



**In re Estate of Brian Weyama (Deceased) (Succession Cause 369 of 2018)  
[2022] KEHC 13344 (KLR) (Family) (30 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13344 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 369 OF 2018  
MA ODERO, J  
SEPTEMBER 30, 2022  
IN THE MATTER OF THE ESTATE OF BRIAN WEYAMA (DECEASED)**

**BETWEEN**

**BELINDA ANYANGO OUMA ..... APPLICANT**

**AND**

**YOUTH DYNAMIX KENYA LTD ..... RESPONDENT**

**RULING**

1. Before this court is the notice of application dated September 20, 2021 by which the applicant Belinda Anyango Ouma seeks the following orders:

- “ 1. That summons be and are hereby issued to the Deceased’s former employer Youth Dynamix Limited located on Gatundu Road, Hse No. 3328 Kileleswa P.O. Box 51635-00200, Nairobi to render an account of the deceased’s terminal and insurance benefits held by them.
2. That the Deceased’s former employer, Youth Dynamix Limited located on Gatundu Road, Hse No. 3328 Kileleswa P.O. Box 51635-00200, Nairobi.
3. That the Deceased’s former employer, Youth Dynamix Limited located on Gatundu Road, Hse No. 3328 Kileleswa P.O. Box 51635-00200, Nairobi be and is hereby directed to release the Deceased’s terminal and insurance benefits to a joint interest earning account held in the joint names of Awele Jackson Advocates LLP and Dindi & Company Advocates.
4. That the aforesaid sums be held by the said Advocates in trust for the estate pending the hearing and determination of the objection proceedings.



5. That the costs of this application be in the cause.”
2. The application which was premised upon sections 1A, 1B of the *Civil Procedure Act*, order 51 rule 1 of the *Civil Procedure Rules* 2010 and all other enabling provisions of law was supported by the affidavit of even date sworn by the applicant.
3. The respondent Youth Dynamix Limited (hereinafter referred to as ‘the Company’) filed a Response to the Application by way of the replying affidavit dated February 14, 2022 sworn by David Ngaruiya a Director and shareholder of the company.
4. One Dorothy Muteti Mwangangi, the only surviving parent of the Deceased also filed a replying affidavit dated March 7, 2022 in support of the application.
5. The matter was canvassed by way of written submission. The applicant filed the written submissions dated May 18, 2022 as well as the Supplementary submissions dated July 7, 2022. The Respondent relied upon her written submissions dated June 29, 2022.

### **Background**

6. The matter concerns the estate of Brian Weyama (hereinafter referred to as ‘the Deceased’) who died intestate on February 22, 2016. A copy of the death certificate Serial Number 0446702 is annexed to the petition for grant of letters of administration intestate dated February 12, 2018.
7. According to a letter dated June 27, 2016 authored by the Chief Mumias Sub-County Lubinu Location, Kakamega County. The Deceased was survived by the following persons:-
  - i. Benjamin Oduory Weyama – Father
  - ii. Dorothy Mutete Mwangangi – mother
  - iii. SOW – son aged 5 years – born out of wedlock
8. Amongst the assets comprising the estate of the Deceased was expected compensation payable under the Work Injuries Benefit Act (hereinafter ‘WIBA’) amounting to approximately Kshs 6,000,000. This compensation was to be payable to the Deceased’s estate as terminal benefits arising from a fatal accident in which the Deceased was involved during the period when he was employed by the Respondent.
9. Following the demise of the Deceased his mother Dorothy Mutete Mwangangi filed a petition dated February 12, 2018 seeking to be issued with letters of Administration in respect of the estate of the Deceased. On April 12, 2019 the court did issue a Grant to the said Dorothy Mutete Mwangangi and Benjamin Oduory Weyama. A copy of the said Grant appears as Annexure ‘DB-2’ to the Affidavit dated June 6, 2020 sworn by the said administrators.
10. Following the issuance of the grant the applicant herein Belinda Anyango Ouma who claimed to be a widow of the deceased filed objection to grant of letters of administration which protest is dated October 31, 2019. That protest is yet to be heard and determined.
11. The applicant avers that she is aware that AIG Insurance Co. Limited did pay to the respondent (the Deceased’s employer) Insurance compensation in excess of Kshs 6,000,000. She is apprehensive that due to external involuntary risks business which ordinarily face the company, the said compensation may be lost subjecting the estate of the deceased to irreparable loss. As such, the applicant prays that the said compensation be deposited in a joint interest earning account opened in the name of the Advocates of the parties pending the hearing and determination of the objection proceedings.



12. As stated earlier Dorothy Muteti Mwangangi who is a mother of the Deceased and one of the administrators of the estate filed an affidavit dated March 7, 2022 supporting this Application.
13. On its part the respondent Company confirms that the Deceased Brian Weyama was indeed an employee of the company. It is further confirmed that at the time of his unfortunate demise on February 22, 2022 the Deceased was engaged on Company business.
14. David Ngaruiya a Director of the Company averred that on February 24, 2016 the Company did write to the Director of Occupational Health and Safety informing them of the passing of the Deceased, followed by a Certificate of Dependency dated March 23, 2016. Copies of the letter and Certificate are annexed to the replying affidavit (Pages 6-8).
15. That on June 13, 2016 the Director of Occupational Health and Safety made an assessment of Kshs 6,240,000 payable under the WIBA (See page 9 of the replying affidavit). The respondent confirms that an amount of Kshs 6,265,000 was remitted to the Company by the Insurer AIG Insurance on June 21, 2016. A copy is annexed at page 10 of the replying affidavit.
16. The Company avers that it did not pay out the compensation received due to differences between the parents of the deceased and the Applicant. The Company's position is that once an Administrator for the estate is legally appointed they will proceed to remit the deceased's benefit to said administrator.
17. Further it is averred that the Company has undergone significant changes in its shareholding which culminated in a dispute before the High Court being HCCC No E197 of 2019. That the parties in that case are currently negotiating with a view to settling said dispute. One key item of their negotiation being the uncontested benefits due to the Deceased. That the Company therefore seeks the said benefits to be indicated as an asset for the Deceased and seek time to settle their issues as the question of Administration of the Estate of the deceased is being determined by the probate court.
18. Finally, the company reiterates that it is ready and willing to settle the benefits owing to the estate of the Deceased.

### **Analysis and Determination**

19. I have carefully considered the application before this court, the affidavit filed in reply as well as the written submissions filed by both parties. The only issue for determination is whether this court should order the Respondent to release the terminal benefits paid to them by the Insurer on behalf of the estate of the Deceased.
20. It is common ground that the deceased was an employee of the Company at the time he met his death. It is also not disputed that AIG Insurance Co. Ltd remitted to the Company a sum of Kshs 6,265,000 payable as compensation under the WIBA. Therefore, it is admitted by the Company that they have since June 2016 been holding this amount which is due to the estate of the Deceased. However, the Company states that it has been unable to pay out that amount due to differences regarding the process of administration of the estate between the applicant and the parents of the Deceased.
21. On her part the applicant states that she is apprehensive that the wrangles within the Company may lead to dissipation and/or loss of the entire amount due to the estate of the Deceased.
22. The fact of the matter is that there exists already a court appointed legal Administrators to the estate of the Deceased. Grant of letters of Administration Intestate was made to Dorothy Muteti Mwangangi and Benjamin Oduory Weyama on April 12, 2019. That Grant has not been revoked and/or set aside.



23. It is admitted by the applicant that the Grant issued to the Administrators has not been confirmed due to the objection filed by the applicant herself. However, the mere existence of a dispute regarding the estate regarding the estate of Deceased is not a bar to the remittance by the Company of the compensation due to the estate. The Respondents cannot use this as an excuse for their failure to remit the insurance money which they confirm the company received on behalf of the estate of the Deceased.
24. The duties of an Administrator of an estate include calling in, collecting and preserving the estate of a Deceased person. In Succession No. 3403 of 2005 *Re Estate of David Kyuli Kaindi (Deceased)* [2016] eKLR, Hon Justice William Musyoka held as follows:-
- “7. The role of personal representatives is clearly set out in the law, in the *Law of Succession Act*, Cap 160, Laws of Kenya. That role can be reduced into three (3) broad sub-roles. One, there is the duty to collect, get in and preserve the estate. The first duty is followed by the duty to pay the debts and liabilities of the estate. The last one is distribution of the estate. The personal representative is obliged to gather the estate together before he can think of settling debts and liabilities. The estate that is distributed is what remains after debts have been paid and liabilities settled.
8. It is important to note that the collection of the estate entails several things. It involves ascertaining and identifying the assets that belong to the estate. This would include collecting debts and perfecting imperfect titles. Ideally, one cannot move to distribution of the estate before they have ascertained and collected the estate, for what should be distributed is what has been ascertained and collected. It may involve suing debtors and enforcing causes of action that accrue in favour of the estate, like taking out proceedings against debtors and tortfeasors, to recover debts and damages. The other two duties should follow only after that. This would mean that where the first duty is not discharged satisfactorily the personal representative would encounter difficulties discharging the other two duties. I would repeat that debts are paid out of what has been collected, and distribution is of what is available after payment of debts and settlement of liabilities.” (own emphasis).
25. Similarly in *Re Estate of David Livingstone Loka Injene (Deceased)* the same Judge held that –
- “It should be clear from the language of section 83(b) that an administrator has a duty to get in the assets of the estate. That means that he has to ascertain the assets that belong to the estate. He has to identify them, and once he does so he has a duty to take steps to collect them and gather them and bring them within the estate. ....” (own emphasis)
26. Amongst the debts owed to the estate of the deceased include the compensation paid to the Company. This is an asset of the estate which ought to be collected and preserved for the benefit of the estate. I note that the Company has been holding on to these funds since the year 2016. The fact of the existence of a court case regarding the shareholding of the Company is not grounds for said Company to fail to remit these funds. I do agree with the Applicant that the wrangles within the Company may likely lead to the dissipation and/or loss of the funds due to the estate of the Deceased.



27. Under section 47 of the *Law of Succession Act*, the High Court inherent powers to make appropriate orders in the interest of justice and for the preservation of the deceased's estate. It reads as follows:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”

28. Rule 73 of the *P&A* also provides:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

29. I am satisfied of the merit of this application. The Company cannot continue to hold onto funds due to the estate of the Deceased indefinitely without rendering account to the Administrators of the estate. The pending dispute between the directors/shareholders of the Company has nothing to do with the estate of the Deceased. There exists legally appointed Administrators of the estate. Notwithstanding any pending objection proceedings, I find that the compensation benefits must be collected and preserved for the benefit of the estate and the beneficiaries.

30. Finally, I do allow this application and make the following orders:-

- (i) That Youth Dynamix Limited the former employer of the Deceased to render an account of the Deceased's terminal and Insurance Benefits held with them within thirty (30) days.
- (ii) That Youth Dynamix Limited is hereby directed to release the Deceased's terminal and Insurance Benefits to a joint interest earning account held in the joint names of Awele Jackson Advocates LLP and Dindi & Company Advocates.
- (iii) The aforesaid funds to be held by the Advocates in trust for the estate of the Deceased pending the hearing and determination of the objection proceedings filed by the applicant Belinda Anyango Ouma.
- (iv) The costs of the application to be met by the respondent.

**DATED IN NAIROBI THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2022.**

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**MAUREEN A. ODERO**

**JUDGE**

