



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Ian Graham Gregory (Deceased) (Miscellaneous Application
E024 of 2024) [2024] KEHC 4896 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4896 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
MISCELLANEOUS APPLICATION E024 OF 2024**

**M THANDE, J
APRIL 26, 2024**

RULING

1. Before me for consideration is an Application dated 15.3.24 in which the Applicant seeks the following orders:
 1. Spent.
 2. That the Honourable Court be pleased to direct (sic) Stanbic Bank Account Number – xxxx and Stanbic Gbp Account Number – xxxx to confirm the position of the deceased’s accounts.
 3. That the Honourable Court be pleased to direct (sic) Standard Chartered Bank Account Number – xxxx and Standard Chartered Bank Account Number – xxxx to confirm the position of the deceased’s accounts.
2. The grounds upon which the Application is premised are that the advocate on record for the Applicant wrote to Stanbic Bank and Standard Chartered Bank seeking to confirm the position of the of the deceased’s bank accounts. However, the banks declined to provide the information sought and insisted they could only do so upon receipt of a confirmed grant. This was termed as unlawful, irrational and unsupported under the law. It was stated that the purpose of seeking the position in the said accounts is to have them included in the schedule of assets of the deceased’s estate as required under Section 51(2)(h) of the Law of Succession Act (LSA).
3. Section 80 of the LSA stipulates when a grant representation takes effect as follows:
 1. A grant of probate shall establish the will as from the date of death, and shall render valid all intermediate acts of the executor or executors to whom the grant is made consistent with his or their duties as such.
 2. A grant of letters of administration, with or without the will annexed, shall take effect only as from the date of such grant.



4. A careful reading of Section 80, makes it clear that under intestacy, an administrator of the estate of a deceased person derives authority from the grant of letters of administration which takes effect on the date of the grant. Where the deceased has left a will however, the executor thereof derives authority, not from a grant, but from the will and may act as such from the date of death of the deceased. A grant of probate gives validity to the acts of the executor prior to the issuance of the grant, as long as they are consistent with the executor's duties as such.
5. In the case of *In re Estate of Fanice Mary Khanali Aura (Deceased)* [2019] eKLR, Musyoka, J. considered the import of Section 80(1) of the *LSA* and stated:

According to section 79 of the *Law of Succession Act*, Cap 160, Laws of Kenya, a grant of representation vests all the property of the deceased in the executrix or the administrator appointed in intestacy. That would suggest that the property in this case is yet to vest in the executrix. However, section 79 should be read together with section 80(1) of the *Act*, which establishes that a will takes effect upon the death of its maker, and that the grant of probate merely authenticates it and gives validity to any acts of the executrix carried out between date of death and the date of the making of the grant. That would mean that the property of a testatrix really vests in the executrix from the date of death, and that such acts are not unlawful so long as they are concomitant with the duties of an executor.

6. The Applicant has moved to this Court following the decline by the 2 banks to disclose information relating the deceased's bank accounts. The Court is therefore tasked to determine whether it should direct the banks to supply the information sought by the Applicant.
7. As indicated, herein, an executor derives authority over the estate of the deceased from the will, which takes effect from the date of the death of the deceased. In the present case, a will dated 15.5.23 has been exhibited. The Court has however not been told when the deceased died nor has a copy of his death certificate been exhibited. It is therefore not possible for the Court to know when and indeed, if the will has taken effect and that the executor can act as such.
8. The duty of banks to keep customer information confidential cannot be gainsaid. Banks are bound by the common law principle of confidentiality as well as the requirements under the *Banking Act* of non-disclosure of information. Section 31(2) of the *Banking Act* prohibits disclosure of information as follows:

Except as provided in this *Act*, no person shall disclose or publish any information which comes into his possession as a result of the performance of his duties or responsibilities under this Act and, if he does so, he shall, for the purposes of section 49, be deemed to have contravened the provisions of this *Act*.

9. In the case of *Standard Chartered Bank Kenya Ltd v Intercom Services Ltd & 4 others* [2004] eKLR, the Court of Appeal stated:

The Bank's duty to secrecy regarding a customers' account and matters relating to it is never in dispute. The banks, whether collecting banks or paying banks, have a duty to ensure that customers' account and matters relating to it are kept secret or are made confidential. There is no doubt about that for it is on that understanding that anybody either as individual or as a corporate body would ever think of putting his money in a bank.

10. Banks must therefore be absolutely certain that the person to whom information is disclosed, is duly authorized to receive such information. I have looked at the letters addressed to the 2 banks by both



the advocate and the executor and note that none of them annexed a copy of the will of the deceased. It is little wonder then that the banks declined to release the information sought.

11. Further the request for information from the banks was made by the advocate on record as was the Application under consideration. The 2 affidavits in support of the Application were sworn by Tukero ole Kina, advocate.
12. Under Section 82 of the [LSA](#), filing suit on behalf of the estate of a deceased person is one of the powers of an executor of the will of a deceased person. This power may not be delegated as it is fiduciary in nature and may not be delegated to another. An executor of the will of a deceased person may not in law delegate the power and discretions conferred by a will. It is personal to such executor.
13. In this regard, I associate with the sentiments expressed by Kimaru, J. (as he then was) in [In Re Estate of Krishan Murti Maini \(deceased\)](#) [2011] eKLR as follows:

It is therefore clear that when a court issues letters of administration or grants a probate of written will, such letters or grants are issued personal to the person applying to administer the estate of the deceased. The person applying for letters of administration or grant of probate cannot on his part delegate the powers granted to him by the court to someone else to administer the estate (in the case where the deceased died intestate) or to execute the will (in the case where the deceased left behind a written will) on his behalf.

14. By parity of reasoning, a person appointed as executor of a will cannot delegate the powers conferred upon him under the will, to someone else to execute the will or act as such on his behalf.
15. And in the case of [Abdisatar Haji Mohamed & Another v Omar Ahmed & another](#) [2017] eKLR the Court of Appeal stated:

The Judge found and rightly so in our view, that, powers granted to personal representatives or executors cannot be delegated. An executor cannot delegate his authority but may engage the services of other experts or professionals, for instance, advocates, accountants, property valuers, managers, estate agents who may offer services which may be required in the administration of an estate.

16. An executor may engage the services of a professional such as a lawyer in the administration of the estate but may not delegate his powers to such lawyer. The Application under consideration was made by counsel who has also sworn the affidavits in support thereof and not by the named executor of the will. This amounts to delegation of the powers of the executor, which is not permitted in law.
17. One more thing. Testamentary freedom of a testator is stipulated under Section 5 of the [LSA](#) which provides that every adult of sound mind and may dispose of all or any of his free property by will. It is a well known fact that wills continue to be challenged for a variety of reasons. In recognition of this, the [LSA](#) has made provided for objection proceedings Sections 68 and 69 of the [LSA](#) and Part IV of the [Probate and Administration Rules](#). The provisions allow any person who wishes to object to the making of a grant which has been already applied for by another, to lodge an objection stating the grounds thereof. To this end, Section 67 requires the publication of a notice of the application for such grant, inviting objections thereto. Probating a will requires publication of a notice in the Kenya Gazette to ensure that all who need to know are aware of the same. This affords such persons the opportunity to object thereto, if necessary, to make such representations as necessary.
18. Before granting any orders in respect of the estate of a deceased person therefore, a court must ensure that all beneficiaries of the estate are aware of the matter. Indeed Section 70 of the LSA empowers the



Court to call for further evidence as to the due execution or contents of the will or some other will, the making of an oral will, the rights of dependants and of persons claiming interests on intestacy, or any other matter which appears to require further investigation before a grant is made.

19. The reality of our times is that there has been an increase in incidences of contentious probate as well as fraudulent dealings with estates of deceased persons. As a result, institutions and persons have adopted a cautious approach when dealing with such estates. Indeed, the Court takes judicial notice of the fact that institutions such as banks, to which grants of representation and certificates of confirmation are presented always seek verification by the court from which they are issued, that they are genuine.
20. It is no doubt that it is against this backdrop that the 2 banks insisted on a confirmed grant before release of the information relating the deceased's bank accounts. The disclosure of the information sought without confirmation by a court that the Applicant is indeed authorized to seek it, would expose the said banks to the penal provisions under the *Banking Act*.
21. The Applicant has stated that the purpose for which the information in question is sought, is to comply with the requirements of Section 51(2)(h) of the *LSA* to provide a full inventory of the assets and liabilities of the deceased. It is common knowledge that bank balances keep changing due to charges or interest. As such, any amount indicated in a bank account on the filing of a petition for a grant, may be very different at the time of distribution. In light of this, it is enough to indicate the bank accounts and the banks in which they are held.
22. In the end and in view of the foregoing, I find that the Application dated 15.3.24 lacks merit and the same is hereby dismissed. The circumstances herein do not call for an award of costs.

DATED SIGNED AND DELIVERED IN MALINDI THIS 26TH DAY OF APRIL 2024

M. THANDE

JUDGE

