



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 13 OF 2017

IN THE MATTER OF THE ESTATE OF MAKOKHA IDRIS KHASABULI (DECEASED)

RULING

1. The deceased person the subject of these proceeding died on 2nd January 2017. Representation to the estate was initially obtained by Zubeida Khasabuli Ibrahim, on 9th January 2018, and a grant of letters of administration intestate was made to her on 11th January 2018. I shall hereafter refer to her as the first administrator. Other administrators were brought on board, by consent, following the filing of a summons for revocation of the grant made to the first administrator. The new administrators were Gabriel Wesonga, Hanifa Idris Musindalo and Fami Idris. I shall refer to them hereafter as the second, third and fourth administrators. The grant issued on 16th January 2018 was amended on 8th November 2018, to accommodate the changes.

2. The consent order of 8th November 2018, which brought on board the new administrators, had also provided for the filing of a summons for confirmation of the grant made to them. It was the fourth administrator who was tasked with filing the confirmation application. The other administrators and beneficiaries were at liberty to file affidavits of protest, if they so desired, to the proposals to be made in that application. The confirmation application was filed on 14th May 2019, bearing an even date. To the confirmation application, a protest affidavit was filed on 4th July 2019, sworn by the third administrator on 4th July 2019.

3. Prior to the filing of the confirmation application, another application had been filed on 11th March 2019, dated 7th March 2019, by the first, second and third administrators, seeking a variety of orders in respect of estate assets described as Bungoma/Municipality/517 and East Bukusu/South Kanduyi/6483, 6484, 6485, 6486, 6487 and 6488. The orders sought were to restrain the fourth administrator from collecting rental income from those properties, an order for deposit of rental income from those properties into an estate account operated jointly by the administrators, an order directing the tenants occupying premises standing on the said properties to deposit rent into that estate account and an order to compel the fourth administrator to render an account of all the rental income that has been collected from the said properties from the date of the deceased's death to date. The affidavit in support of the application was sworn by the third administrator. She averred that there were rental houses on the said property occupied by tenants and accruing a rental income of Kshs. 230, 000.00. It was stated that it was the fourth administrator who was collecting the said rent, and that he was not accounting for it and was misappropriating the same. When the other administrators sought to acquaint themselves with the properties, he became hostile and assaulted them.

4. The fourth administrator replied to that application, vide his affidavit sworn on 13th November 2019. He asserted that the family should move with haste and have the estate of the deceased distributed to avoid further and future wrangles. He said that he was opposed to estate income being deposited into one joint account. He gave a breakdown of the rent that he had allegedly collected and a breakdown of how he had allegedly applied the moneys collected, on maintenance of the estate and education of the children of the deceased. He also called on the first administrator to render accounts with respect to specified accounts at Family, Cooperative, Barclays and DTB Banks, as well as proceeds from a garbage collection tender with the Kakamega County government and from a spares shop at Mumias.

5. The third administrator swore a further affidavit on 13th November 2019, filed herein on even date. She averred that the deceased had loans secured by some estate assets, specifically Bungoma/Municipality/517 and East Bukusu/South Kanduyi/6485 and 6488. She averred that the arrangement the deceased had was that the rental income from the assets the subject of the application would be applied to servicing those loans. She asserted that although the fourth administrator collected millions of money as rental income, he had not applied the money to service the loan. She pleaded that the property had since been advertised for sale by public auction for default. She claimed that the fourth administrator had failed to service the loans so that he could use the rental income collected to buy the said assets once they were offered for sale at the auction.

6. The parties had agreed by consent, on 4th July 2019, to have the two applications disposed of simultaneously. However, when the property was advertised for sale by public auction, the third administrator pushed for the hearing of their application to be speeded up. The application was urged before me on 14th November 2019.

7. My understanding of the dispute expressed in the application dated 7th March 2019 is that it is centred on the administration of the estate.

There are four administrators in place. They do not appear to be working in tandem. The first three administrators appear to be on one side while the fourth administrator appears to be on his own. They do not appear to be managing or administering or running the estate corporately, in terms of working jointly and together as administrators. Each side appears to be doing its own thing.

8. It must be stated that even though there are four administrators in places in law there is only one administration or representation to the estate of the deceased. The four administrators hold one grant, which appoints all four of them as administrators. None of them holds a grant which makes them the sole administrators of the estate. Since there is only one administration, and not four, it behoves the four administrators to act as one with regard to managing the estate of the deceased. Responsibilities and duties must be shared. They must agree on the management of the assets. They must take a common stand on the expenses of administration and on the settlement of liabilities and debts and other outgoings. It should not be the business of one or a section of the administrators to make decisions on behalf of the estate, that falls upon all four of them.

9. As stated earlier, the four administrators were appointed under one grant and hold one grant. By virtue of section 79 of the Law of Succession Act, Cap 160, Laws of Kenya, the assets are vested corporately in all the administrators named in the grant. The powers conferred on administrators by section 82 of the Law of Succession Act are exercisable by all the four administrators named in the grant, and all the duties imposed on administrators by section 83 of the Act fall on all four the administrators. The four cannot purport to act singly or solely, unless, of course, there has been delegation of responsibility.

10. The primary roles of administrators are several. The first is collection or gathering or getting in of the assets of the estate. The second role is the protection or preservation of the assets collected or gathered or gotten in. The third one is payment of debts and liabilities of the estate from the assets gathered and preserved. Finally is the distribution of the estate after all the debts and liabilities have been settled. Collection or gathering or getting in of assets may require filing of suits to recover estate property. Payment of debts would include clearing any loans the deceased had with any banks or other persons, and where assets are encumbered by charges and mortgages, by having such encumbrances removed through settlement of debts and liabilities, for such encumbered assets cannot possibly be distributed at confirmation before the encumbrances have been cleared.

11. Since the administration is one and not four, the prudent thing to do should be that all the assets of the estate should be administered centrally. That would mean that all the income collected from the income-generating assets ought to be pooled together and preserved, to be applied to settle debts and liabilities, and ultimately for distribution amongst all those entitled. The best way to preserve rental income, or other income in monetary form, is to have it held in an estate account. Such estate account must, no doubt, be opened in the names of and operated by the administrators. They must identify the debts and liabilities to be cleared, and the administration expenses to be met. Joint administration, such as the one in this case, is a joint enterprise, it cannot be done by one administrator alone without involving the rest.

12. I believe that I have said enough. I am persuaded that the administrators herein ought to delay distribution of the estate so that they can put their house in order. They must act and be seen to be acting in concert, running one enterprise and one administration. Failure to act together would mean that their administration has failed, and the court ought to consider replacing them.

13. The deceased died on 2nd January 2017. The first administrator was appointed a year later on 9th January 2018. The other administrators followed on 8th November 2018. In the intervening period, between the date of death and that appointment, the businesses that the deceased was running continued running and the income from the assets continued being generated and collected. Section 45 of the Law of Succession Act outlaws handling of estate assets by persons who have no authority to handle it. Such authority comes only from a grant of representation, and anyone who does so handle estate property without a grant intermeddles with the estate. The fact that one is a surviving spouse of a deceased person or a child of the deceased grants them no authority to handle estate property unless and until they are granted representation. That would mean that all those persons who handled or took over the running of the businesses of the deceased and the collection of rental income immediately upon his demise, and before they were appointed administrators, intermeddled with the estate.

14. The law takes a serious or dim view of intermeddling. Under section 45 of the Act, it is a criminal offence and a person found guilty of handling estate property without authority can be fined or even sent jail or subjected to both fine and imprisonment. Under the same provision, such a person should account to the person who is ultimately appointed administrator.

15. The deceased herein left a fairly vast estate. I am told that it has income generating assets and businesses. It would appear that his survivors, including the four administrators, took over the businesses and the assets before administrators were appointed. That would mean that such survivors intermeddled with those assets. To cleanse themselves under section 45 of the Act, they must all account for their intermeddling. The application before me is, therefore, not misplaced in that regard.

16. The final orders that I am disposed to make are as follows:

(a) That the four administrators shall henceforth administer the estate of the deceased as one corporate body and none of them shall administer any asset of the estate to the exclusion of any of the other administrators;

(b) That, to that end, the four administrators shall jointly open and operate one estate account into which all the income generated from the assets of the estate shall be paid;

(c) That all the expenses of administration, and all the debts and liabilities of the estate, shall be met or settled from the said estate account;

(d) That all the tenants occupying any premises standing on any of the assets of the estate shall pay or deposit their rents into the said estate account;

(e) That all the four administrators shall render accounts of their handling of any of the assets of the estate for the period

running from 2nd January 2017 to the date of their appointment on 8th November 2018;

(f) That the estate account shall be opened within the next forty-five (45) days of the date of this ruling, while the administrators shall all file their accounts in the next forty-five (45) days; and

(g) That the matter shall be mentioned thereafter for compliance and further directions.

PREPARED, DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 20TH DAY OF DECEMBER, 2019

W. MUSYOKA

JUDGE