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ESTATE ADMINISTRATION UNDER SCRUTINY: HIGH COURT REAFFIRMS FAIRNESS, TRANSPARENCY AND FIDUCIARY DUTY

High Court at Milimani – Probate & Administration Cause No. 109 of 2023
Ruling delivered on 18 December 2025- In the Estate of Paul Gicheru alias Paul Njoroge Gicheru (Deceased)

Overview

In a decision of considerable importance to estate administrators, beneficiaries, and private clients, the High Court has reaffirmed that estate administration must be conducted in strict compliance with principles of fairness, transparency, and fiduciary responsibility.

The Court revoked a Further Partial Confirmed Grant and restrained the sale of estate property that was subject to an unresolved objection. The ruling confirms that urgency, liquidity pressures, or competing beneficiary needs cannot justify procedural shortcuts or the erosion of a party's right to be heard.

Key Facts

- The deceased died intestate, leaving behind a widow and acknowledged sons.
- An alleged son of the deceased, supported by the deceased's mother, filed an objection asserting paternity, dependency, and a beneficial interest in Eldoret Municipality/Block 13/542.
- While the objection remained pending, the administrators obtained a Further Partial Confirmed Grant authorising the sale of the disputed property.
- The Applicant challenged the grant on the basis that it was obtained without notice, thereby violating his constitutional right to a fair hearing.

Court's Determination

1. Due Process Is Fundamental

The Court held that proceeding with the hearing and issuing substantive orders without serving a hearing notice on an active objector breached the audi alteram partem principle under Article 50(1) of the Constitution.

The Court emphasised that general awareness of proceedings does not equate to formal notice of a hearing date, particularly where substantive proprietary rights are affected.

2. Revocation of Grant for Procedural Defect and Concealment

Invoking Section 76(a) and (b) of the Law of Succession Act, the Court revoked the Further Partial Confirmed Grant, finding that:

- The proceedings were defective in substance; and
- The grant was obtained through concealment of a material fact, namely the existence of a pending objection relating to the same asset.

The Court observed that confirming a grant in respect of a disputed asset before determining the underlying dispute is legally unsound and procedurally indefensible.

3. Injunctive Relief to Preserve Estate Assets

Applying the principles in Giella v Cassman Brown, the Court issued injunctive relief restraining any dealings with the disputed land. In doing so, the Court found that:

- The Applicant had established a prima facie case supported by documentary evidence of paternity;
- Land is a unique and irreplaceable asset for which damages are an inadequate remedy; and
- Administrators should prioritise liquidation of undisputed assets where estate liquidity is required.

4. Education Needs Do Not Override Fiduciary Obligations

The administrators' argument that the sale was necessary to fund overseas education was rejected. The Court clarified that adult university students do not fall within the scope of Article 53 of the Constitution and that dependency considerations do not displace fiduciary duties or procedural fairness.

The Court underscored that the interests of one beneficiary cannot be advanced by extinguishing another's unresolved inheritance rights.

Key Takeaways for Administrators and Beneficiaries

- Estate administrators act as fiduciaries and must exercise their powers prudently and transparently.
- Assets that are the subject of objections should be preserved until disputes are resolved.
- Partial confirmation of grants cannot be used to pre-empt or defeat pending claims.
- Proper service of process is a substantive legal requirement, not a technicality.
- Statutory records carry greater evidentiary weight than informal or social documentation.

Why This Decision Matters

This ruling provides clear judicial guidance on the standards expected of estate administrators, particularly in complex, high-value, or blended-family estates.

It reinforces the principle that estate administration is not merely a procedural exercise but a fiduciary function governed by accountability, fairness, and strict adherence to due process.

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