



REPUBLIC OF KENYA



In re Estate of James Cleophas Otieno Okello (Deceased) (Succession Cause 416 of 2020) [2022] KEHC 14398 (KLR) (Family) (31 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14398 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 416 OF 2020

AO MUCHELULE, J

OCTOBER 31, 2022

IN THE MATTER OF THE ESTATE OF JAMES CLEOPHAS OTIENO OKELLO (DECEASED)

BETWEEN

VICTOR ONYANGO OKELLO APPLICANT

AND

MARY TERESA KWAMBOKA 1ST RESPONDENT

CHRISTINE JUMA OKELLO 2ND RESPONDENT

RULING

1. The deceased Cleophas Otieno Okello died intestate on May 2, 2017. His widow Mary Teresa Kwamboka (1st respondent) and daughter Christine Juma Okello (2nd respondent) were on June 20, 2019, following a petition filed in the High Court in Kisumu in Succession Cause No. 2 of 2018, issued a grant of letters of administration intestate. The deceased left five beneficiaries, including the respondents and his eldest son Victor Onyango Okello (the applicant). He left various properties.
2. On December 16, 2014 the respondents filed an application for the confirmation of the grant. On February 5, 2020 the applicant filed a protest against the confirmation of the grant. He was opposed to the proposed distribution. On the same day he filed the present application under section 83(e) of the *Law of Succession Act* (cap 160) and 59 of the *Probate and Administration Rules* for the respondents to be compelled to give a full and accurate account of the rent received in respect of the estate properties from the time of the deceased's death to date. In the supporting affidavit he stated that the estate had 10 two-bedroom apartments and 8 three-bedroom apartments on Ngong/Ngong/12549 with the rent of Kshs 200,000 in respect of which the respondents were not providing accounts.



3. On September 22, 2020 the cause in Kisumu was by consent transferred to this court. On June 15, 2021 the parties' counsel consented to the respondents filing and serving accounts within 60 days with the applicant filing response within 14 days upon service. The accounts were not filed.
4. The present application is dated May 17, 2022 by the applicant. It was filed under section 76 of the Act and rule 44(1) of the *Probate and Administration Rules*, and sought that the grant issued to the respondents be revoked because they had failed to proceed diligently with the administration of the estate and had failed to produce an inventory and account of administration as required under section 83(e) and (g) of the Act.
5. The application was not opposed.
6. Under section 83(g) of the Act, upon the confirmation of the grant, the administrator is required, within six months, to complete the administration of the estate and to produce to the court a full and accurate account of the completed administration. It is evident that the grant issued to the respondents has not been confirmed. There is undetermined application for the confirmation of the grant.
7. Under section 83(e) of the Act, to administrators were required within six months of the grant to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of account. It is clear that the applicant's application dated January 30, 2020 sought accounts under section 83(e) of the Act. The application was compromised in the consent of June 15, 2021. If the respondents disobeyed the consent order, the applicant should bring an appropriate application.
8. Consequently, the applicant's application fails, but I make no order as to costs as it was not defended.
9. However, so that this matter is progressed, I direct that the application dated December 13, 2019 and filed on December 16, 2019 for the confirmation of the grant and the response filed on February 5, 2020 be heard on March 6, 2023. In the meantime, the respondents have 30 days to file and serve written submissions on the application and, upon service, the applicant shall respond within 30 days.

DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 31ST DAY OF OCTOBER 2022

A.O. MUCHELULE
JUDGE

