



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of the Late George Okoth Olila (Deceased) (Succession Cause
2 of 2023) [2023] KEHC 1277 (KLR) (22 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1277 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
SUCCESSION CAUSE 2 OF 2023
RE ABURILI, J
FEBRUARY 22, 2023**

RULING

1. I observe that this matter was pending before Kisumu High Court since 2004 and grant was issued on 25/1/2005. The petitioner on 5/8/2022 filed summons for confirmation of grant issued to her as the widow of the deceased.
2. However, I observe further that the estate comprises Land Parcel No. N. Ugenya/Sega/274 meaning 6.4 Ha registered in the name of George Okoth Olila (deceased) herein, Gilbert Martin Okuma, Erastus Mwangi Olila and Winstone W.A. Otieno, with each of the registered proprietors having $\frac{1}{4}$ share of the said land as per the Certificate of official search - dated 7/10/2021.
3. In the P&A5 form, the petitioner only listed Death gratuity as the asset of the Estate, valued at Kshs. 150,000/=. No other asset was listed.
4. In addition, the beneficiaries were stated to be “as per attached letter from the DC Siaya” meaning, those were the listed beneficiaries in respect of the death gratuity due to the estate of the deceased. The Petitioners were Jane Odaha Okoth and Michael Onyango (by hand) as per P&A 80; P&A 5&12 widow and son.
5. In the letter of the DC Siaya dated, 28/12/2002, there are 11 beneficiaries comprising the widow and her children, some of whom were 17 and 10 years old.
6. When the grant was issued on 26/1/2005, the sole administrator was Jane Odaha Okoth as per the Gazette Notice No. 10020 of 12/12/2004. Nothing was mentioned or said about Michael Onyango.
7. It follows that the estate for which the grant was issued was that comprising of death gratuity only and no other estate of the deceased. There is no mention of the distribution of the death gratuity.
8. However, in the summons for the confirmation of grant the sole administrator is only assigning herself whole of $\frac{1}{4}$ share of land parcel No. N. Ugenya/Sega/274 to the exclusion of all other beneficiaries of the estate of the deceased yet she failed to disclose the existence of the said estate/asset in P&A 5.



9. Further, in the consent filed on 5/8/2022, Selina Aoko has not signed and it does not provide any mode of distribution of the estate of the deceased which is dangerous as the beneficiaries seem not to know why they were signing the consent.
10. The affidavit in support as sworn by the administrator does not indicate how she intends to distribute the estate as she is taking whole ¼ share of the land with no indication that she is to hold it in trust for any other beneficiary.
11. Again, that is dangerous as the estate does not belong to the administrator who must disclose to court all material facts.
12. The search certificate for the land Parcel N. Ugenya/Sega/274 was only filed into court after grant was issued. It is dated 7/10/2021 yet grant was issued on 26/1/2005.
13. I find that there are serious irregularities in these proceedings which the court is under a duty on its own motion to deal with to protect the estate of the deceased and interests of all other beneficiaries.
14. In the premises, I find that the grant issued to the administrator Jane Odaha Okoth on 26/1/2023 was in error as there was non-disclosure of material facts to court being that the immovable assets of the deceased were not listed and neither were the beneficiaries properly identified and listed in P&A 5.
15. I observe that the petitioner is receiving legal aid from FIDA (K) Kisumu office. For the above reasons, I hereby proceed and revoke the grant issued on 26/1/2005 and all the subsequent processes pursuant to that grant are nullified.
16. The beneficiaries of the estate of the deceased George Okoth Olila to commence fresh and proper succession proceedings identifying and listing all assets and beneficiaries.
17. This Ruling to be communicated to the petitioner whose address telephone contacts are missing from the file, through Ms. Janet Anyango of FIDA (K) Kisumu office to assist the Petitioner in filing proper succession proceedings. The Registry to supply the ruling free of charge and send it by email to Fida Kenya Kisumu regional Office.
18. I so order.
19. This file is now closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 22ND DAY OF FEBRUARY, 2023

R.E. ABURILI

JUDGE

