



In re Estate of Julius Okene Okecha (Deceased) (Succession Cause 290 of 1995) [2022] KEHC 14237 (KLR) (25 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14237 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 290 OF 1995
RE ABURILI, J
OCTOBER 25, 2022
IN THE MATTER OF THE ESTATE OF LATE JULIUS OKENE OKECHA
(DECEASED)
AND
IN THE MATTER OF AN APPLICATION BY:**

BETWEEN

**ELIUD KENYA OKECHA 1ST APPLICANT
HERINE ADHIAMBO OCHIENG 2ND APPLICANT
LORNA A. KIBEBE 3RD APPLICANT**

AND

**ROBERT OKENE OKECHA 1ST RESPONDENT
FANUEL OKENE OKECHA 2ND RESPONDENT**

(For reinstatement of grant revoked and revocation of grant issued to the Respondents and appointment of applicants as administrators of the estate of the deceased Okene Okecha)

RULING

1. Before I determine the merits of the application before me, I must first give some brief history of this matter which is quite old and ought not to be pending in court considering the judiciary policy of clearing of case backlog. The succession cause herein was filed on 15/9/1995 *vide* a petition for grant of letters of administration in respect of the estate of the deceased Okene Okecha alias Julius Okene Okecha who died in the year 1959. The petitioners are Robert Okene Okecha and Fanuel Okene Okecha. Robert Okecha is now said to be deceased. No certificate of confirmation of the grant was ever sought or granted.



2. The original file and proceedings appear to be unavailable as what I have is skeleton file and in addition, the skeleton file was opened on 6/10/2020, two years ago. It is not clear whether the original file is in the archives, considering the Reference No AKS/4/4690 on the cover of this file and there being no order for retrieval of the original file from the archives.
3. However, most of the documents which were filed in the petition are available in copy formats including the petition for grant.
4. The record shows that on 4/8/1998 a grant of letters administration intestate was issued to Robert Samson Okecha, Fanuel Okene Okecha and Maurice Opodi Okecha. Again, from the material on record, it is evident that one of the administrators of the said estate, Robert Samson Okecha has since died.
5. There is no dispute that the petitioners/administrators are sons of the deceased Julius Okecha Okene. The estate is listed as comprising two assets Land Parcel No EK Dago 348 and EK Dago 335. No liabilities are listed.
6. From the P&A5 which is the affidavit in support of the petition for letters of administration intestate, the deceased had 6 wives who are listed as surviving the deceased. The list of survivors also contains 6 sons and “others” who are not named. The listed survivors are said to be related to the deceased by reason of being his wives and sons. The chief’s introducing letter is not included to introduce the known beneficiaries of the estate of the deceased.
7. Contrary to what is in P&A5, the affidavit under section 67 and rule 36 of the *Law of Succession Act* lists ‘death benefits as one of the assets.’
8. From 4/8/1998 when the grant was issued, the grant has never been confirmed. In addition, the petitioners never disclosed that the deceased was survived by any daughters and one of the widows was also not included.
9. From the summons for revocation/annulment of grant dated 28/9/2020 filed by Eliud Kenya Okecha, Herine Adhiambo Ochieng and Lorna A Kebebe, it is stated that the applicants are son and daughters of the deceased. Eliud was listed as no (j) in the P&A 5 while Herine and Lorna were never listed as children of the deceased.
10. Further, the persons who are listed in P&A 5 as wives no a, b, c, d, e and f, in the supporting affidavit sworn by the applicants herein, there is an addition of Hadija Okecha as one of the wives. Further, all the now seven widows except Alice M Okecha, the 2nd wife and widow, are said to be dead. Other survivors including Maurice Okecha, George Moses Okecha and Benard Okecha have also since died. Among those listed further in the affidavit sworn on 28/9/2020 are daughters of the deceased, one of whom, Maurine Okecha is said to be deceased while five of them, including the 2nd and 3rd applicants herein are alive but they were never listed in the P&A5 filed by the petitioners herein. The P&A 5 listed only 6 sons while the affidavit by the applicants herein lists 10 sons, three of whom have since died.
11. Back to the summons for revocation of grant as amended on December 11, 2020, the applicants herein are seeking for revocation of the grant issued to the petitioners herein. However, the applicants do not disclose when that grant was issued. I have perused the file and I find that the grant was issued to Robert Samson Okecha, Fanuel Okeme Okecha and Maurice Opodi Okecha on August 4, 1998. Nonetheless, and as deposed by the applicants herein, the said grant does not exist because it was revoked after the succession cause herein was dismissed for want of prosecution (prayer 4). This court cannot, therefore, revoke what has already been revoked. It can only revive or reinstate what has been revoked.



12. I have read the very longwinded grounds filed by the applicants a-o and their brief supporting affidavit but nowhere do they state categorically, when or on which date the matter was dismissed for want of prosecution and the grant revoked.
13. The applicants claim to be son and daughters of the deceased Julius Okene Okecha and they blame the petitioners for the delay in seeking to have the grant confirmed. They further seek that the property of the deceased which was not included in the earlier petition for grant namely, East Kisumu/Dago/335 be included and that they be substituted with the petitioners herein as the administrators of the estate of the late Julius Okecha so that they can administer the estate of the late Julius Okene Okecha. The applicants also seek order compelling the petitioners to furnish an account an inventory of all the assets and liabilities of the estate of the deceased since they started the administration of the estate.
14. On the part of the respondents who have also filed a very lengthy affidavit in reply, they have not mentioned the date of dismissal or revocation of the grant issued to them. The respondents oppose the prayers sought by the applicants especially that the applicants be made administrators of the estate. The respondents claim that the applicants have been part of the family members that have intermeddled with the estate of the deceased. That the respondents delayed applying for confirmation of the grant because they were busy battling in court to save one of the parcels of land forming part of the estate namely, East Kisumu/Dago 348 from being sold by the bank as it was used as security to guarantee a loan which was defaulted and that they finally succeeded and had the title to the said land safely discharged by the bank. They have annexed copy of the discharge and proceedings before court for recovery of the said title.
15. The respondents have also annexed some documents which include green card for Parcel No East Kisumu/Dago/335 which is not even registered in the deceased's name. The title is in the name of the Alice Mitende Okecha and Anna Nanyama Okecha from 6/10/1993, which title was closed on 6/10/1993 on subdivision and creation of new numbers 1590, 1591 and 1592.
16. The deceased Julius Okecha Okene is said to have died on 19/6/1991 at New Nyanza Hospital yet the Title No East Kisumu/Dago/335 was transferred on 6/10/1993 after his demise without any transmission and was registered in the names of two of his widows, one of whom is now said to be deceased, and subdivided into new titles.
17. Title No Kisumu/Dago/335 is also named in P&A5 as one of the deceased's assets. The petitioners in their replying affidavit admit that they did not apply for confirmation of grant because one of the assets East Kisumu/Dago/348 was charged with National Bank as security guaranteed to Risper Susan Owenga who defaulted to repay the loan and as a result, the property was advertised for sale which prompted the petitioners to first obtain a limited grant which they used to sue the bank and the loan defaulter and obtain an injunction to stop the said sale. That charge was discharged on November 14, 1997. They also claim that Parcel No 335 had been sold to Thomas Asiago on 13/5/1993 by Alice Mutende and that it is the 1st applicant's mother, Alice Mutende who is enjoying the benefits from the Parcel No 348 as it has rental houses where she is collecting rent from 1991.
18. More claims are that part of Parcel 348 is also sold by the 3 applicants to Robert Rapandu hence the estate is intermeddled. There is no denial by the applicants to these depositions by the petitioners. The sale agreements have been annexed and the green card says it all regarding Parcel No East Kisumu/Dago/335.
19. This court has just gathered a few facts from this old file which demonstrate that there is a serious problem with the estate of the deceased Julius Okecha and that even if this court was to revive the proceedings which were dismissed and the grant revoked, that will not salvage the dire situation.



20. The estate of the deceased is in shambles. Its depletion without distribution and or administration is overt and is uncontrollable unless the court takes decisive steps to salvage it for the benefit of all those persons who are beneficially entitled.
21. On the face of it, there is serious intermeddling of the estate of the deceased Julius Okene Okecha for reason that Parcel No East Kisumu/Dago/335 was transferred and subdivided without a grant for transmission and this was after the deceased's demise. What that means is that as at now, there appear to be nothing in the estate, capable of being administered and or distributed yet the dispute between the beneficiaries is escalating. Intermeddlers are described as criminals and there are serious consequences for intermeddling with the estate of a deceased person. Section 79 as read together with section 82(a) (b) (c) of the *Law of Succession Act* provide for the powers vested in personal representatives by section 82, which stem from the fact that the estate of the deceased is vested in the personal representatives. Section 82(a)(b)(c) provides that:
- "Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers-
- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death for his estate;
 - (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:
- Provided that –
- (i) the purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and
 - (ii) no immovable property shall be sold before confirmation of the grant;
 - (c) to assent, at the any time after confirmation of the grant, to the vesting of a specific legacy in the legatee thereof ..."
22. On the other hand, section 45 of the *Law of Succession Act* prohibits intermeddling and creates an offence against it. The relevant portions of that section provide that:
- "(1). Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or intermeddle with, any free property of a deceased person.
- (2). Any person who contravenes the provisions of this section shall –
- (a) be guilty of an offence and liable to a fine ... or to a term of imprisonment ... or to both such fine and imprisonment ..."
23. Whereas the applicants herein seek for reinstatement of these proceedings many years since the grant was issued and revoked and also want to be substituted as the administrators of the estate in the place of the petitioners, and want the petitioners, one of whom has since died, to account for the assets and liabilities of the estate many years down the line, there are serious allegations levelled against them of alleged intermeddling with the said estate. In other words, the applicants cannot be trusted with the administration of the estate of the deceased.



24. This is demonstrated by the sale agreements annexed to the petitioners' affidavit showing that Alice Mutende Okecha and Anna Nanyama Okecha had sold Parcel No East Kisumu/Dago/335 to Mr Thomas Asiago on 13/5/1993 and as per the annexed green card, the sellers became registered owners on 6/10/1993, five months later and subdivided the said title into 1590, 1591 and 1592. It is strange indeed that among the witnesses to that agreement is Eliud Kenya Okecha, the 1st applicant herein. In my view, with such intermeddling of the estate, no administrator can administer or distribute an estate. As at the time the petition was filed in 1995, the estate had been intermeddled hence the administrators were frustrated enough and those frustrations coupled with the threat to sell the other parcel of land No East Kisumu/Dago made it impossible for them to apply for confirmation of the grant. This was within the full knowledge of the applicants herein.
25. In succession proceedings, all assets of the deceased's estate and all beneficiaries must be disclosed and listed in P&A5. That is missing in the instant case.
26. On the part of the applicants, they are soiled with claims of the intermeddling and *prima facie*, there is some material that points towards intermeddling with the estate of the deceased by the widow of the deceased Alice Mutende Okecha with the connivance of Eliud Okecha with some purported buyers, before a petition for a grant was filed or even confirmed which is illegal and contrary to sections 82 and 45 of the [Law of Succession Act](#) cited above.
27. Section 79 of the [Law of Succession Act](#) is the section that vests the estate of a deceased person in the administrator. Where no grant has been issued, then no person has any power to administer the estate of the deceased or to sell the same. That selling is what the law at section 45 of the Act calls intermeddling. This is because before a grant is confirmed, no sale or transfer of title in an estate of a deceased person can take place. Section 79 of the [Law of Succession Act](#) provides that: –
- “The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”
28. The effect of section 79 is that the property of the estate is vested in the executor so that he exercises such power over the property as the deceased himself would have done. The executor, or administrator as the case may be, is, for all practical purposes, the legal owner, though temporarily and subject to certain restrictions, of the said property. He has the power to sell it, to mortgage or charge it, to lease or rent it out, to sue and be sued over it, in precisely the same manner that the owner would have done.
29. That was not the case here where widows took upon themselves the power that they did not have to get themselves as registered proprietors of the land belonging to the deceased before obtaining any grant and subdividing and selling the said parcel of land No East Kisumu/Dago/355. The applicants herein are aware of the state of affairs of the estate which has been intermeddled but have opted to say nothing about it and instead, they point accusing fingers at the surviving administrator who appears not to have had any control of the state.
30. From the above scenario, it is clear that the estate of the deceased Julius Okecha can only be salvaged if this court intervenes at this stage, not by granting the orders sought or wholly dismissing the application before me but by making the following orders:
1. That the orders of dismissal of these proceedings for want of prosecution were justified in the circumstances of this case. They are sustained as no confirmation of grant was sought and obtained within one year of issuance of grant on August 4, 1998.



2. That the revocation of the grants was justified in the in the circumstances of this case as two of the administrators have since died and no application was ever made to substitute the said deceased administrators.
 3. That the application for reinstatement of the proceedings and that the grant issued to the petitioners be revoked and reissued to the applicants is not merited. It is hereby dismissed on account that a court of law cannot aid and abet intermeddling and interloping with an estate of the deceased person as is in this case where the applicants herein make no mention of intermeddling yet they are aware of the same.
 4. That any immovable asset of the estate of the deceased Okecha Okene that was transferred into the names of Alice Mutende Okecha and Anna Nanyama Okecha, persons who had no grant of letters of representation after the demise of the deceased be and is hereby cancelled and the asset which is land parcel No East Kisumu/Dago/355 shall revert to the name of the deceased Okecha Okene.
 5. That the family of the late Julius Okene Okecha shall restart the succession process of petitioning for letters of administration intestate to administer his estate afresh by first collecting all the assets of the estate of the deceased as at the time of his demise and listing all liabilities if any, and identifying and listing all beneficiaries of the estate before appointing suitable administrators to petition for a fresh grant to administer the estate of the deceased Julius Okene Okecha in accordance with the law.
 6. That as the estate of the deceased appears to have been intermeddled with the title No East Kisumu/Dago/335 being transferred to two of the beneficiary widows and one who is surviving after the death of the deceased Okene Okecha, and before a grant of letters of administration intestate was issued or confirmed, I hereby nullify the transfer and subsequent subdivision and any other subsequent transfer of the subdivided portions of the said title(s) 1590, 1591 and 1592 and order that the same shall forthwith revert to the title East Kisumu/Dago/355 and in the name of the deceased Okene Okecha .
 7. The newly appointed administrators shall ensure that the mess created in the estate is cleaned.
 8. Each party to bear their own costs of these proceedings.
31. This file is closed.

I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 25TH DAY OF OCTOBER, 2022

R.E. ABURILI

JUDGE

