



**In re Estate of Maurice Obonyo (Deceased) (Probate & Administration
2 of 2022) [2023] KEHC 24012 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24012 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
PROBATE & ADMINISTRATION 2 OF 2022
RPV WENDOH, J
OCTOBER 26, 2023**

BETWEEN

SIPRINA OBONYO NGANI PETITIONER

AND

ERICK OMONDI OBONYO 1ST OBJECTOR

MALATH ATIENO OBONYO 2ND OBJECTOR

RULING

1. Siprina Obonyo Ngani (the petitioner) filed a Notice of Motion dated 13/4/2023 (the application) seeking the following orders: -
 1. That this court directs the Office of the Director of the National Registrar of Persons (National Registration Bureau) to make available to the petitioner or his advocate and to this court the registration details of Vincent Onyango Omondi ID No. 24833054.
 2. That this court does summon the chief of North Kamagambo Location, Mr. John Agoro Kodo to appear before this court and testify on the chief's letter tabled before this court.
2. The application is supported by the grounds on its face and the supporting affidavit of the applicant. The applicant deposed that the dispute in court is about the family structure; that the chief wrote a letter following instructions from the objectors to the exclusion of the petitioner or any other family member; that the chief in his letter included strangers in the list of beneficiaries which names are in dispute that is, the names of Mary Anyango, Sofia Omondi Nyarodi and Vincent Onyango Omondi.
3. The applicant further deposed that the purpose of this application is to direct the registrar of persons to avail all registration documents of the aforementioned persons for purposes of identification, after they declined to identify themselves upon request; that the instant application will not prejudice any



party but will assist the court in arriving at a just and fair decision on the issue of family structure which is the main issue before court.

4. The application was opposed. The objectors swore a joint affidavit dated 15/6/2023. They deposed that in addition to this replying affidavit, they will also rely on the contents of the 1st objector's replying affidavit dated 6/2/2023 in support of the petitioner's application for revocation of grant; that this application is a mere afterthought meant to delay the case and waste court's time; that the orders being sought are permanent in nature and premature; that this matter was already set down for hearing and each party was given an opportunity to call 3 witnesses; that when filing this petition, the petitioner relied on the chief's letter and therefore she cannot turn round and claim that the letter includes strangers after an application for revocation of grant has been filed.
5. The objectors stated that the 1st objector's mother, Mary Anyango was married to the deceased but separated in 1984 and there is a divorce certificate; that Mary Anyango and Sophia Omondi Nyarodi are not to benefit from the estate of the deceased but they are only mentioned to indicate the house they are from; that the identification document (the ID) for Vincent was processed using the death certificate of his mother Sophia Omondi and the documents of his grandfather Eliazar Omondi Nyarondi who became his guardian after his mother died. The objectors further stated that they are willing to produce Vincent's identification card before this court if necessary; that the names in the identification card do not meet the threshold to prove relationship unless a DNA is conducted, thus the application for registrar of persons to produce the documents is misplaced. The objectors urged this court to dismiss the application as being premature as the same can be dealt with during the hearing.
6. The application was canvassed by way of written submissions and it is only the applicant who filed submission. This court has considered the application, the replying affidavit and the submissions by the applicant.
7. These succession proceedings relate to the Estate of the Maurice Obonyo Ngani (Deceased) who died intestate on 6/8/1998. The succession proceedings were filed by Siprina Abiero Obonyo (the petitioner) and letters of administration intestate dated 28/6/2022 were issued to her. The objectors filed summons for revocation or annulment of grant dated 30/6/2022 which is still pending before this court. Directions on the hearing of the summons were taken on 27/2/2023 and this court directed that the parties file their respective responses and that it would proceed by way of viva voce evidence.
8. Without getting into the merits or demerits of the summons for the objectors contended that the petition for confirmation of grant failed to include all the beneficiaries and there was material concealment of facts. In particular, the objectors contended that one of the sons of the deceased, that is, Vincent Onyango Obonyo was left out as a beneficiary.
9. The said Vincent Onyango Obonyo is also the subject of the present application. The applicant wants this court to direct the Office of the Director of National Registrar of Persons to make available the registration details of Vincent Onyango Omondi ID No. 24833054. The applicant also wants this court to summon the Chief of North Kamagambo Location Mr. John Agoro Kodo to appear and explain the contents of his letter dated 4/10/2021.
10. In her submissions, the applicant contended that Vincent Onyango Omondi is not a son to the deceased; that he was born of Eliazar Omondi Nyarondo and Sofia Anyango Omondi who are both deceased and they left their estates to Vincent Onyango Omondi.
11. I have considered the letter from the Chief dated 4/10/2021. The name of Vincent Onyango Omondi does not appear as one of the beneficiaries. The only name which appears is that of Vincent Onyango Obonyo as a son in the third house in which Sophia Omondi Obonyo (deceased) was a wife. This court



has not been told whether Vincent Onyango Omondi and Vincent Onyango Obonyo is one and the same person.

12. Further to the foregoing, the applicant also disputes the names of Mary Anyango Obonyo and Sophia Omondi Obonyo as wives of the deceased being included in the chief's letter. The objectors conceded in their replying affidavit that the aforementioned wives are not to inherit from the estate of the deceased but their names were inserted to show the order of the houses.
13. Before confirming grant of letters of administration, the law imposes a duty upon the court, to confirm the identities and shares of all persons who are beneficially entitled to inherit from the estate of the deceased person. Section 71 (2) of the *Law of Succession Act* provides: -

" Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares."
14. This court is of the view that asking the Director of the National Registrar of Persons to avail the registration details of the said Vincent Onyango Omondi and summoning the Senior Chief of North Kamagambo is unnecessary at this stage since this court will have an opportunity to confirm the identities of all persons claiming to be beneficially entitled to the estate of the deceased at the hearing of the application. The issues being raised in the instant application are suitable to be dealt with during the objection proceedings as directed by this court on 27/2/2023.
15. I therefore find that the Notice of Motion dated 14/4/2023 is premature and unmerited and it is hereby dismissed. Costs will abide the outcome of the succession cause.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 26TH DAY OF OCTOBER, 2023

R. WENDOH

JUDGE

