



In re Estate of the Late Guya Robert Otieno (Deceased) (Succession Cause E006 of 2021) [2024] KEHC 7694 (KLR) (25 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE E006 OF 2021
RE ABURILI, J
JUNE 25, 2024**

IN THE MATTER OF THE ESTATE OF THE LATE GUYA ROBERT OTIENO (DECEASED)

BETWEEN

CHIEF REGISTRAR OF THE JUDICIARY APPLICANT

AND

BETHA AWUOR GUYA 1ST RESPONDENT

MARREN ATIENO GUYA 2ND RESPONDENT

AND

WYCLIFFE OMONDI GUYA INTERESTED PARTY

SILAS OTIENO OYARO INTERESTED PARTY

RULING

1. This ruling determines the application dated 22nd January 2024 in which the applicant Chief Registrar of the Judiciary seeks the following orders:
 - i. Spent
 - ii. The applicant be admitted to these proceedings as an interpleader.
 - iii. The Honourable Court be pleased to declare the rightful beneficiaries of the sum Kshs 1,605,217 held by the judiciary being the balance of the gratuity of Kshs 3,188,592 that was payable upon the death of Guya Robert Otieno who was, until his death, an employee of the Judiciary.
 - iv. Upon the declaration of the rightful beneficiaries of the sum identified above, the Honourable Court be pleased to direct the Applicant to act accordingly.



- v. The Honourable Court be pleased to order that the costs of the Chamber Summons be borne by the Respondents.
 - vi. The Honourable Court be pleased to make any other incidental or alternative order it may deem just and expedient.
2. The application was based on the grounds therein as well as the supporting affidavit sworn by Dr. Elizabeth Kalei the Director of Human Resource in the Judiciary on the 22nd January 2024.
 3. It was the applicant's case that the deceased, who was their employee, left behind two families who have since submitted competing claims for the deceased's gratuity. The applicant further submitted that it had no interest in the funds forming the balance of the deceased's gratuity and further that it had not colluded with either of the parties in instituting the said application.
 4. The applicant submitted that in a ruling delivered on the 26th July 2021, this court, Ochieng J (as he then was) ordered the applicant to release part of the gratuity to the 2nd respondent and her children and the applicant had so far released Kshs 1,583,375 nearly half of the gratuity leaving a balance of Kshs 1,605,217.
 5. The applicant further averred that the court in its subsequent rulings did not answer the question of who was entitled to a share of the deceased's gratuity and as such, the applicant was apprehensive that either party may act on the threats to institute legal proceedings against it if it does not apply the gratuity as demanded by the party.
 6. The Respondent and Interested parties' responses
 7. The parties made oral submissions at the hearing of the application on the 23.5.2024.

The Applicant's Oral Submissions

8. Mr. Ogutu counsel for the applicant reiterated that the applicant had no interest in the gratuity balance. He submitted that the ruling of 21.7.2021 was prompted by the need to have part of gratuity paid out for the deceased's children's school fees.
9. It was further submitted that the 1st interested party had contested the nomination form and that the court noted the contestation but allowed the applicant to pay part of the gratuity without making a formal pronouncement on the contest.
10. Mr. Ogutu further submitted that the ruling of 26.8.2022 confirmed the validity of the will and that the nomination form was never an issue in the contested will. He submitted that all the gratuity was transmitted to the applicant for onward payment to beneficiaries but that the applicant only released part of it because of the ruling of the court.
11. Mr. Ogutu submitted that it awaited the directions of the court and that where there was no dispute, they would disburse funds as per the nomination form.

The 1st Respondent's Oral Submissions

12. Mr. Munanguo counsel for the 1st respondent submitted that the deceased's gratuity did not form part of the free estate of the deceased's estate as provided in Section 36A of the *Retirement Benefits Act*. He further submitted that the applicant had not availed the Scheme Rules on how death gratuity should be dealt with.



13. Mr. Munanguo relied on the case of *In Estate of Carolyn Acheng Waga (deceased)* (2015) eKLR where it was held that death gratuity does not form part of the estate of the deceased. It was his submission that the nomination form annexed spelled out who the nominees are and the respective shares of each nominees and that those wishes must be respected.

The 2nd Respondent and 1st Interested Party's Oral Submission

14. Ms. Omuya and Mr. Agan submitted on behalf of the 2nd respondent and 1st interested party respectively.
15. Mr. Agan led the submissions and argued that his client was part of the first family and that the mediation attempted by court had failed. It was his submission that his client prayed for an equitable distribution because the 2nd interested party was part of the deceased's family.
16. It was his submission that the nomination forms were unsigned by the trustee and were only indicative as the person nominating was only giving wishes and it was possible for trustees to vary what was indicated in the nomination forms.
17. Mr. Agan submitted that it would be an injustice to the 1st family if the whole amount is only paid to members of the 2nd family. He reiterated that the court was a court of equity and it could make a pronouncement in the interest of justice. He thus sought an equitable declaration by the court.
18. Ms. Omuya submitted concurring with the submissions by Mr. Agan on the grounds that even if there are nominees, there was a will that was left behind giving most properties to the 1st respondent. She relied on the case of *In the Estate of Carolyn Acheng Waga* [2015] eKLR where the court observed that where adequate provision is not made for dependants, then the law of succession can apply.
19. She submitted that the 2nd respondent's family was hardly provided for and as such she invited the court to find that adequate provision be made for the 2nd respondent since the 1st respondent was adequately provided for. She reiterated that this is a court of equity.

Analysis & Determination

20. The first issue for determination whether the applicant has met the threshold for interpleader proceedings, section 58 of the *Civil Procedure Act*, Cap 21 provides: -

“58. Where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants, or where a suit dealing with the same subject-matter is pending may intervene by motion on notice in such suit, for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made, and of obtaining indemnity for himself:...”

21. Order 34 Rule 2 of *Civil Procedure Rules 2010*, which is founded on the above section, lays out the characteristics of an interpleader as follows: -

“In every suit of or application by way of interpleader the applicant shall satisfy the court by way of affidavit or otherwise—

- (a) that the applicant claims no interest in the subject-matter in dispute other than for charges or costs;



- (b) that there is no collusion between the applicant and any of the claimants;
- (c) that the applicant is willing to pay or transfer the subject-matter into court or to dispose of it as the court may direct.”

22. From the foregoing, it is clear that Interpleader proceedings are instituted by a party who has no interest in the subject matter of the dispute save for charges or costs relating to the property held. For a court to grant orders in interpleader proceedings, the interpleader must satisfy the court that there has been no collusion between himself and any of the claimants. He should be willing to pay or transfer the subject matter into court or dispose it as the court may direct.
23. In the instant case, the applicant states that it was the deceased’s employer and that following the deceased’s passing, all the gratuity was transmitted to it for onward payment to beneficiaries. It was the applicant’s case that vide a ruling by this court on the 21.7.2021, prompted by the need to have part of gratuity paid out for school fees, it released released Kshs 1,583,375 nearly half of the gratuity to the 1st respondent and her children.
24. I have considered the applicant’s case, there is no evidence that the applicant has any interest in the funds. There is also no evidence of its collusion with any of the parties hereto. The applicant is willing to surrender the funds as shall be directed by this court. In this regard, the Court is satisfied that the application meets the threshold of an interpleader.
25. On the second issue of who are the rightful beneficiaries of the sum Kshs 1,605,217 held by the judiciary being the balance of the gratuity of Kshs 3,188,592 that was payable upon the death of Guya Robert Otieno who was, until his death, an employee of the Judiciary, Section 36A of the [Retirement Benefits Act](#):
- “Upon the death of a member of a scheme, the benefit payable from the scheme shall not form part of the estate of the member for the purpose of administration and shall be paid out by the trustees in accordance with the scheme rules.”
26. In a similar situation such as the one before hand, Justice Musyoka in the case of [Re Estate of Carolyne Achieng’ Wagab \(Deceased\)](#) [2015] eKLR held that:
- “From the material before me, the deceased was a member of the Social Service League Staff Retirement Benefits Scheme. She had made a nomination in favour of her children. By virtue of Section 36A of the [Retirement Benefits Act](#), the benefits accruing to the said children do not form part of the estate of the deceased, and should not be the subject of these proceedings. Where issues arise concerning those funds, the process for addressing them is that set out in the [Retirement Benefits Act](#) and the subsidiary legislation made under it. The probate court has no jurisdiction over such benefits and it cannot distribute them.”
27. Guided by the above statutory and judicial pronouncements, I find that this court has no jurisdiction to address issues if any arising from funds from a retirement benefits scheme. It is therefore my finding that benefits that have a specially recognized mode or method of distribution of pension with inbuilt mechanisms of redress should not be subject of adjudication in a court of law unless challenged by way of Judicial Review.
28. I thus allow the application dated 22nd January 2024 in as far as it seeks to have the applicant enjoined as an interpleader. However, as the deceased’s gratuity does not form part of the deceased’s free estate, the applicant can distribute them as provided under the [Retirement Benefits Act](#) and the Scheme Rules,



with the guidance from the Trustees of the Scheme, without resort to the Succession Court which has no power to order for the distribution thereof.

29. Each party to bear their own costs of the Application.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 25TH DAY OF JUNE, 2024

R.E. ABURILI

JUDGE

