



REPUBLIC OF KENYA



KENYA LAW
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**in re Estate of Domenico De Masi (Deceased) (Succession Cause
625 of 2009) [2025] KEHC 852 (KLR) (Family) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 852 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 625 OF 2009
PM NYAUNDI, J
JANUARY 31, 2025
IN THE MATTER OF THE ESTATE OF DOMENICO DE MASI (DECEASED)**

RULING

1. The application for determination is the Summons for Confirmation of Grant dated 14th December 2022 presented by the Administrator seeking that the Grant of Letters of Administration intestate issued to Berando Vincenzo Demasi on 27th July 2009 be confirmed.
2. The Summons is supported by the affidavit of Bernado Vincenzo Demasi sworn on the 14th December 2022. The Application does not on the face of it state the provisions of the law under which it is presented.
3. Section 71 of the *Law of Succession Act* and rules 41 and 42 set out the procedure to be followed in an application for confirmation of grant. In the affidavit sworn in support of the Summons, the Administrator avers that all the beneficiaries are adults and they have consented to the confirmation of the grant. Rule 41 requires that the Application for summons for confirmation be accompanied by consent in writing in Form 37 of all dependants or other persons who may be beneficially entitled.
4. The Summons for confirmation lodged by the Applicant is not accompanied by a consent signed by the beneficiaries who are identified in paragraph 2 of his affidavit as
 - a. Bernado Vincenzo Demasi
 - b. Antonio Kenyatta De Masi
 - c. Jospena De Masi
 - d. Elizabeta De Masi
 - e. Eleana De Masi
 - f. Nicola De Masi



5. The summons as presented is therefore incompetent. Viewed against the back drop of the history of the Administrators conduct it is evident that he is playing every card in his deck to avoid administering the estate in accordance with the law.
6. I will afford him one last chance and in accordance with Section 71 (2) (d) postpone the confirmation of grant for 30 days to enable him secure the consent of all the beneficiaries. Failure to do so will result in the revocation of the grant.
7. Accordingly, the matter will be mentioned on 4th March 2025 to confirm compliance and take further directions.
8. All the beneficiaries to attend Court on that date.
9. The objections herein are hinged on a purchaser's interest. The Objectors are therefore advised that the probate court as has been established by judicial precedent is not clothed with the necessary jurisdiction to adjudicate over their claims. The Objectors therefore to lodge their claims in the court of competent jurisdiction.
10. Costs in the Cause

It is so ordered

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 31ST DAY OF JANUARY, 2025.

.....

P. NYAUNDI

JUDGE

In the presence of:

Noel Court Assistant

..... for the Applicant

..... for the Respondent

