



REPUBLIC OF KENYA



In re Estate of Michael Owuor of Michael Owuor & Co. Advocates (Deceased) (Succession Cause E1189 of 2020) [2023] KEHC 400 (KLR) (Family) (27 January 2023) (Ruling)

Neutral citation: [2023] KEHC 400 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E1189 OF 2020
MA ODERO, J
JANUARY 27, 2023
IN THE MATTER OF THE ESTATE OF MICHAEL
OWUOR OF MICHAEL OWUOR & CO. ADVOCATES
(DECEASED)**

BETWEEN

MAURICE OGOLA OLOO & 43 OTHERS CITOR

AND

RISPER OWUOR 1ST CITEE

S N THUKU & ASSOCIATES ADVOCATES 2ND CITEE

RULING

1. Before this Court the Notice of Motion dated 3rd November 2021 by which Maurice Ogola Oloo & 43 others (hereinafter ‘the Citors’) seek the following orders:-

“1. Spent.

2. That this court be pleased to issue order directing the Bank Manager Spire Bank formally known as Equatorial Commercial Bank to render statement of account, Advocate client account for Account Name Michael Owuor & Company Advocates, Account No. 0401xxxxxx Bank Branch Waiyaki Way in Nairobi from 1st March 2013 to 3rd November 2021 to the applicant or his advocate on record Mr Obonyo Francis.



3. That this court be pleased to put a caveat and issue order stopping withdrawals or transfer of any money in the said bank account.”
2. The Application was supported by the Affidavit of even date sworn by the 1st Applicant.
3. The Respondent S.N Thuku & Associates Advocates despite having been properly served with the summons failed to file any reply thereto. The summons was canvassed by way of written submissions. The citors filed the written submissions dated 7th October 2022.

Background

4. The Succession Cause relates to the estate of Michael Owour (hereinafter ‘the Deceased’) an Advocate of the High court of Kenya who prior to his demise was practicing under the name and style of Michael Owuor & Company Advocates. The Deceased passed away in October 2015.
5. The Citors claim that the Deceased had acted for them in a labour suit (ELRC) and in the Court of Appeal. The Citors aver that they won the case and were on 22nd March 2013 awarded an amount of Kshs 4,229,425 which sum they confirm was remitted to them.
6. Thereafter on 28th January 2014 Hon Justice Rika made a Further Award of Kshs 41,152,605 to the Citors. According to the Citors the sum of Kshs 41,152,605 was remitted to the account of their Advocate (the Deceased) on 28th February 2014, but unfortunately this amount has not to date been remitted to the citors.
7. The citors claim that the subject funds were deposited into an Advocate/Client Account at Spire Bank (formerly known as Equatorial Commercial Bank). That their Advocate passed away before disbursing said funds to them. That no Petition for Grant of letters of Administration has been lodged in respect of the estate of the Deceased.
8. The Citors then filed the citation dated 13th October 2020 directed at the widow of the Deceased Risper Owuor as well as the firm of S.N. Thuku & Associates, the law firm which had been appointed by the Law Society to take over the management of the Deceased’s law practice. The citation is yet to be heard.
9. The Applicants are apprehensive that the award made to them by the ELRC may be withdrawn before the citation is determined. They filed their present application seeking to protect the said funds pending the determination of the citation which they filed.
10. As stated earlier there has been no response to this application.

Analysis and determination

11. I have carefully considered the application before this court, the Affidavit filed in support thereto as well as the written submissions filed by the citors.
12. The citors allege that the monies awarded to them amounting to Kshs 41,152,605 was deposited into an Advocate/Client Account held at Spire Bank. They allege that following the demise of their Advocate some unknown persons have been making attempts to withdraw said funds. They also allege that the Deceased’s wife has made attempts to withdraw the monies from the account held at Spire Bank.
13. I have perused the annexed copy of the Ruling delivered in ELRC No. 1722 of 2011. At Paragraphs 8-11 of the said Ruling it is stated as follows:-

“8. The 42 successful claimants were to be paid compensation and terminal benefits as shown at paragraphs 26 and 2C of the Ruling.



9. This was to be paid less the amount of Kshs 4,229,425 already paid by the Respondent and acknowledged by the claimants.
10. The Further Award is dated 28th January 2014.
11. In compliance the Respondents Advocates transferred the sum of Kshs 41,152,605 to the claimants advocates on 28th February 2014.” (own emphasis)
14. Additionally I have perused the later dated 28th February 2014 (Annexure ‘JG-5’) written by Ochieng Onyango Kibet & Ohaga Advocates to the manager of Prime Bank Ltd instructing that the sum of Kshs 41,152,605.00 be transferred into the account of Michael Owuor and Company Advocates held at Equatorial Commercial Bank. A cheque in the amount of Kshs 41,152,605.00 is annexed to their letter.
15. From the above, I am satisfied that the sum of Kshs Kshs 41,152,605 was indeed paid into the account of the Deceased in compliance with the Ruling of the ELRC Court on 28th February 2014.
16. The citors claim that the Deceased passed away without disbursing this award to them. There is nothing to disapprove this claim. If the money had actually been disbursed to the citors then I have no doubt that S.N. Thuku and Associates would have availed evidence to prove such disbursement.
17. This application is premised upon Article 35 of the *Constitution* of Kenya 2010 which provides that -
Access to information
 - “ 35(1) Every citizen has the right of access to
 - a. information held by the State; and
 - b. information held by another person and required for the exercise or protection of any right or fundamental freedom.
18. Section 47 of the *Law of Succession Act* provides that –
 - “The High court shall have 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.”
19. Similarly Rule 73 of the *Probate and Administration Rules* Provides that -
 - “Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice to prevent abuse of the process of the court.”
20. Further Section 22 of the *Civil Procedure Act*, Cap 21 Laws of Kenya provides for the jurisdiction of this court in such instances as follows:-
 - “Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party—
 - (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and



facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;”

21. I am satisfied of the merit of this application. There is need to preserve the funds deposited into the Advocate/Client Account on behalf of the Citors. Accordingly, I do allow the application and make the following orders:-

1. The Bank Manager Spire Bank formerly known as Equatorial Commercial Bank is ordered to render statement of account, Advocate-Client account for Account Name Michael Owuor & Company Advocates, Account No. 0401xxxxxx Bank Branch Waiyaki Way in Nairobi from 1st March 2013 to 3rd November 2021 to the Applicants Advocate on record Mr Obonyo Francis.
2. It is hereby ordered that there shall be no withdrawals and/or transfer of monies from the Bank Account No. 0401xxxxxx at Spire Bank formally known as Equatorial Commercial Bank until further orders are given by this court.

DATED IN NAIROBI THIS 27TH DAY OF JANUARY 2023.

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MAUREEN A. ODERO

JUDGE

