



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 721 OF 1992
IN THE MATTER OF THE ESTATE OF THE LATE MZEE ALI
TAJIRI (DECEASED)

ASHA MZEE ALI 1ST
APPLICANT

RUKIA NJOKI 2ND
APPLICANT

TIBA ALI 3RD
APPLICANT

ADIJA NYAGAKI 4TH
APPLICANT

ALI MZEE ALI 5TH
APPLICANT

VERSES

**MARINDA FATUMA MZEE
RESPONDENT**

RULING

1. In their application dated 1st August 2023 the Applicants are seeking the following orders:-
 - (a) Prayers 1,2,3,4,5,6,7,8, and 9 spent.

- (b) That all steps taken by the said Administrator/Respondent pursuant to the said order granting the grant of administration and certificate of confirmation and which may have changed the assets of the estate subject of this application be declared null and void.
 - (c) The purported Will be revoked.
 - (d) That a limited grant of letters of administration be issued to the Applicants.
 - (e) That such further order be made for the preservation of the estate.
 - (f) That the court be pleased to restrain further dealings in the deceased property.
2. The application is based on the sworn affidavit of Asha Mzee Ali dated the same date as well as the grounds thereof.
 3. In her lengthy affidavit the Applicant on behalf of the rest of the Applicants have challenged the Respondent who is the Administrator of the estate of the deceased herein pursuant to a Will dated 4th July 1985.
 4. The Applicants are deceased children together with the Respondent who was mandated to be Administrator on 15th March 2005 pursuant to the confirmation of the grant with Will annexed.
 5. The substratum of the Applicants' case is that the said Will was a forgery and that the Respondent has failed to

administer the estate properly and that she has left out other assets of the estate.

6. They argue that the consents by the siblings which gave rise to the grant being confirmed were obtained through forgeries of their signatures.
7. It is their case that the Respondent has intermeddled in the estates properties and wasted the same and that she has benefited alone.
8. For the above reasons they pray that the grant be revoked and they Will be nullified.
9. The Applicants have also in support of their claim filed an affidavit of one Daniel Michungu Gutu a document examiner dated 11th April 2024. His report dated 11th April 2024 is contained in his affidavit.
10. The Respondent on the other hand has filed her affidavit sworn on 21st August 2023 in which she vehemently opposed the application. She averred inter alia that she is the administrator of the estate of their father and she was by then 73 years.
11. She accused her siblings of bringing up the matter 31 years later yet all along they have been in the picture.
12. She deponed that as a matter of fact and despite being granted the chance to have all the two properties in the estate she decided out of her own volition to transfer LR No. 209/4401/130 to the Applicants. To date they have not

effected the transfer into their own names despite handing over the transmission documents to them.

13. She argued therefore that the application is belated having supported her siblings all through as directed by their father without any coercion or at all.
14. That they have not established any grounds for revocation of the Will or the grant for that matter neither have they laid out any basis for getting any conservatory orders.

ANALYSIS AND DETERMINATION

15. I have perused the history of this matter and the rival arguments in the affidavits.
16. The first point to start with is where have the Applicants been for the last 31 years as alluded to by the Respondent? They cannot feint ignorance of the fact that this cause has been in existence. I think it is high time some limitation period is placed in the Succession Act.
17. The Applicants for instance have not denied the fact that the Respondent transferred LR No. 209/4401/130 to them despite the will indicating otherwise. I suppose this was done very many years ago. If that is the case, why have they been holding the said conveyancing instruments without raising any complain or for that matter returning the same to the Respondent?

18. Secondly and more importantly I have not seen any sufficient reasons for impugning the Will. I have perused the said handwritten Will and the translation thereof.
19. The grounds for setting aside a Will are now obvious including specifically the inability for the testator for whatever reasons including incapacity to make a Will because of illness. In this case save for the forgery allegations there is no deposition that he did not have such capacity.
20. For over thirty years the Applicants have known that the same existed. They waited until some three years ago or thereabouts to challenge the same. This is pure indolence despite that fact that there is no limitation period for challenging one. The same must however be challenged within a reasonable period.
21. Significantly as well is the fact that despite raising fraud allegations the Applicants have not taken any precipitate criminal action against any of the would-be forgers. The document examiner in my view has come too late in the day and in any case, it was incumbent upon them to raise any complaint with the criminal wing or arm of the law.
22. I dare suggest therefore that the application has been brought too late in the day and with mala fides specifically against the aging Administrator.
23. As she correctly pointed out there is no evidence of any other property left out of the Will and if there was one

then it ought to be brought out and shall be dealt with effectively and perhaps through intestate process.

24. For now, I think I have stated much to show that the application is not merited.

25. **The application is dismissed with costs to the Respondent.**

**Dated signed and delivered via video link at Nairobi
this 19th day of March 2026.**

**H K CHEMITEI
JUDGE**