



REPUBLIC OF KENYA



**In re Estate of Yuda Venant Mwashuma (Deceased) (Succession Cause  
48 of 2018) [2024] KEHC 5725 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 5725 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 48 OF 2018**

**G MUTAI, J**

**APRIL 30, 2024**

**IN THE MATTER OF THE ESTATE OF YUDA VENANT MWASHUMA  
(DECEASED)**

**BETWEEN**

**MARION CHEBET KIMKUNG ..... 1<sup>ST</sup> APPLICANT**

**GIBSON DODI WANJALA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**PAULINA MSHAI MWASHUMA ..... 1<sup>ST</sup> RESPONDENT**

**MARTHA MLAGHO NYAMAI MASILA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Vide a Summons dated 11<sup>th</sup> December 2023, the Applicants herein sought the following orders:-

1. That the names of Paulina Mshai Mwashuma and Martha Mlagho Nyamai Masila be removed as co-administrators of the deceased's estate and trustees in respect of Alfred Mjomba's interest; and
2. That the remaining administrators, Marion Chebet Kimkung and Gibson Dodi Mwanjala to complete the administration and distribution of the deceased's estate as per the certificate of confirmation of grant herein issued and dated 8th April 2022 and to continue as Trustees of Alfred Mjomba's (minor) interest in the estate until he attains the age of majority.

2. The applicants accuse Paulina Mshai Mwashuma and Martha Mlagho Nyamai Masila of being uncooperative and unwilling to continue participating in the completion of the administration and distribution of the estate of the deceased to the other beneficiaries in accordance with the certificate of confirmation of the grant. They further stated that Paulina Mshai Mwashuma had evinced an intention



to take away part of the estate of the deceased with the intent of giving it to her sons, who are brothers of the deceased, while Martha Mlagho Nyamai Masila has health challenges and does not wish to continue being a co-administrator.

3. The application is supported by the annexed affidavit of Marion Chebet Kimkung sworn on 11<sup>th</sup> December 2023, vide which she deposed to the averments made in the grounds in support of the application.
4. Despite being served with the application and also with the hearing notices on 22<sup>nd</sup> February 2024, 14<sup>th</sup> March 2024 and 5<sup>th</sup> April 2024 through his advocate via email and or WhatsApp, the Respondents did not file Replying Affidavits and or Grounds of Opposition. The application is thus unopposed.
5. Although the application is unopposed, I must nevertheless be satisfied that the application seeks orders that the Court can lawfully grant while exercising its jurisdiction.
6. Section 47 of the *Law of Succession Act* provides that the High Court:-

“shall have the jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.

Provided that the High Court may, for the purpose of this section, be represented by the Resident Magistrates appointed by the Chief Justice.”
7. Rule 73 of the Probate and Administration Rules states that

“Nothing in these Rules shall limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”
8. Although Section 47 of the *Law of Succession Act* and Rule 73 of the Rules appear to give the *Probate and Administration* Court wide and unfettered powers, the Court's jurisdiction must nevertheless be exercised in respect of “disputes under this Act,” and the orders the Court makes ought always to be within the Act's ambit.
9. Can the Court grant the order sought? Section 76 of the *Law of Succession Act* grants the Court the power to revoke the grant where the person to whom the grant was made has failed after due notice and without reasonable cause “to proceed diligently with the administration of the estate”.
10. The court in the case of *In re Estate of Joseph Odinde Odongo (Deceased)* [2021] eKLR stated:-

“Indeed, failure to distribute a deceased's estate is a ground for revocation of a grant for letters of administration as provided under Section 76 (d) of the Law of Succession. However, such revocation is not automatic. It is conditional. It is dependent on the applicant demonstrating that notice has been issued to the person who has applied for the grant and that person has failed:-

  - a. To apply for confirmation of the grant within a year from the date of such notice or such time fixed and/or prescribed by the court; or
  - b. To administer the deceased's estate; or
  - c. To produce an inventory or account of administration as required by the law within a time prescribed by the court.”



11. The Respondents did not file responses to the application. The allegations made against them were therefore not controverted. In the circumstances I am persuaded that it is indeed true that the Respondents failed to proceed diligently with the administration of the estate and must therefore be removed.
12. Section 66 of the *Law of Succession Act* gives the Court the discretion to determine to whom the grant should be made. Since the Applicants are willing to continue being administrators the Court will reappoint them so that the administration of the estate can be completed.
13. The orders that, therefore, commend themselves to me are as follows: -
  1. I revoke the grant issued to Marion Chebet Kimkung, Gibson Dodi Mwanjala, Paulina Mshai Mwashuma and Martha Mlagho Nyamai Masila forthwith;
  2. I make a grant of letter of administration intestate to Marion Chebet Kimkung and Gibson Dodi Mwanjala. The said grant shall be confirmed forthwith;
  3. The said administrators are hereby directed to complete the administration of the estate, save for the continuing trust in favour of Alfred Mjomba (minor) within 60 days from the date hereof; and
  4. Mention on 8<sup>th</sup> July 2024 to confirm compliance and for further directions.
14. This being a family matter I make no order as to costs.
15. Orders accordingly.

**DATED AND SIGNED THIS 30<sup>TH</sup> DAY OF APRIL 2023 AT MOMBASA.**

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Mr Mogaka, for the Applicant;

No appearance for the Respondent; and

Arthur - Court Assistant

