



REPUBLIC OF KENYA



In re Estate of Peter Kago Mukuha (Deceased) (Succession Cause 92 of 2011) [2024] KEHC 2089 (KLR) (28 February 2024) (Ruling)

Neutral citation: [2024] KEHC 2089 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 92 OF 2011
HM NYAGA, J
FEBRUARY 28, 2024**

IN THE MATTER OF THE ESTATE OF THE LATE PETER KAGO MUKUHA (DECEASED)

RULING

1. The incessant disputes in this cause would definitely make the deceased turn in his grave, if he is not doing so already.
2. The deceased died on 6th May 2010. He was survived by his widow (now deceased and nine (9) children namely;
 - a. Theresia Njeri Mukuha
 - b. Grace Muthono Mukuha
 - c. Ruth Wanjiru Mukuha
 - d. Newton Kagira Mukuha
 - e. Hanna Njeri Mukuha
 - f. Grace Wambui Mukuha
 - g. Linet Wambui Mukuha
 - h. David Kimani Mukuha
 - i. Simon Gashwe Mukuha
3. The deceased left a vast estate which included the most famous of them all shares in Naivas Limited which operates the Naivas chain of supermarkets.
4. Simon Gashwe Mukuha was appointed as the executor of the deceased's will, but after a protracted dispute over the will itself.
5. It is now not in dispute that the said Simon Gashwe Mukuha is now deceased. It is for that reason that the following applications were filed;



- a. Summons for Revocation of Grant dated 4th August 2022, by Newton Kagira Mukuha.
 - b. Summons for Rectification of Grant dated 26th May 2023 by Grace Wambui Mukuha
 - c. Summons for Revocation of a Grant dated 16th November 2023 by Grace Wambui Mukuha.
6. When the matter came up for directions, I handled the first two applications and ordered that they be heard together.
 7. In the Application dated 4th August, 2022, the Applicant seeks the following orders;
 1. Spent
 2. That the grant of Letters of Administration that was made to Simon Gashwe Mukuha, on the 5th day of October 2016 be revoked for it has become useless and inoperative due to the subsequent circumstance; namely his demise.
 3. That a fresh letters of administration intestate be issued to Newton Kagira Mukuha, the Applicant herein.
 8. The Application is propped by the grounds set out on the face of it and the Supporting Affidavit of the Applicant.
 9. In a nutshell, the Applicant states that the grant issued to Simon Gashwe Mukuha has become inoperative after his demise. That the said Simon Gashwe Mukuha died before he could complete the administration of the estate. He sets out the property at paragraph 5 of his Affidavit.
 10. The Applicant further states that three (3) of the beneficiaries namely Hannah Njeri Mukuha, Grace Wambui Mukuha and Linet Wairimu Mukuha have consented to his being appointed as an Administrator of the estate. That unless the Application is granted, the estate stands the risk of being wasted.
 11. In the 2nd Application dated 26th May 2023, the Applicant Grace Wambui Mukuha, seeks the following orders;
 1. That, the Grant of Letters of Administration issued on 6th May, 2010 be rectified by removing the name of the late Simon Gachwe Mukuha and substitute it with Grace Wamboi Mukuha.
 2. That, the said Grace Wamboi Mukuha be appointed an administrator in place of the late Simon Gachwe Mukuha who passed away on 26th August 2019.
 3. That, the costs of this application be borne by the estate.
 12. The Application is propped by the grounds set out on the face of it and the Supporting Affidavit annexed thereto.
 13. In a nutshell, the Applicant reiterates the facts relating to the death of the sole executor, the said Simon Gashwe Mukuha.
 14. The Applicant also avers that there are properties which were improperly distributed and there is need to have an administrator to solve the issues. She also adds that there are pending cases involving the estate of the deceased that need to be attended. The details of the cases are set out under Paragraph 5 of her Affidavit.
 15. During the pendency of the two (2) Applications, the 3rd Application dated 16th November 2023 was filed by Grace Wambui Mukuha. The Applicant sought the following orders;



1. That, the Grant of Letters of Administration issued on 6th May, 2010 be revoked for it had become useless and inoperative due to the demise of its holder.
2. That, Grace Wamboi Mukuha be appointed an administrator in place of the late Simon Gachwe Mukuha who passed away on 26th August 2019.
3. That, the costs of this application be borne by the estate.
16. The Applicant reiterated the contents of the previous Application she had filed dated 26th May 2023. She effectively withdrew the earlier Application and was left with the present Application.
17. If the above facts sound confusing, then you haven't seen anything yet?
18. David Maina Mukuha, who had filed his Affidavit to oppose the Applications by Newton and Grace, subsequently filed an Application dated 22nd January, 2024 also seeking to have the Grant revoked, and that he be appointed as an administrator. The Application came to court under Certificate of Urgency and I gave directions that the matter be mentioned on 21/2/2024. Came that day there was no appearance from the said David. The Advocates for the other Applicants applied to have the court determine their Applications.
19. In his response to the earlier two (2) Applications, David averred that he and the other six (6) beneficiaries are in concurrence that that the late Simon Gashwe Mukuha had completed distribution of the estate under Section 83(a) of *the Act*. He set out the distribution at Paragraph 9 of the Replying Affidavit. He thus contended that the court was functus officio.
20. The said David further avers that Newton is a vexatious litigant who has cases against the late administrator, cases that he has cited in paragraph 16 of his Replying Affidavit.
21. As I stated earlier, the court was dealing with the Applications by Newton and Grace but then David made his Application.
22. As can be seen, there are now 3 Applications, all seeking the same orders, that of Revocation of the Grant issued to Simon Gashwe Mukuha (now deceased).
23. The said Newton and Grace filed Submissions to support their respective Application while David filed his to oppose the two Applications and support his own.
24. Since the court is dealing with the two earlier Applications, I will restrict in respect to David's submissions to the opposition he has raised against the two (2) said Applications.
25. Curiously, David had initially argued that this court was functus officio, but he appears to have hit a hasty retreat and made quick turn around, hence his Application dated 22nd January 2024.
26. The parties filed their respective submissions which I have duly considered.

Analysis and Determination

27. It is not in dispute that the sole executor of the deceased's will, Simon Gashwe Mukuha passed away on 26th August 2019.
28. The said Simon Gashwe Mukuha was the sole executor of the will and upon his demise, the estate has been left without an executor.
29. It is not clear if the late executor had completed the distribution of the estate as alleged by David, but going by the fact that he has also filed a subsequent Application similar to the other ones, then it is



logical to presume that the distribution of the estate was not complete. In the circumstances, then with the death of the sole executor, there is need to have someone in place to manage the estate.

30. Section 81 of *the Act* provides for the death of an executor or administrator when there are more than one of such. It reads as follows;

“Powers and duties of personal representatives to vest in survivor on death of one of them.

Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.”

31. The situation herein is different in that there is only one sole executor. Therefore the correct procedure, as the parties have done, is to apply for the for the revocation of the grant issued to Simon Gashwe Mukuha, on account of his death as the said grant has become inoperative or useless.

32. The revocation is done under Section 76(e) of *the Act* which provides that;-

“Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

(a)

(e) that the grant has become useless and inoperative through subsequent circumstances.”

33. From the material before the court, the estate was substantively distributed. Thus, what the court can grant is a Limited Grant of Letters of Administration de bonis non to any of the heirs/beneficiaries, with the consent of the rest. *In the matter of the Estate of Hannah Njuki (Deceased)* Nairobi High Court Succession Cause No. 463 of 1997 the court held as follows;

“Where an administrator dies before the completion of administration, the next cause of action should be to apply for letters of administration de bonis non which is limited to the completion of the administration of the estate.”

34. Similar holdings were made in the following cases;

a. *Re Estate of Goolamboosain Manjee Keshavjee (Deceased)* 2017 eKLR

b. *Faith Wanjiku Maganjo vs Reuben Mureithin Maganjo* (2017) eKLR

35. Having found that the sole executor herein is deceased, the grant issued to him has become useless and inoperative.

36. The next, and perhaps the trickiest question is, who should the said Grant of Letters of Administration *de bonis non* be issued to?



37. Clearly, the beneficiaries herein rank equally in priority to make the Application. However, it is evident that only 3 are seeking the said grant namely Newton Kagiri Mukuha, Grace Wambui Mukuha and belatedly, David Kimani Mukuha. The other beneficiaries seem to have taken a back seat and left the three gladiators to fight it out in court.
38. Since all the Applicants rank equally, it is the duty of the court to establish who is the best suited person to oversee the remainder of the estate.
39. This is not to say that the rest are not suited, but rather, who can manage the estate properly.
40. In deciding on the matter the court has to look at any factors such the consent of the parties and those that will lead to a conflict of interest if any one of the beneficiaries is granted the letters of administration.
41. In other words, the court will embark in the process of elimination and then decide if the last man/woman standing is suitable. I will deal with each applicant.
42. For Newton Kagira, it is stated that he has suits pending in the Court of Appeal against the late executor of the estate. These are;
 - a. Civil Appeal No 116 of 2017
 - b. Civil Appeal No. 204 of 2016
 - c. Civil Application No. E040 of 2022
43. The said Newton has not denied the existence of these cases. If he is to be made the administrator, then he will be in the shoes of both Appellant and Respondent and Applicant and Respondent. Clearly, there will be a conflict of interest, notwithstanding the fact that a consent has been given by four (4) of his siblings, including Grace, who also wants to become an administrator.
44. As for Grace, although she appears not to have any conflict of interest. I do note that her Application to become an administrator is not backed by any of the siblings. She appears to be a lone ranger, who now wants to be appointed alongside Newton as co-administrators.
45. For the lack of consent from the other siblings, I would be hesitant to grant her the orders sought. This is already a convoluted matter and the orders sought by Grace if granted may only add fuel to the fire that is already blazing at extremely high temperatures. However, Grace may appear to be a compromise candidate as compared to Newton and David whose attitudes towards each other appear pugnacious, even when there is no reason for the same.
46. The above states, I think that this estate may require more than one administrator, one from each “faction”, to enable the completion of the distribution of the estate.
47. Having discounted Newton’s suitability as an administrator, I think that the other Applicant, Grace, needs to seek the consensus of the other siblings first.
48. In addition, the siblings agree on additional person to become a co-administrator. I am aware that David has a pending Application of his own, which is not for consideration in this Ruling so I will not dwell on it. If the time comes I will subject him to the same tests as I have with the other applicants.
49. For now, I find that Newton, for a likelihood of conflict of interest is unsuitable to be appointed as an administrator. His Application dated 5th August, 2022 is dismissed but with no orders as to costs.



50. As for Grace's Application, I will not dismiss the same but give her time to get a consensus from her siblings, who should also agree on another administrator.
51. As can be noted, I have taken a route that encourages consultation amongst the parties. They are reminded that the wishes of their late father, have to be respected, subject to any interventions the courts handling their different cases may make. They only have to look back and see the carnage they have left behind in their fights to know what lies ahead if they do not conclude this matter soon.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 28TH DAY OF FEBRUARY, 2024.

H. M. NYAGA,

JUDGE.

In the presence of;

C/A Oleperon

Mr. Muchoki for Newton Kagira

Mr. Moindi for Grace Wambui

Ms Kinyua for David Kimani

