



REPUBLIC OF KENYA



**KENYA LAW**  
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**Farah v Mbaya (Succession Cause E006 of 2023)  
[2025] KEHC 3817 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3817 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE E006 OF 2023  
PN GICHOHI, J  
MARCH 26, 2025**

**IN THE MATTER OF THE ESTATE OF GORSHO ROBLE MOHAMED (DECEASED)**

**BETWEEN**

**RASHID MAHMOUD FARAH ..... APPLICANT**

**AND**

**JEREMIAH MBAYA ..... RESPONDENT**

**RULING**

1. The subject of this Ruling are two applications. The first one is a Notice of Motion dated 11<sup>th</sup> July, 2023 and filed by Rashid Mahmoud Farah on 18<sup>th</sup> July 2023 pursuant to Order 40 Rule 1,2,3(1) & 4, Order 51 Rule 1 of the Civil Procedure Rules, Section 1A, 1B and 63 ( c) of the *Civil Procedure Act* and Section 45 of the *Law of Succession Act* seeking for Orders that:-
  1. Spent.
  2. The Respondent/ Intermeddler, Mr. Jeremiah Mbaya be restrained from collecting any rent or any other monies due to the Estate of the deceased from the tenants in the commercial spaces in the building erected on parcel of land comprised in title No. 1.R 2511/13 in respect of LR No. 1317/12/11 Gilgil (the property) or in any other way intermeddling and or interfering with the property.
  3. The Respondent to give an account of all the rent that he has collected from the tenants in the commercial space in the building erected on parcel of land comprised of title L.R 2511/13 in respect of L.R No. 1317/12/11 Gilgil and submit all monies to the Applicant for distribution to the rightful beneficiaries.



4. The Respondent to pay rent at the rate of Kshs. 30,000 per month for the 2 commercial spaces that the Respondent occupies within the building in the property or in the alternative, vacate the 2 commercial spaces.
5. The Costs of this application be borne by the Respondent.
2. The grounds are on the face of the application and supported by the Applicant's Affidavit sworn on 17<sup>th</sup> July, 2022. The Applicant's case is that the property which is the subject of this application is registered in the name of Gorsho Roble (Deceased). That initially, the Grant of Letters of Administration Intestate was given to Yakub Ahmed (son of the deceased and the sole administrator) on 22<sup>nd</sup> July, 2019 vide the Chief Magistrate Court at Nakuru Succession Cause No. 26 of 2019 and the Grant was confirmed on 1<sup>st</sup> December, 2020.
3. He states that the said Yakub Ahmed died on 20<sup>th</sup> January, 2021 before distribution could be completed. It is then that the Applicant petitioned this Court to administer the remainder of the Estate of the Deceased and indeed, the Court appointed him the Administrator de bonis non on 26<sup>th</sup> July, 2023.
4. It is his position that despite the Respondent being neither a beneficiary nor administrator of the Estate of the deceased, the Respondent has been collecting rent from the subject property without any authority. Further, he has refused to account for the rent collected from the stated property and has refused to pay rent for two commercial spaces he currently occupies to the detriment of the beneficiaries of the Estate of the deceased, which act amounts to intermeddling under the Law of Succession Act.
5. Instead of filing a response to that application, the Respondent (Jeremiah Mbaya) filed the Application dated 16<sup>th</sup> October, 2023, under certificate of urgency and brought under Sections 67(1), 68 and 76 of the Law of Succession Act and Rules 44 (1), 49 & 73 of the Probate and Administration Rules seeking Orders that: -
  1. Spent.
  2. Spent.
  3. The Limited Grant ad litem made to Rashid Mahmoud Farah on 26<sup>th</sup> June, 2023 be revoked or annulled.
  4. The Applicant (Rashid Mahmoud Farah) pays costs of this Application.
6. The grounds are on the face of the application and supported by the Affidavit of Jeremiah Mbaya sworn on 16<sup>th</sup> October, 2023. He stated that the Limited Grant ad litem was obtained by making false statements and concealment of material facts.
7. He depones that Gorsho Roble (deceased) died on 24<sup>th</sup> October, 1982 and the Grant of Letters of Administration Intestate were issued to Yakub Ahmed on 22<sup>nd</sup> July, 2019 and subsequently confirmed on 1<sup>st</sup> December, 2020. That prior to the Administrator's death, he (Jeremiah Mbaya) was given authority to collect rent and other monies from the rental premises situated on the parcel of land known as LR 2511/1 (LR 1317/12/11) Gilgil Township.
8. He states that he was also tasked with maintaining the premises that is carrying our repairs, going to court when an issue arises, paying all dues accruing to the premises and handling any matters from the County Council.



9. Further, he states that he has been managing the said property from the year 2011 pursuant to the said Power of Attorney and the Letter of Authority. He adds that he has been collecting rent from the subject property with approval of the Administrator's other siblings (Hussein Ahmed and Fatuma Ahmed) who are all living in Canada.
10. It is his position that upon the death of the sole Administrator, Rashid Mahmoud Farah, approached the court and sought for a limited grant ad litem which was granted to him on 26<sup>th</sup> June, 2023 and subsequently, he wrote the letter addressed to all tenants dated 5<sup>th</sup> October, 2023 instructing them to remit rent to his personal account.
11. He maintains that Rashid Mahmoud Farah is not a beneficiary of the Estate of the deceased, has failed to disclose the legitimate survivors of the Estate of the deceased and that the Grant of Letters of Administration was confirmed by the Court. He therefore contends that unless the Grant ad litem granted to Mr. Farah is nullified, he would not be able to carry out his lawful duty of protecting and preserving the Estate of the Deceased.
12. In response to this application, Rashid Mahmoud Farah, filed a Replying Affidavit which he swore on 6<sup>th</sup> November, 2023. He opposes the application and maintains that he is the Administrator de bonis non.
13. It is his case, that upon the demise of the sole administrator Mr. Yakub Ahmed, he (Rashid Mahmoud Farah) made an application for his appointment as administrator of the Estate and that during hearing of that application, the two surviving beneficiaries of the Estate of the deceased attended the virtual court on 26<sup>th</sup> June, 2023 and gave their consent for his appointment as the sole Administrator of the Estate of the deceased.
14. He depones that the Grant issued to him was erroneously written as ad litem instead of de bonis non. He reiterates that Jeremiah Mbaya, has continued collecting rent for the Estate of the deceased from December, 2021 to September, 2023, without accounting to the beneficiaries of the Estate.
15. It is his case, that upon being granted Grant de bonis non, he immediately wrote to all tenants to deposit all rent into his account as he was now in charge of managing the Estate affairs, including collecting rent from the said Estate.
16. He states that in the bid to administer the remainder part of the Estate of Deceased, he appointed Peculiar Holdings Ltd, as agents to aid in the collection of rent from the subject property, which agents have managed to collect rent from all other spaces except those occupied by Jeremiah Mbaya.
17. Maintaining that he is a beneficiary of the Estate of the Deceased by dint of being a grandson of the deceased, he elaborates that Yakub Ahmed was his paternal cousin. He reiterates that the basis of annulling and or revoking his Grant de bonis non, has not been established.
18. In a rejoinder, vide a Supplementary Affidavit sworn on 27<sup>th</sup> June, 2024, Jeremiah Mbaya, states that the Grant issued to Rashid Mahmoud Farah was Grant ad litem and not Grant de bonis non. He maintains that Rashid Mahmoud Farah is a stranger to the Estate of the deceased and therefore he could not give any information of the collected rent.
19. He states that Yakub Ahmed entered into a land sale agreement with him (Jeremiah Mbaya) to sell the subject property L.R 1317/12/11 Gilgil for consideration of Kshs.4,000,000/= whereby he paid a sum of Kshs. 3,000,000/= leaving a balance of Kshs. 1,000,000/= to be completed when the Grant was issued to him. He therefore states that he is a bonafide purchaser for value and is entitled to the said property.



20. He prays that his application be allowed as prayed and the Grant ad litem issued to Mr. Farah be annulled and revoked.
21. Pursuant to a consent recorded by both parties before this Court on 3/7/2024, Jeremiah Mbaya filed, on the same day, a Replying Affidavit which he swore on 27<sup>th</sup> June, 2024 and in response to application dated 11<sup>th</sup> July, 2023.
22. He reiterates his Supporting Affidavit sworn on 16<sup>th</sup> October, 2023 and prays for revocation of the Grant ad litem issued to Rashid Mahmoud Farah arguing that it is interfering with his duty of collecting rent on behalf of the Estate of the deceased.

### **Jeremiah Mbaya's (Respondent) Submissions**

23. On whether there is an existing a Grant of Letter of Administration, he maintains that this Court issued the Grant to Yakub Ahmed on 22<sup>nd</sup> July, 2019 and the same was confirmed on 1<sup>st</sup> December, 2020 in Nakuru CM Succession No. 26 of 2019. He states that despite death of the said sole administrator, the other beneficiaries being Hussein Ahmed and Fatuma Ahmed have not moved the Court for substitution
24. On whether he was acting lawfully in this Estate, he maintains that during his life time, Yakub Ahmed had issued him with a Letter of Authority and a Power of Attorney so that he could maintain and repair the building; go to court if any issue arises; pay all dues to in regard to the plot and handle any County Council matters. He therefore argues that he is not an intermeddler but a manager pursuant to authority given to him by the then Administrator of the Estate of the deceased.
25. On whether Rashid Mahmoud Farah is a beneficiary of the Estate of the deceased, he answers in the negative and argues that if he was the beneficiary, then Yakub Ahmed(Deceased) could have included him as such in the Grant of Letters of Administration. In addition, he argues that Rashid Mahmoud Farah is not an Administrator of the Estate but a holder of a Grant ad litem not Grant of Letters of Administration de bonis non.
26. He submits that the Grant issued to Rashid Mahmoud Farah was limited to representing the Estate in legal matters only and therefore, he does not have any locus standi or interest thereof in the Estate of the deceased so as to file the current Application. In support of that argument, he relies on the case of *Edema & 2 others v Edema & 5 others* (Miscellaneous Succession Cause E001 of 2022) [2022] KEHC 9960 (KLR) where J. N. Njagi J held:-

“In the instant application, I hold the view that the application is incompetent for having been filed before a grant of letters of administration was obtained. It is a grant of letters of administration that gives a person the mandate to deal with the property of a deceased person. This is made clear by section 82(a) of the [Law of Succession Act](#) which lists the powers of a personal representative to include –“to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death for his estate... In the case of *John Marete Kirema & another v Gladys Karimi M'Muthamia & 3 others* (2013)eKLR where it was argued that the applicant did not require a grant of letters of administration to pursue an application under Section 45 of the [Law of Succession Act](#), Makau J. (as he then was) held that:“....an intended administrator or a person who has made a petition to be appointed as administrator is not a personal representative of the deceased person and therefore has no locus standi to bring any action independent or within the petition until a grant of letters of representation has been made to him or her as case may be. I therefore do not agree as this is a petition cause and not a civil suit as submitted by the



counsel for the applicant, he does not require grant of letters of administration to pursue the application under Section 45 of the *Law of Succession Act*. In the absence of a grant the applicants herein have no locus standi to deal with the property of the deceased in any manner. The applicants were subsequently issued with a grant of letters of administration ad litem on the 6<sup>th</sup> June 2022, which was way later after the application was filed. However, the same cannot be used to support an application filed before the grant was issued. Section 80(2) of the *Law of Succession Act* is categorical that a grant only takes effect as from the date of issue and not earlier. A grant therefore does not operate retrospectively. The subsequent grant thereby cannot cure the defect.”

27. On whether he has failed to render accounts of the Estate, he submits that in Nakuru Business Premises and Rent Tribunal Case No. 192 of 2023; Paul Chege T/A Peculiar Holdings Limited Versus Jeremiah Mutunga Mbaya and Nakuru BPRT E202 Samuel Karuga Kahura and 4 others Versus Jeremiah Mutunga , Rashid Mahmoud and Another, the Tribunal directed all tenants to pay rent into the Tribunal’s Account and upon final determination of these applications, the money to be released to the bonafide party. Therefore, he submits that he has not been collecting rent from the said premises.
28. On whether he (Jeremiah Mbaya) is a bona fide purchase of the subject property, he maintains that Yakub Ahmed, who was the Administrator then, sold the property to him vide the sale agreement executed on 6<sup>th</sup> September, 2019 and he immediately paid in cash the sum of Kshs 3,000,000, leaving a balance of Kshs. 1,000,000 which was to be paid upon obtaining Grant of letter of administration.
29. It is on that basis that he argues that he is a bonafide purchaser for value hence entitled to the said property and that he is ready to pay the balance of the purchase price. In conclusion, he urges this Court to allow his application as prayed and that the Grant ad litem issued to Rashid Mahmoud Farah be annulled as it was obtained fraudulently and without locus standi.

### **Rashid Mahmoud Farah’s (Applicant) submissions**

30. Regarding his application dated 11<sup>th</sup> July, 2023, he relies on Section 45 of the *Law of Succession Act* and submits that no person, without express authorization, shall deal with property of a deceased person. In support, he cites the case of Veronica Njoki Wakagoto(Deceased)[2013] eKLR, where the Court held that:-

“The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”

31. Further, he relies on the case of Benson Mutuma Muriungi vs C.E.O. Kenya Police Sacco & another [2016] eKLR where F. Gikonyo J observed that:

“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *Law of Succession Act*. I should add that any act or acts which will dissipate or diminish or put at risk the free property of



the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the *Law of Succession Act*. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

32. In the circumstances, he submits that no documents were produced to show that Jeremiah Mbaya applied and/ or obtained any Grant to enable him deal with any part of the deceased property and therefore, his act of collecting rent from the said Estate amounts to intermeddling.
33. Regarding the alleged power of Attorney, argues that the document is not in the statutory format; is undated; has not been correctly executed by a Notary Public or an advocate and is not registered, hence it does not meet the threshold of a standard Power of Attorney to grant Jeremiah Mbaya any powers. He further submits that in any event, the alleged Powers of Attorney abated upon the demise of Mr. Yakub Ahmed. In support of that line of submissions, he relies on the case of Alfred Ngutuku Wamalwa vs Justus Mboya Ogunyio & 3 Others [2014] eKLR where the A. Omollo J held :-

“Consequently, upon the death of the Administratrix (Fronica Owori), all actions she had undertaken as an administrator but which were pending upon her death must and can only be continued by the new administrator of the estate of Alexander Owuori- deceased and not the administrator of Fronica Owori’s estate. It follows that the power of attorney donated by Fronica Owori- deceased as the administratrix of the estate of Alexander O. Olile – deceased was therefore cancelled with her death and can only be revived by her successor in administration of the estate of Alexander Owuori- deceased. The grant obtained and copy shown to the court is issued in respect of estate of Fronica Owori- deceased and not of the estate of Alexander. My understanding is that action survived Alexander Olile and not Fronica Nyanguka Owori-deceased as she had not acquired the registration of the suit parcels in her name.”

34. On his locus standi in these proceedings, he submits that he made an application before this court seeking to administer the remainder of the Estate of the deceased. That the application was allowed on 26<sup>th</sup> June, 2023, in the presence of the other beneficiaries of the Estate, who affirmed his appointment. However, the Court erroneously extracted the same as Grant ad litem instead of Grant de bonis non.
35. On allegation that Jeremiah Mbaya purchased the subject property, he argues that the alleged sale agreement gives Jeremiah Mbaya authority to deal with any property of the deceased nor does it empower him to collect any rent from the said premises.
36. For those reasons, he submits that his application seeking to restrain Jeremiah Mbaya from dealing with the Estate of the deceased should be allowed and directions be made for him to account to the Court for the rent collected from 2021 and further, he be compelled to pay rent for the two spaces which he occupies failure to which he be ordered to vacate the said premises.
37. He submits that his prayer for revocation of Grant is based on the fact that the Grant issued to him was indicated as Grant ad litem yet the Grant sought by the Petition dated 21<sup>st</sup> February, 2023 was Grant de bonis non and therefore, the error in issuing Grant ad litem was on the Court and should not be visited on him.
38. On allegation that the grant was obtained fraudulently on concealment of material fact, he submits that in his application for a Limited Grant de bonis non, he informed the Court that the deceased was



survived by three issues and that the sole Administrator had since died without completing succession process calling for his Application to complete the administration of the remainder of the Estate.

39. He submits that he has not listed his name as a beneficiary, even though he is the grandson of the deceased and a paternal cousin of the beneficiaries herein and further, he obtained authority of the two beneficiaries listed when they in this Court on 26<sup>th</sup> June, 2023 and gave their respective consents to him being granted the said Grant, hence, he obtained the said Grant legally.
40. Regarding the purported sale of the subject property, the Applicant herein argues that it is puzzling how such crucial information was brought to this Court in a supplementary affidavit a year later. He contends that the purported sale is an afterthought, conjured by malice to rob the beneficiaries of the Estate their rightful inheritance.
41. Further, he points out that the agreement indicates Jeremiah Mbaya as the vendor and the Yakub Mohamed as the purchaser. It is his contention that the purported purchaser Yakub Mohamed is not and has never been an Administrator of the Estate of the deceased as the administrator is one Yakub Ahmed.
42. He further submits that Jeremiah Mbaya was collecting and remitting rent to Yakub Ahmed advocates until April, 2022 as indicated in the letter by Sheth & Wathigo Advocates dated 23<sup>rd</sup> May, 2022. Hence the allegation that he purchased the said property is without any basis. Lastly, he urges this Court to dismiss the application seeking revocation of his Grant and award him costs.

### **Analysis and determination**

43. After considering the two applications , affidavits and submission by parties, the issues for determination are:-
  1. Whether Rashid Mahmoud Farah is the administrator de bonis non.
  2. Whether the Application for revocation of Grand ad litem is merited.
  3. Whether Jeremiah Mbaya was given authority to deal with the property of the deceased.
  4. Whether Jeremiah Mbaya should be directed to render accounts for the rent collected from the Estate of the deceased.
  5. whether the subject property I.R 2511/1 9LR 1317/12/11) situated in Gilgil township was sold to Jeremiah Mbaya.
  6. Who should bear costs of these Application.
44. On whether Rashid Mahmoud Farah is the administrator de bonis non(, it is evident that in Nakuru Chief Magistrate’s Court Succession Cause No. 26 of 2019, Yakub Ahmed was issued with a Grant of Letters of Administration on 19<sup>th</sup> July, 2019 and it was confirmed on 1<sup>st</sup> December, 2020. However, he died on 21<sup>st</sup> January 2021 before he could complete the administration of the Estate.
45. In such a case, Rule 20 of the 5<sup>th</sup> Schedule of the [Law of Succession Act](#) provides:-

“If the executor to whom probate has been granted has died, leaving a part of the testator’s estate un-administered, a new representative may be appointed for the purpose of administering such part of the estate.”



46. The primary purpose of Grant of Letters of Administration de bonis non is to ensure the completion of the process of administration of the Estate of the Deceased where the sole administrator dies before completing that work.
47. From the material availed herein, it is clear that the Applicant petitioned this Court on 21<sup>st</sup> February, 2023 seeking issuance of a Grant of Letters of Administration de bonis non. Subsequently, T. A. Odera, J allowed the petition as prayed vide Ruling delivered on 26<sup>th</sup> June, 2023. In the said Ruling, the Judge noted that the survivors of the Estate were present and did not object to the Grant being given to the Applicant herein
48. Pursuant to this Ruling, the Grant extracted by the Court was titled Limited Grant ad litem. That is an error on the face of the record as the Grant the Judge issued to Rashid Mahmoud Farah was, for all intent and purposes, a Limited Grant de bonis non and not Limited Grant ad litem.
49. By virtue of that Grant de bonis non, Rashid Mahmoud Farah was granted powers to administer the remainder Estate of the deceased. Consequently, and having found that the Grant that was granted by the Court was Grant de bonis non but erroneously extracted as Grant ad litem, the alleged Grant of Letters of Administration ad litem is non-existent and therefore, this Court cannot revoke it. The Grant can only be rectified to read the correct title.
50. On whether Jeremiah Mbaya had authority to deal with the Estate of the deceased pursuant to authority given to him by the late Yakub Ahmed through a letter and Power of Attorney marked as (JM2), a perusal of the purported Power of Attorney reveals that the donee was powers to maintain and repair the building, handle any legal issue that may arise, pay dues accruing to the said plot and deal with the County Council on all matters.
51. However, that document is not dated hence possible to tell when it was allegedly issued to Jeremiah Mbaya. Further, the Land Reference Number therein merely reads ‘plot’ without indicating the exact property it is referring to and it is allegedly signed by one Yakub Muhamed whereas the previous Administrator of the Estate of the Deceased was Yakub Ahmed. Further still, though the Donor stated that he is living in Canada, the Power of Attorney is notarized to ascertain the authenticity of the said documents.
52. The letter annexed therein refers to Gonso Building without indicating the Land Reference Number and again, that letter is drawn by Yokub Muhamed, allegedly the donor of the Power of Attorney, whose name is different from that of the deceased Administrator.
53. Had the alleged Power of Attorney been properly done, the Applicant argues that it ought to have been registered. However, the Respondent has not addressed that issue.
54. Regarding registration , Section 4 of the [Registration of Documents Act](#), Cap. 285 of the Laws of Kenya provides that:-

“ All documents conferring, or purporting to confer, declare, limit or extinguish any right, title or interest, whether vested or contingent to, in or over immovable property (other than such documents as may be of a testamentary nature) and vakallas shall be registered as hereinafter prescribed.”
55. In this case and considering the role the Donee was to play, the purported Power of Attorney does not appear to be conferring or extinguishing a right, interest and title in land so as to require its registration.



56. Further, the Donor (Yakub Ahmed) of purported Power of Attorney has since died and therefore, the Power of Attorney is extinguished by operation of law and any further dealings on the deceased property by Jeremiah Mbaya amounts to intermeddling. Indeed, the Court of Appeal in the case of *Meru & 3 others v Meru (Civil Appeal 9 of 2018)* [2023] KECA 1600 (KLR) held:

“On whether the power of attorney survives the death of the donor, there is consensus by both courts below that the power of attorney is extinguished upon death of the donor. We agree with that finding. In the present case, when the respondent’s mother died, the power of attorney that anchored him to file the suit on behalf of his mother was dislodged.”

57. On whether Jeremiah Mbaya should be directed to render accounts for the money collected, it is not in dispute that Jeremiah Mbaya was helping Yakub Ahmed in collection of rent while he was away in Canada. Indeed, Rashid Mahmoud Farah admitted in his submission when he argued that Mr. Mbaya has been collecting and remitting rent to Yakub Ahmed Advocate till April, 2022 as affirmed in the letter dated 23<sup>rd</sup> May, 2022 and drawn by Sheth & Wathigo Company Advocate.
58. It is noted that on record are two Orders dated on 1<sup>st</sup> December 2023 and 11<sup>th</sup> April, 2024 where the Business Premises Tribunal directed the tenants in the subject premises to remit their rent to the Tribunal until this matter is concluded.
59. It is also noted that Jeremiah Mbaya had been remitting the said money to Yakub Ahmed’s advocates Sheth & Wathigo and upon the demise of the sole Administrator, the Business Premises Rent Tribunal (BPRT) directed the money to be deposited in the Tribunal. In the circumstances, there is no justification for an order requiring Jeremiah Mbaya to account for rent which he is no longer collecting.
60. On the prayer seeking to compel Jeremiah Mbaya to pay rent for the two commercial spaces he is currently in occupation, the parties herein have told this Court that the subject premises comprise of Nine (9) commercial spaces, two (2) of which are occupied by Jeremiah Mbaya and it has been alleged that he has refused to pay his rent when due, a fact he has not disputed.
61. From this Court’s finding herein on the fate of the alleged Power of Attorney which he had been clinging on, Jeremiah Mbaya has no further role to play in the Estate herein other than being a tenant obliged to pay rent for each of the two commercial spaces he occupies as and when it falls due. This Court was informed that the rate is at Kshs. 15,000/= for each of the two spaces making a total of Kshs. 30,000/= per month, a figure he has not refuted.
62. On whether Jeremiah Mbaya is the bona fide purchaser for value of the subject property, he alleges to have bought it together with all its fixtures, from the Administrator of the Estate (Yakub Ahmed) in 2019 at an agreed consideration of Kshs. 4,000,000/= out of which he paid Kshs. 3,000,000/= in cash and the balance to be cleared upon issuance of Grant of Letters of Administration.
63. In support, he has annexed the sale agreement (JM-1) dated 6<sup>th</sup> September to the Supplementary Affidavit sworn on 27<sup>th</sup> June, 2024. That agreement indicates Jeremiah Mbaya as the vendor and Yakub Mohamed as the purchaser.
64. It is noted that the name of the Administrator is indicated as Yakub Mohamed whereas the name in the succession proceedings is Yakub Ahmed. Further, the property is described as ‘GORSHO ROBLE’ measuring 0.3435 acres instead of I.R. 2511/13(L.R. No. 1317/12/11) Gilgil Township measuring 0.34435 Acres as appearing in the title documents.



65. This Court further notes that at the time of the purported sale, the Administrator (Yakub Ahmed) had just been issued with the Grant of Letters of Administration intestate on 22<sup>nd</sup> July, 2019 and the Grant was yet to be confirmed. Section 79 of the *Law of Succession Act* provides that:-

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”

66. Further, Section 82 of the Act provide that:-

“Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
- (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that—

- (i) any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and
- (ii) no immovable property shall be sold before confirmation of the grant;
- (c) to assent, at any time after confirmation of the grant, to the vesting of a specific legacy in the legatee thereof;

67. From the above provisions and considering that the alleged sale was done before the Grant was confirmed on 1<sup>st</sup> December, 2020, the transaction was unlawful and unenforceable by dint of Section 82 above unless leave had been obtained from the Court to carry it out.

68. A perusal of the Court record reveals that no such leave was obtained and therefore, the purported seller had no title to pass to purported buyer (Jeremiah Mbaya). He (Jeremiah Mbaya) did not acquire any rights to the said property. His remedy in regard to that transaction is to pursue the purported seller or the Estate of the said seller through a suit.

69. In conclusion, this Court makes the following Orders:-

1. Rashid Mahmoud Farah be and is hereby affirmed the Administrator de bonis non for the un-administered remainder of the Estate of the Deceased.
2. In consultation with Hussein Ahmed and Fatuma Ahmed (the beneficiaries of the Estate of the Deceased), he shall file a fresh Summons for Confirmation of Grant.
3. Jeremiah Mbaya is directed to pay monthly rent amounting to Kshs. 30,000/= for the two commercial spaces he occupies in the building erected on land known as I.R 2511/13 (L.R No. 1317/12/11) Gilgil Township or vacate from the said premises.



4. Interim Order granted to Jeremiah Mbaya on October 19, 2023 be and is hereby discharged.
5. Each party to bear its own costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 26<sup>TH</sup> DAY OF MARCH, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

Ms. Wanjiru for Mr. Mwangi for Jeremiah Mbaya

Ms. Kasmani for Rashid Mahmoud Farah

Ruto, Court Assistant

