



REPUBLIC OF KENYA



In re Estate of Hosea Karanja Karari (Deceased) (Succession Cause 701 of 2015) [2024] KEHC 562 (KLR) (30 January 2024) (Ruling)

Neutral citation: [2024] KEHC 562 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 701 OF 2015
SM MOHOCHI, J
JANUARY 30, 2024**

IN THE MATTER OF THE ESTATE OF HOSEA KARANJA KARARI (DECEASED)

BETWEEN

**MARY WAMBUI (GATUATHI) 1ST APPLICANT
GEORGE GICHURU KARANJA 2ND APPLICANT
ESTHER NYANDIRI KARANJA 3RD APPLICANT
IAN KARANJA 4TH APPLICANT**

AND

FELIX NG'ANG'A KARANJA RESPONDENT

RULING

1. What is coming up for determination is the Application dated 31st January, 2023 seeking the following prayers;
 - i. Spent.
 - ii. That the Honourable Court be please to cite the Felix Ng'ang'a Karanja for contempt for defiance of the orders Issued on 4th September, 2019 and 2nd October 2019.
 - iii. That this Honourable Court be pleased to issue an order directing the Respondent to render a full and accurate inventory of the assets and liabilities of the estate of the deceased.
 - iv. That this Honourable Court be pleased to deny the executer/Respondent audience until full compliance with the orders issued on 4th September, 2019 and 2nd October, 2019 and production of a full and accurate inventory of the assets and liabilities of the Estate of the deceased.



- v. That this Honourable Court be pleased to direct the Executor/Respondent to pay the Applicant income arrears of Kshs. 1,400,000, Kshs. 1,400,000 and Kshs. 600,000 respectively to be deposited into the account number George G. Karanja; Family Bank Nakuru Branch Acc. Number, 09*/**/*/*73, Esther Nyandiri Omollo, Equity Bank, Gate House Branch; account number, 01*/**/*/*00 and Ian Karanja Hosea, Sidian Bank Mombasa Town Branch, Acc Number 01*****78 pursuant to the Certificate of Confirmation of Grant of Probate made on 2nd October, 2019.
 - vi. That this Honourable Court be pleased to direct the Executor/Respondent to open an account in the Name of Natasha Njoki Karanja (minor) and deposit arrears of Kshs. 600,000 as stipulated in the Will made on 22nd August 2015 as read together with the Confirmation of Grant of Probate made on 2nd October, 2019.
 - vii. That this Honourable Court be pleased to Order that rental income generated from property known as LR No. 5/113; Hoska Plaza, Nakuru Town be collected by a reputable estate management Company.= and be deposited in an account number 13*/**/*/*26; Account Name Esther and George; Bank; Kenya Commercial Bank Limited Nakuru Branch and the Executor/ Respondent, Nancy Wanjiru Karanja and Mary Wambui be included as mandatory signatories to the account.
 - viii. That Costs of this Application be provided for.
2. The Application was supported by the Supporting Affidavit of George Gichuru Karanja sworn on even date. He stated that the Respondent/Executor has failed to remit rental income generated from the property known as LR Number, 5/113 Hoska Plaza Nakuru Town or to open an account in the name of Natasha Njoki Karanja and deposit funds in compliance with the Will. That the Respondent/ Executor has also failed to open an estate account to remit all income from the estate of the deceased.
 3. That for transparency, there be an account opened and Mary Wambui, George Gichuru Karanja, Nancy Wanjiru Karanja, Felix Nga'ng'a and Esther Nyandiri Karanja or alternatively the other be added as signatories to a temporary account opened by George and Esther.
 4. That the Respondent/Executor has severally failed to facilitate for Natasha's schooling needs contrary to the wishes of the deceased. That the Respondent/Executor has also failed to pay land rates which has accumulated heavy arrears. That the Respondent/Executor is channeling income from the estate towards personal enrichment to the detriment of the other beneficiaries.
 5. In Response, the Executor/ Respondent filed a response in the form of a Supplementary Affidavit dated 26th July, 2023 stating that the allegation that he failed to remit annual allowances since 2015 is false as the confirmed grant states from 2016. That he is not in defiance of any Court orders as the grant was rectified in 2022 June and he cannot be cited for contempt of a defective grant as it need rectification of the registration number of motor vehicle registration number KBP 561J.
 6. He added that he has educated Natasha contrary to what he has been accused of. That land rates and rent were paid respectively and was issued with clearance certificates who are aware of. That all annual allowances have been remitted to the third Applicant to a tune 1,440,000 more than what he is claiming. That as a matter of fact the 3rd Applicant owes the estate Kshs. 500,000 since the estate also advanced him a car loan.
 7. He added that, the expenditure for Hoska Plaza a recurring expenditure has amounted to Kshs. 9.2 million. There were also tax areas of Kshs. 1.7 million, there are estate auditors who are paid about Kshs. 100,000 per year thereby having 10 million shillings of tax incidental cumulatively.



8. He stated that, the estate has assets that can be sold to cater for the arrears of the allowances.
9. That Esther Nyandiri has been collecting Rent from Room G1 in Hoska Plaza after the demise of the 1st Applicant who had been given the said room by the deceased to which he stopped the same.
10. The Respondent/Executor filed a Further Supplementary Affidavit on 10th November, 2023. He stated that the 1st Applicant has received a total of Kshs. 964,100 via M-Pesa and Kshs. 36,740 and 23,830 through Nancy Karanja where Nancy was refunded the same. As well a cheque which in total cumulatively amounts to Kshs 1,024,670. As for the 2nd Applicant, she received a total of Kshs. 4,606,020. The 3rd Applicant has received Kshs. 1,111,810. He stated that he had opened a bank account for Natasha which has a balance of Kshs. 221,232.70 and admitted that he needed to put in more effort. The objector Mary Wambui has received a total of Kshs 1,340,500.
11. He also stated that the suit premises was being managed by Nancy Wanjiru Karanja, that he has been withdrawing money and sending to Nancy who has also been sending to the beneficiaries via M-Pesa which is convenient that drawing cheques. He proposes the sale of Nakuru Municipality Block 15/106 measuring 0.001 Ha within Nakuru County for Kshs. 25 million.
12. A further Affidavit filed on 27th November, 2023 sworn by Mary Wambui Karanja on even date, stated that she is the 2nd widow to the deceased and that, she never knew there was a Will left behind by the deceased and was only informed by the Respondent/Executor who informed the family that, it was drafted by him under the instructions of the deceased. That she objected but pursuant to mediation a consent was recorded on 2nd October, 2019.
13. She deponed that, at the time of filing the citation, the estate owed her Kshs 1.6 million and had not been paid but had since been paid (pursuant to the Orders of Matheka J) She added that, she has not been receiving her annual allowance as and only gets small amounts of money from the Respondent/Executor when she has to beg.
14. She stated that, as a widow, she was aware the rental income from Hoska Plaza was over Kshs. 600,000 and as at 21st November, 2023 all the units were full and there's no justification of financial problems. The estate had no debts.
15. She added that one of the beneficiaries Nancy Wanjiru Karanja was entitled to a total annual allowance of Kshs. 600,000 between 2020 to September, 2023 but has received Kshs 6,806,250 within that said period. She urged Court to direct that the rental income generated from Hoska Plaza should be collected by an estate management company. She stated that, Court orders should be complied with and the Court directs that she be paid her arrears.
16. Further and pursuant to the leave granted on 14th November, 2023 a Supplementary Affidavit was filed on 27th November, 2023 sworn by Esther Nyandiri Karanja on even date. She deponed and urged Court to take judicial notice of the fact that the Respondent/Executor had not filed Bank Statements running from September, 2015 to October, 2023 thus the statement of account was inconclusive. That the Respondent/Executor has been drawing personal cheques from the Bank Statement from MEB Bank Account number 1003003000153. The amounts range from between Kshs 16,240 to Kshs. 25,000. That further for every month the Respondent/Executor has been withdrawing Kshs. 30,000 and at page 26 the same amount goes to Tower Sacco a personal account to which the Applicants are strangers too.
17. That property LR Number 5/113 Hoska Plaza generates rental income for over half a million and there were large withdrawals which have not been explained by the Respondent/Executor. She added that the Respondent/Executor did not account for the large deposits to Nancy Wanjiru Karanja one



of the beneficiaries of the Estate specifically on 3rd June, 2019, 30th July, 2020, 1st September, 2020 and 25th August 2023 receiving most of the estate funds contrary to the wishes of the deceased.

18. That it was evident in the statement that, the Deponent and the Applicants have not been receiving their annual allowances as contemplated in the deceased's Will. That the two (2) Cheques of Kshs 10,000 each were the only ones drawn in favour of the 3rd Applicant. The money sent on M-Pesa ranging from between Kshs. 10,000 to Kshs. 15,000 is an allowance the deceased used to give the 3rd Applicant and as such the family agreed the same be maintained.
19. That the deceased had contemplated that, the remainder of his annual income would amount to Kshs. 2.6 million but as at 17th October, 2023 the estate bank had a balance of Kshs 30,312 which was to her an indication of embezzlement. She also stated that the Respondent/Executor has failed to open an account for Natasha Njoki Karanja as contemplated in the Will and as such the estate owes her the sum of Kshs 700,000.
20. That the other beneficiaries object to the Respondent/Executor's proposal to sell Nakuru Municipality Block 15/106 to settle the arrears as it would mean they would be paying off their own arrears which was prejudicial to them and it is the Respondent/Executor who should pay the arrears from his own share.
21. Parties were directed to file written submissions which they complied.

Applicant's Submissions

22. The Applicants filed submissions on 19th September, 2023 and Pursuant to the leave granted on 14th November, 2023 filed supplementary submissions on 27th November, 2023.
23. The Applicant through counsel submitted and reiterated and relied heavily on what is in the various affidavits in support of the application and I will not repeat the same.
24. The Applicants submit that, the Respondent/Executor has intermeddled with the Estate and should give a full and proper statement of accounts.

Respondent Submissions.

25. The Respondent/Executor filed submissions on 1st December, 2023 and submitted that, he is not in contempt or that, he has not remitted any amounts due as claimed and that, the matter is suitable for mediation. He stated that he had not been served with responses by the other parties which has made drafting submissions tasking.

Analysis and Determination

26. Having considered the Application and the heavily worded Affidavits in support and in opposition of the Application by and large, the dispute herein in this case is in relation to the rental income/proceeds that is fetched from LR No. 5/113; Hoska Plaza, Nakuru Town. It is alleged that the Respondent/Executor has failed to remit the annual income to each beneficiary as contemplated by the deceased in his Will dated 22nd August 2015 and reproduced in the Confirmation of Grant of Probate made on 2nd October, 2019.
27. All the Applicants allege that, they are owed their annual income, that the Respondent/Executor has failed to honour the wishes of the deceased as per the Will. The allegations have been met by denial by the Respondent/Executor and in turn submitted that he has been remitting annual income to all the beneficiaries and terming them "greedy and lazy". He added that the 3rd Applicant actually owes



- the estate money since he was advanced more on a car loan. It was his contention that when the Will was made, tax implications, running of the asset and other incidentals were not factored in. That the running expenses have been coming out of the estate income from the proceeds of the rent. However, with regard to Natasha, he admitted to having not remitted the annual income.
28. Now therefore, on the issue of whether the Respondent/Executor should be ordered to account for the funds and or proceeds collected or received from the Estate of the Deceased, according to the provisions of Section 83 of the [Law of Succession Act](#), production of accounts is a component of the administration process of a deceased person's estate. Failure to comply with the obligations bestowed upon an executor of an estate amounts to mismanagement.
 29. The Respondent/Executor has legal obligation to maintain full and accurate accounts of all dealings therewith. Maintaining proper accounts is an accountability tool that shows whether the Respondent/Executor has been diligent in his role. When issues arise as to the accountability of an executor as in the instant case, the integrity of the process is questioned. Once such integrity is questioned, the Court has been empowered to order a full and accurate inventory of dealings of the estate account on its own motion or on an application by a party with vested interests in the estate.
 30. By the Ruling of 8th December, 2022, the Respondent/Executor was ordered to furnish Court with estate accounts pursuant to the Application dated 5th July, 2022. The Respondent/Executor did furnish the Court with accounts of payments or rather funds disbursed to the Applicants and the other beneficiaries to the estate among other irrelevant documents. The accounts were from his M-Pesa transactions with the explanation that he has been withdrawing money and remitting to the other beneficiaries via M-Pesa which was convenient as opposed to drawing cheques.
 31. Where or when the money was withdrawn has not been established. The amounts advanced to the beneficiaries are so sporadic, that it is difficult to ascertain what was sent at a particular time. At one instance the 1st Applicant received as low as Kshs. 160 from the statements provided. Whether this was part of the annual income is uncertain or whether the Respondent/Executor only paid Mary Wambui upon issuance Court orders and did not pay the full amount and still has arrears accruing.
 32. The Respondent/Executor has also admitted to not adhering to the deceased instructions as regards to remittance of Natasha's annual income hence falling into arrears though there is an account in her name. The Respondent/Executor also demonstrated that he has also been taking care of the educational needs contrary to what he has been accused of. The bone of contention on failure to cater for educational needs was the Respondent/Executor's refusal to purchase a phone for Natasha. This in my opinion not neglect of taking care of educational needs.
 33. It however goes without saying that the Respondent/Executor has been handling the rental income from Hoska Plaza as a personal account. The monies transferred to the beneficiaries have come from his personal bank account. As to why that is the Respondent/Executor has not explained. There is also a period that is unexplained. What was collected as rental income or when is a mystery. The Respondent/Executor has demonstrated that the Applicants have each been sent money but from the explanation given and the statements provided, there are arrears due and owing. How about the other beneficiaries since they are all 9 in total? Have they gotten their share of the estate?
 34. The Respondent/Executor has accused the Applicants of being "liabilities". The Respondent/Executor ought to understand that the deceased left a Will on how income of the rental property was to be utilized. The beneficiaries were entitled to what was owed to them. As to how they spend the money that is their business. It is not the job of the Respondent/Executor to police how the beneficiaries utilize their inheritance.



35. If indeed there were challenges as alluded by the Respondent/Executor, as to taxes or payments of land rates or rent should have been disclosed to the beneficiaries. The Respondent/Executor has also not demonstrated how much comes in from the rental property per month and how much is left after payments of salaries utilities and overheads or school needs etcetera. The Applicants have also not given tangible evidence on their allegations of the rental property attracting the figure suggested per month.
36. Therefore, it is my view that, with the allegations made by the Applicants and the explanations given by the Respondent/Executor, and given my finding that the Respondent/Executor has handled and managed the estate clandestinely, for the beneficiaries to be satisfied and for this Court to ensure the estate of the deceased is protected, is to hold that, the Respondent/Executor has not executed the responsibilities bestowed upon him by the confirmed Grant with transparency.
37. The Respondent/Executor is an advocate of the High Court and is knowledgeable and aware of his obligations and responsibilities under the law and sanctions and consequences arising therefrom, and from the findings of this Court, it is apparent that the conduct of the Respondent/Executor would call for this Court's sanction.
38. It would not be appropriate at this juncture for the Court to grant or refuse to grant the present Application in terms stated in prayers (2) and (4) and (7) since first and foremost the Respondent/Executor is still the executor of the estate and that has not changed. He is still clothed with the responsibility of the management of the affairs of the Estate until otherwise and until an account of all the proceeds for the period since the demise of the deceased till date respecting property known LR No. 5/113; Hoska Plaza, Nakuru Town are rendered to the Court.
39. Where a party files an Application seeking the revocation of grant, the Court has the discretion to make orders as it considers fit in the circumstances and is not bound to issue orders for the revocation of the grant as sought. (- *Angelas Maina vs. Rebecca Waiyego Mwangi and Another* Succession cause 692 of 2012, [2016] eKLR) In the instant case, a revocation is not necessary for the ends of justice to be met. In any event, it will only serve to drag this cause further and delay the distribution of the deceased's estate.
40. For all the foregoing factors, now therefore, since the Court is clothed with power under Rule 73 of the *Probate and Administration Rules* to make any orders that meets the ends of justice, in the interest of justice the Court shall at this juncture direct;
- a. The Respondent/Executor Shall compute, All the outstanding arrears and remit any and all outstanding annual arrears due and owed to each or any beneficiary, up to 30th January 2024, within thirty (30) days from today.
 - b. The Respondent/Executor Shall open a Trust Bank Account in the Name of Natasha Njoki Karanja (minor) with a reputable bank and deposit all outstanding arrears up to 30th January 2024, within thirty (30) days from today.
 - c. The Respondent/Executor shall open an Estate Account with a reputable bank and all the rental income generated from property known as LR No. 5/113; Hoska Plaza, Nakuru Town and estate affairs shall be handled from that account.
 - d. The Respondent/Executor is hereby directed and ordered, to prepare and place on record herein, an accurate account for the rental income/proceeds collected from the property known as LR No. 5/113; Hoska Plaza, Nakuru Town from the date of the demise of the deceased, up to 30th January 2024, on how and when rental income/proceeds were collected, utilized, spent and/or preserved, with sixty (60) days from today.



- e. Failure to comply with and/or default of any, of the orders above in a), b), c), and d) above by the Respondent/Executor, shall give rise to the possibility of annulment and/or revocation of the grant of letters of administration with a written will and other consequential orders.
- f. Mention for compliance after thirty (30) days.
- g. This being a family matter, there will be no orders as to costs

It is so ordered

SIGNED DATED AND DELIVERED AT NAKURU THIS 30TH DAY OF JANUARY, 2024.

.....

MOHOCHI S.M.

JUDGE

