



In re Estate of the late Robert Otieno Guya(Deceased) (Succession Cause E006 of 2021) [2022] KEHC 12736 (KLR) (26 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12736 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE E006 OF 2021
FA OCHIENG, J
AUGUST 26, 2022
IN THE MATTER OF THE ESTATE OF
THE LATE ROBERT OTIENO GUYA (DECEASED)
AND
IN THE MATTER OF APPLICATION**

BETWEEN

WYCLIFFE OMONDI GUYA APPLICANT

AND

SILAS OTIENO OYARO 1ST RESPONDENT

BETHA AWUOR GUYA 2ND RESPONDENT

RULING

1. On November 22, 2021 this court delivered its ruling on the objection which had been lodged by Wycliffe Omondi Guya.
2. I held that the objector had failed to prove that the deceased had been coerced into making such disposition as he did not really intend to make.
3. By the said ruling, i held that there appeared to be insufficiency on the attestation of the will which was executed by the deceased.
4. In the circumstances, the court invoked the provisions of rule 54 (1) of the *Probate and Administration Rules*, and directed the 2 persons who were witnesses to the execution of the will, to file their affidavits explaining the circumstances in which they had attested the execution of the will.



5. The court directed the 2 witnesses to give their detailed affidavits, specifying;
 - (a) Place and time where they appended their signatures to the will;
 - (b) The particulars of the persons who were present at the material time;
 - (c) The explanation why each of them only signed page 2 of the document.
6. I further directed that after the witnesses had filed their affidavits, they would present themselves in court, so that any party who wished to cross-examine them, would have an opportunity to do so.
7. In compliance with the court's directions, the 2 witnesses filed their affidavits in court.
8. PW1, Yonah Orawo Auma, deponed that on 18th December 2020, the deceased called him, and explained that he was in the process of preparing a will.
9. The deceased had identified PW1 as one of the persons whom he wished to witness him executing the will.
10. At the time when the deceased talked to PW1 on phone, the latter was attending a funeral. He therefore told the deceased that he would only be able to visit him at the Aga Khan Hospital, later in the evening.
11. PW1 testified that he arrived at the hospital at about 6p.m. He found the following persons at the hospital;
 - (i) Bernard Odhiambo Odhong (PW2)
 - (ii) Rev Silas Otieno Oyaro
 - (iii) A male nurse
12. After Rev Silas Oyaro had said some prayers for the deceased, the latter called upon PW1 and PW2 to move closer to the bed, where the deceased was seated.
13. It was the evidence of PW1 that the deceased informed him and PW2, that his advocates, Ms Stausi, Asunah & Oluoch Advocates had prepared a will for him, under his instructions.
14. The deceased told his 2 friends that he wanted them to witness him signing the said will.
15. PW1 testified that he witnessed the deceased signing the 2 pages. Thereafter, the deceased directed his 2 friends to sign the second page of the will.
16. During cross-examination PW1 said that when the deceased talked to him on phone, at about 11a.m, on the material day, PW1 was not made aware that he would be signing the will of the deceased. It is when he arrived at the hospital, at about 6p.m that the deceased told him about signing the will, as a witness.
17. When the deceased showed PW1 where to sign, the name of PW1 was already typed on page 2 of the document. Therefore, PW1 signed against his name.
18. PW1 testified that he did see the deceased signing the 2 pages of the will.
19. When questioned about the physical health of the deceased at the material time, PW1 said that the deceased was okay, even though he was undergoing treatment.



20. PW1 told the court that the deceased was sitting on the bed, at the time of signing. Thereafter, the deceased escorted PW1 and PW2, when they were leaving the hospital. He escorted them until the ground floor.
21. During cross-examination, PW1 identified the first page of the document herein, as the one which he saw the deceased signing.
22. And although there was no pagination of the document, PW1 pointed out that the paragraphs of the will were numbered. As pointed out by the witness, the document ended with paragraph (e), on page 1; and page 2 begun with paragraph (f).
23. PW1 told the court that Robert was not under any duress when he signed the will. If anything, PW1 noted that Robert's mental faculties were normal, and that Robert talked normally, as he used to do.
24. PW2, Bernard Odhiambo Odhong testified that when Robert phoned him, at about 12.00 noon, PW2 was at his place of work, at Maseno University.
25. He went to visit Robert at the Aga Khan Hospital at about 4p.m.
26. Upon arrival, PW2 found Robert seated on his bed. The 2 of them chatted for a while.
27. It was the evidence of PW2 that PW1 joined them whilst he (PW2) was praying for Robert.
28. PW2 corroborated the testimony of PW1, about how Robert told them to inch closer to him, and he then told them that he wanted them to witness him signing his will.
29. PW2 said that he saw Robert signing the 2 pages of the will. Thereafter, PW2 and PW1 both signed on page 2, in line with the instructions given to them by Robert.
30. During cross-examination, PW2 said that Robert knew what he was doing. He was talking normally; and he was not stressed.
31. Having given due consideration to the evidence of the 2 persons who witnessed as Robert was signing the will, I find that there was absolutely no evidence that Robert executed the will under coercion. He was not under any stress. He was aware of what he wanted his friends to do; and he explained it to them.
32. Robert wanted his friends to witness as he signed the will; and they did so.
33. Accordingly, I am satisfied that the will produced before this court was duly executed by Robert; and the said execution was witnessed by Yonah Orawo Auma and Bernard Odhiambo Odhong.
34. In the event, the will was appropriately attested.
35. I do now admit the will as constituting Robert's last wishes, with respect to his properties.

DATED, SIGNED AT DELIVERED AT KISUMU

THIS 26TH DAY OF AUGUST 2022

FRED A. OCHIENG

JUDGE

