



REPUBLIC OF KENYA



In re Estate of Joan Ambayo Otiemo (Deceased) (Succession Cause 1050 of 2020) [2023] KEHC 187 (KLR) (Family) (20 January 2023) (Ruling)

Neutral citation: [2023] KEHC 187 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1050 OF 2020
MA ODERO, J
JANUARY 20, 2023
IN THE MATTER OF THE ESTATE OF THE ESTATE OF
JOAN AMBAYO OTIEMO (DECEASED)**

BETWEEN

JUNE JULLIET OKWAKO PETITIONER

AND

DISHON OTIEMO OTEMO RESPONDENT

RULING

1. Before this court for determination is the notice of motion dated June 15, 2022 by which the applicant Jane Julliet Okwako seeks the following orders:-
 1. Spent.
 2. Spent
 3. That this honourable court be pleased to make and issue an order restraining the Agricultural Finance Corporation and the National Social Security Fund from disbursing or remitting the terminal/group life cover dues of Joan Ambayo Otiemo – deceased to the respondent, his servants, agents, employees or any person acting under his instructions and authority, or such other person pending the hearing and determination of this suit.
 4. That this honourable court be pleased to direct the National Social Security Fund from disbursing or remitting the terminal/group life cover dues of Joan Ambayo Otiemo – deceased in the childrens account to cater for their immediate needs.



5. That this honourable court be pleased to appoint the petitioner as the guardian of RPO (17 years) and CAO (15 years).
 6. That pursuant to prayer (5) the honourable court be pleased to grant the petitioner custody of RPO (17 years) and CAO (15 years).
 7. That this honourable court be pleased to make such other or further orders that the ends justice may require.”
2. The application was premised upon sections 54, 26, 27, 28 (c), (e) & (g), 35 (3) & (4), 48, 49, 54 and 66 of the Law of Succession Act cap 160 of the Laws of Kenya sections 4 (2) (3), 6 (2), 7, 73, 76 (1), (3-b), 81 (2), (3), 82, 102, 119 (1) (a) of the Children’s Act No 8 of 2001 and all other enabling provisions of the law and was supported by the affidavit of even date sworn by the applicant.
 3. The respondent Dishon Otieno Otemo opposed the application through the replying affidavit dated September 21, 2022.
 4. The matter was canvassed by way of written submissions. The applicant filed the written submissions dated October 5, 2022 whilst the respondent relied upon his written submissions dated October 21, 2022.

Background

5. This matter relates to the estate of Joan Ambayo Otieno (hereinafter ‘the deceased’) who died intestate on March 30, 2020. A copy of the death certificate serial number 0xxxx4 appears as annexure JJO ‘2’ to the supporting affidavit dated June 15, 2022. The deceased was survived by two (2) sons RPO 17 years and CAO 15 years old.
6. Prior to her death the deceased was an employee of the Agricultural Finance Corporation (AFC) and was a contributor at the National Social Security Fund (NSSF). The applicant who is the mother of the deceased avers that she has had the responsibility for the maintenance and care of the deceased’s minor children. She alleges that the biological father of the children had completely abdicated and neglected his responsibility towards the children.
7. The applicant filed in the High Court a petition for a special limited grant dated June 15, 2022 seeking to access the deceased’s pension fund and terminal dues from NSSF and AFC. She avers that the said funds are required to provide for the children of the deceased who are in her custody.
8. The applicant also filed this notice of motion seeking orders to restrain NSSF and AFC from disbursing any funds due to the deceased. She claimed that the respondent intended to approach the two bodies to obtain the deceased’s benefits to the exclusion of the minor children.
9. The respondent on his part averred that the applicant lacked *locus standi* to petition for a grant in respect of the estate of the deceased. The respondent categorically denied the allegation that the he had abdicated his role as a father and denied having neglected his children. He insists that the children have all along been under the care of himself and the deceased.

Analysis and Determination

10. I have carefully considered the application dated June 15, 2022, the affidavit filed in reply as well as the written submissions filed by both parties.
11. The question of who between the applicant and the respondent is entitled to apply for a grant of representation to the estate is one which cannot be determined in this application.



12. Likewise the allegation by the applicant that it is she who has been responsible for the maintenance and upkeep of the deceased's minor children cannot be determined on the basis of affidavit evidence alone. This is a matter which can only be determined upon the court hearing evidence from both parties.
13. Suffice to say it is my view that all benefits due to the deceased ought to be preserved pending determination on the issue of representation to her estate. I therefore grant prayer (3) of the motion.
14. The applicant has sought to be awarded custody of the deceased's children. The court with original jurisdiction on matters of custody and guardianship is the Children's Court as guided by the *Children Act* 2022. I therefore decline to grant prayers (5) and (6) of the application.
15. Finally this court makes the following orders:-
 - (1) That Agricultural Finance Corporation and the National Social Security Fund be and are hereby restrained from disbursing or remitting the terminal/group life cover dues of Joan Ambayo Otieno to any party pending the hearing and determination of the main petition.
 - (2) This matter is referred to court annexed mediation to enable the parties discuss and agree on the question of representation of the estate of the deceased.
 - (3) This being a family matter each side will bear its own costs.

Dated in **Nairobi** this **20th** day of **January, 2023**.

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MAUREEN A. ODERO

JUDGE

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