



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**SUCCESSION CAUSE NO 84 OF 1998**

**IN THE MATTER OF THE ESTATE OF EDWARD AKELO NYANGOR (DECEASED)**

**HARRISON OUMA AKELO.....1<sup>ST</sup> ADMINISTRATOR**

**VERSUS**

**ROBERT ACHAPA AKELLO.....OBJECTOR**

**AND**

**HERINE AKINYI AKELO.....2<sup>ND</sup> ADMINISTRATOR**

**EMMANUEL OMONDI.....3<sup>RD</sup> ADMINISTRATOR**

**RULING (1)**

**INTRODUCTION**

1. In his Chamber Summons dated 15<sup>th</sup> July 2021 and filed on even date, the 1<sup>st</sup> Administrator herein sought for orders that the Certificate of Confirmation of Grant of Letters of Administration issued to Robert Achapa Akelo and dated 22<sup>nd</sup> October 2020 be rectified to read Harrison Ouma Akelo, Herine Akinyi Akelo and Emmanuel Omondi Akelo.
2. He swore the Affidavit in support of his application on 15<sup>th</sup> July 2021. He averred that on 8<sup>th</sup> March 2018, this court ordered that the 2<sup>nd</sup> Administrator, 3<sup>rd</sup> Administrator and himself be appointed as the Administrators of the deceased's estate and that the rental proceeds and income collected from the estate be deposited in a joint account to be opened by the three (3) Administrators.
3. He confirmed that a joint account in the names of the said three (3) Administrators was opened at Co-operative Bank, Kisumu Branch, account number 01109766750400. He added that subsequent to the aforesaid direction of the court, this matter proceeded for full hearing whereafter the court delivered its judgment on 21<sup>st</sup> October 2020.
4. He was categorical that the court did not revoke the appointment of the three (3) Administrators and he was therefore shocked to learn that a certificate of confirmation of grant was issued a day after the judgement in favour of the Objector as an Administrator of the estate of the deceased. He was emphatic that Paragraphs 11 and 21 (4) of the said judgement did not appoint the Objector as the Administrator of the deceased's estate for purposes of winding it up.
5. He averred that the speed with which the Objector took to obtain the Certificate of Grant was wrong and misled the court that he had been appointed as the Administrator. He stated that this was solely intended to enrich himself at the expense of other beneficiaries.
6. He was categorical that following a Ruling by this Court on his application to appeal and stay of execution of the judgement of Cherere J, the Objector had through his advocates moved with speed to demand that rental income proceeds from the deceased estate LR No 1148/1059 be paid into his personal account or transmitted to his mobile phone. He added that not being an Administrator of the deceased's estate, the Objector's actions were not only criminal in nature but also amounted to intermeddling with the deceased's estate.
7. He was emphatic that the Certificate of Confirmation of Grant having been issued to the wrong person, it was only prudent that the same be rectified to read the correct names and the Objector be restrained from receiving, collecting, demanding rent or rental income as the same had all been channeled to account number 01109766750400 held at Co-operative Bank Kisumu Branch, in the names of the three (3) Administrators.

8. In opposition to the said application, on 4<sup>th</sup> November 2021, the Objector filed a Replying Affidavit that he swore on 2<sup>nd</sup> November 2021. He averred that he was also an Administrator of the deceased's estate duly appointed after successful succession application by that he filed against the 1<sup>st</sup> Administrator vide judgment dated 21<sup>st</sup> October 2020.

9. He contended that he filed an application that sought revocation of grant which was fraudulently applied for and obtained by the 1<sup>st</sup> Administrator on 24<sup>th</sup> June 2002 and was revoked on 8<sup>th</sup> March 2018 where he was reappointed as an Administrator together with the 2<sup>nd</sup> and 3<sup>rd</sup> Administrator on temporary basis pending the hearing and determination of his application thereof.

10. He asserted that following the aforesaid judgment, both the 2<sup>nd</sup> and 3<sup>rd</sup> Administrators mandated him to respond on their behalf. He added that the revocation arose from his application that the 1<sup>st</sup> Administrator had forged his signature with those of three (3) other beneficiaries namely, Malaki Onyango Akelo, Patrick Owuor Akelo and Jared Okuku Akelo (Aketch), the same being subject of a **Criminal Case Cr No 189/2019** pending in court.

11. He was emphatic that he neither appointed himself as the Administrator of the deceased's estate nor obtained a fraudulent grant as claimed by the 1<sup>st</sup> Administrator but obtained a grant duly signed by the Trial Judge, Cherere J. on 22<sup>nd</sup> October 2020. He added that the said Grant was issued to him in wisdom of the Trial Judge after hearing to conclusion, all the parties including the 1<sup>st</sup> Administrator.

12. He was categorical that the 1<sup>st</sup> Administrator alluding to the Grant issued to him as irregularly obtained, was raising a question of integrity on the Trial Judge who in her wisdom found the 1<sup>st</sup> Administrator unsuitable to manage the deceased's estate after obtaining a fraudulent grant by way of forgery of our signatures.

13. It was his contention that the 1<sup>st</sup> Administrator having successfully obstructed his co-administrators now sought to do the same to him after threatening tenants not to comply with his services as the current Administrator. He added that the prayers in his application was a repeat of prayers in which the court pronounced its Ruling dated 29<sup>th</sup> June 2021 and asking this court to review its own ruling was to accord the 1<sup>st</sup> Administrator another lifeline to continue manipulating both the 2<sup>nd</sup> and 3<sup>rd</sup> Administrators as his co-administrators.

14. He contended that the prayer sought followed his total disregard to comply with any of this court's orders and directives amounting to contempt of court. He added that his service to the tenants residing on the deceased's property Plot LR No 1148/1059 revealed that the 1<sup>st</sup> Administrator, his brother Amos Atieno Akelo, and their managing Agents Charcon Properties Ltd, forged a lease Agreement showing Amos Otieno Akelo as landlord as of 17<sup>th</sup> December 2020 yet a judgment had been delivered as early as 21<sup>st</sup> October 2020.

15. He was emphatic that the 1<sup>st</sup> Administrator having failed to give a proper account of how he managed the deceased's estate and having benefitted himself and his siblings only could not in the ordinary sense be accorded room to perpetuate the kind of impudence and discrimination on the other eight (8) children of the deceased after twenty six (26) years of doing so.

16. He pointed out that both the 2<sup>nd</sup> and 3<sup>rd</sup> Administrators had expressed their frustrations in the hands of the 1<sup>st</sup> Administrator as he blocked them from accessing the tenants and documents such as the lease agreement.

17. He filed a Further Replying Affidavit on 19<sup>th</sup> January 2022 that he swore on 10<sup>th</sup> January 2022 reiterating his averments in the Replying Affidavit filed on 4<sup>th</sup> November 2021.

18. The 1<sup>st</sup> Administrator's Written Submissions were dated 10<sup>th</sup> November 2021 and filed on 11<sup>th</sup> November 2021 while those of the Objector were dated 17<sup>th</sup> December 2021 and filed on 23<sup>rd</sup> December 2021.

19. This Ruling is based on the said Written Submissions which parties relied on in their entirety.

## **LEGAL ANALYSIS**

20. The 1<sup>st</sup> Administrator outlined the judgment of this court of 21<sup>st</sup> October 2021 and argued that it did not address any issue on the replacement of the appointed Administrators. He asserted that it only addressed the issue of distribution of the deceased's estate and directed the 2<sup>nd</sup> Administrator, 3<sup>rd</sup> Administrator and himself to manage the estate.

21. He argued that the Objector had purported to extract a Certificate of Confirmation of Grant wherein he had purported to appoint himself as the sole administrator of the deceased's estate hence his application herein.

22. He contended that on 21<sup>st</sup> March 2018, the 2<sup>nd</sup> and 3<sup>rd</sup> Administrators together with himself were appointed as the Administrators of the estate of the deceased and the objection proceedings thereafter proceeded to its full conclusion when judgement was delivered on 21<sup>st</sup> October 2020. He added that if the court had felt (**sic**) that the Objector had succeeded in the objection proceedings, nothing would have been easier than for the court to have said so and revoked his appointment and that of the 2<sup>nd</sup> and 3<sup>rd</sup> Administrators.

23. He argued that such an act was not only illegal but was tantamount to being criminal in nature having deliberately misled the court. He added that the Objector was now collecting rent proceeds from the deceased's estate while depositing the same into his personal account.

24. He was categorical that that was a clear attempt by the Objector to enrich himself. He argued that the deceased's estate was yet to be distributed and the directions on distribution had been crystallised in Orders 1-6 of the judgment.

25. He contended that it was imperative that an injunction order do issue in terms of prayer 2 of this application and that the court in its inherent jurisdiction to call upon the Objector to give accounts of all monies on account for rent from land parcel known as LR No 1148/1059. He urged the court to allow his application.

26. On his part, the Objector submitted that the Grant issued to him dated 22<sup>nd</sup> October 2020 was a full grant and valid as same was duly signed by the Judge and sealed. He added that the manner in which the same was obtained was not irregular as the same was an outcome of the judgment of the Trial Court dated 21<sup>st</sup> October 2020 which was delivered in the presence of all parties.

27. He contended that the 1<sup>st</sup> Administrator intended the court to make the temporary grant dated 8<sup>th</sup> March 2018 which the Trial Court issued during the trial of the case pending final determination be issued as the full grant through back door while the Trial Court in its wisdom had issued him a full grant dated 22<sup>nd</sup> October 2020 unlike the grant that was issued to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Administrators dated 8<sup>th</sup> March 2018 which was a limited grant.

28. He argued that the 1<sup>st</sup> Administrator did not want the tenants in the suit property to know of the changes in administration of the property so that he could continue collecting rent for self-gain as before and as such, for the period of over three (3) years of the limited grant, he never agreed to meet the tenants in company or with the presence of the 2<sup>nd</sup> and 3<sup>rd</sup> Administrators.

29. He was emphatic that the Trial Judge did not find the 1<sup>st</sup> Administrator to be the proper person to give the mandate of distribution of the deceased's estate following the three (3) years he had presided over the estate and over twenty (20) years of only benefitting from the proceeds of the estate to the exclusion of other beneficiaries as a result of which the Trial Court excluded him from getting a share of the suit property.

30. He asserted that the 1<sup>st</sup> Administrator was not keen in pursuing his intended appeal but had sought to be reappointed as the 1<sup>st</sup> Administrator to continue controlling and self-benefitting from the estate of the deceased as he had for over twenty (20) years and the trial court found out.

31. He was categorical that for three (3) years of trial, the 1<sup>st</sup> Administrator obstructed both the 2<sup>nd</sup> and 3<sup>rd</sup> Administrators from accessing the accounts of the estate and he was now obstructing him by filing several applications including an appeal to help him continue controlling the estate of the deceased.

32. He argued that the 2<sup>nd</sup> and 3<sup>rd</sup> Administrators categorically indicated that the 1<sup>st</sup> Administrator was not sincere in his application as he painted a picture that he irregularly usurped the powers of the court thereby obtaining a grant and assuming the position of an administrator of the deceased's estate in order to enrich himself yet his application was for mere correction.

33. He was emphatic that the Applicant was posing as the 1<sup>st</sup> Administrator of the estate of the deceased as if he was re-appointed. He reiterated that on 8<sup>th</sup> March 2018 the trial court issued a limited grant to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Administrator and when the matter proceeded to full hearing of both parties the Trial Court made a finding and pronounced itself in judgment of the court dated 21<sup>st</sup> October 2020. He added that a Grant was therefore issued on the 22<sup>nd</sup> October 2020 where he was given full grant. It was his contention that the 1<sup>st</sup> Administrator's application lacked merit and should be dismissed with costs.

34. Notably, in the Judgment by Cherere J, there was no order removing the 1<sup>st</sup> Administrator herein from being an administrator of the deceased's estate. In Paragraph (8) of the said Judgment, the learned judge observed that having partially heard the Objection proceedings on 8<sup>th</sup> March 2018, she was satisfied that the 1<sup>st</sup> Administrator failed to proceed diligently on the administration of the deceased's estate and thus revoked the Grant that had been issued to the 1<sup>st</sup> Administrator. However, in the same Paragraph, it was indicated that with the consent of the parties, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Administrators were appointed as administrators of the deceased's estate.

35. While the learned judge issued the Grant to the Objector on 22<sup>nd</sup> October 2020, there was nothing in the said Judgment and proceedings of the Trial Court to suggest that the Objector herein was appointed as an administrator of the deceased's estate. If there were such proceedings, the Objector did not bring the same to the attention of the court.

36. This court took over the matter from the learned judge on 4<sup>th</sup> November 2021 and on 14<sup>th</sup> December 2021, it forwarded to her the file for guidance as far as compliance of the decision of 21<sup>st</sup> October 2020 was concerned. In her Directions of 18<sup>th</sup> January 2021, she reiterated the disposition of her judgment of 21<sup>st</sup> October 2020 and indicated that what was pending was confirmation of compliance and any other matters that would may arise therefrom.

37. As it was not clear to this court if there was indeed an error on the face of the record having noted that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Administrators had by the consent of the parties been appointed as administrators of the deceased's estate, which was consent recorded as an order of the court on 8<sup>th</sup> March 2018 and which could have been a good reason for it to rectify the Certificate of Confirmation of Grant that was issued to the Objector herein, it could not vacate, set aside and/or vary the said Certificate of Confirmation that was issued to the Objector herein as it was issued by a judge of equal and competent jurisdiction.

38. The best option for the 1<sup>st</sup> Administrator was to file an appeal at the Court of Appeal which had the jurisdiction to set aside, vary and/or vacate the judgment of the learned judge that was delivered on 21<sup>st</sup> October 2020 and the Certificate of Confirmation of Grant that she issued on 22<sup>nd</sup> October 2020, if at all there was an error on the face of the court record.

39. Notably, in its Ruling of 29<sup>th</sup> June 2021, this court granted the 1<sup>st</sup> Administrator leave to appeal against the decision of the said learned

judge of 21<sup>st</sup> October 2020 as he had been dissatisfied with the said decision. Accordingly, this court had no option but to down its tools for lack of jurisdiction to hear the present application.

**DISPOSITION**

40. For the foregoing reasons, the upshot of this Court's decision was that the 1<sup>st</sup> Administrator's Chamber Summons dated and filed on 15<sup>th</sup> July 2021 was not merited and the same be and is hereby dismissed. Costs of the application will be in the cause.

41. It is so ordered.

**DATED and DELIVERED at KISUMU this 25<sup>th</sup> day of April 2022**

**J. KAMAU**

**JUDGE**