Succession Cause No. 180 of 2019. It was his evidence that any of the siblings can be appointed as administrator of the estate of the deceased, except the petitioner.
8. Khalid Swaleh Hantoosh (RW1) testified that the court that he does not have a good relationship with the objector and that the objector does not attend meetings. It was his evidence that the reason for filing the petition was to enable him to be in charge of 43/2001, Citation No.36 of 2021, and to resolve a debt of Kes.5,000,000/- owed to the county government of Mombasa. He stated that he has not disclosed the said issues to the court and that he was given a grant *ad litem* to take care of the estate.

9. It was his evidence that they transferred Plot No.11209, which they transferred ten years after the demise of the deceased, and that the same is in the name of Asia, Anissa, and Hawahif.
10. He further told the court that the case before the Kadhi was dismissed and that he did not list pension as an asset, as it is not. That they did not list assets with court cases.
11. Ms Asiya Swaleh Karama (RW2) told the court that all siblings knew that Khalid had filed this case and that he informed the applicant. She, however, conceded that they did not list certain properties, including Plot No. 11209 and a property in Kongowea.
12. It was her evidence that the applicant is not responsible, and that is the reason why they excluded him, and that they still receive rent up to date.
13. Upon the close of the hearing, the court directed the parties to file written submissions. The objectors, through their advocates Bunde Mangaro & Co. Advocates, filed written submissions dated 7<sup>th</sup> July 2025. Counsel submitted that during examination in chief, the petitioner and his witnesses confirmed that he was not made aware of the proceedings at the time of filing and that the respondent did not prove that he obtained the necessary consent from him. Counsel urged the court to allow the objection proceedings.
14. On the other hand, the respondent, through his advocates, Oduor Siminyu & Company Advocates, filed written submissions

dated 24<sup>th</sup> July 2025. Counsel relied on section 67 of the Law of Succession Act and submitted that the act of gazettelement is to serve the following; alert potential beneficiaries, dependants or creditors who may want to object to the grant; prevent unauthorized individuals from acquiring control over the estate of the deceased; provide a statutory 30 day window for any person to lodge a caveat of object; to ensure that the grant process is open, transparent and inclusive. The court was required to confirm that no objection had been received before issuing a grant.

15. Counsel submitted that all parties were duly informed before the filing of the succession cause and that the application lacks merit and ought to be dismissed with costs.

16. I have considered the objection, the responses, the evidence tendered, and the rival submissions by both counsel. Has a case been made for the revocation of grant?

17. Rule 7(7) of Probate and Administration Rules provides;  
**Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has—**

- (a) renounced his right generally to apply for a grant; or**
- (b) consented in writing to the making of the grant to the applicant; or**
- (c) been issued with a citation calling upon him either to renounce such right or to apply for a grant.**

**18.** The applicant filed the objection proceedings pursuant to the leave of the court. The leave was granted on 6<sup>th</sup> December 2024.

**19.** It is evident that the petitioner did not list all the deceased's properties, nor was the objector involved in the process leading to the filing of the petition. The deficiencies are not minor; they invite this court's action.

**20.** The court in the case of *In re Estate of Julius Ndubi Javan (Deceased)* [2018] KEHC 8523 (KLR) stated that: -

**“Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (uberimae fidei) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure steams of justice; such must, immediately be subjected to serious reverse osmosis to purify the**

**streams of justice, if society is to be accordingly regulated by law.”**

- 21.** There is no dispute that the petitioner did not obtain consent to the making of the grant from the objector or that he had omitted specific properties from the list of assets, and or that he transferred specific properties to the other beneficiaries. All these are glaring defects that demand sanction from this court.
- 22.** The upshot of the foregoing is that it is my view that the objection has merit. The same is allowed. The petition dated 14<sup>th</sup> February 2023 is hereby dismissed. The parties are directed to file a fresh petition listing all dependants, assets, and liabilities of the deceased, following consultations with all beneficiaries.
- 23.** As this is a succession proceeding between siblings, each party shall bear his own costs of the application.
- 24.** Orders accordingly.

**Dated** and signed this **19<sup>th</sup>** day of **November 2025**. Delivered virtually through **Microsoft TEAMS**.

**Gregory Mutai**  
**JUDGE**

In the presence of:-

Mr Oduor for the Respondent;  
No appearance for the Applicant; and  
Arthur – Court Assistant.

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