



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
(CORAM: CHERERE-J)
SUCCESSION CAUSE NO. 84 OF 1998
IN THE MATTER OF THE ESTATE OF EDWARD AKELO NYANGÓR (DECEASED)

BETWEEN

ROBERT ACHAPA AKELO.....OBJECTOR/APPLICANT

AND

HARRISON OUMA AKELO.....1ST ADMINISTRATOR/RESPONDENT

AND

HERINE AKINYI AKELO.....2ND ADMINISTRATOR

EMMANUEL OMONDI AKELO.....3RD ADMINISTRATOR

JUDGMENT

1. EDWARD OKELO NYANGÓR (*deceased*) died sometimes on 07.04.91.
2. Deceased's family comprised of the following:

1st wife

- 1) Grace Beldine Akelo (deceased)

Children

- 1) Jane Carren Ongiro Akelo
- 2) Patricia Beatrice Atieno Akelo
- 3) Harrison Ouma Akelo
- 4) Amos Otieno Akelo

2nd wife

- 2) Monicah Adhiambo Akelo (deceased)

Children

- 1) Malack Onyango Akelo

- 2) Patrick Owuor Akelo
- 3) Herine Akinyi Akelo
- 4) Robert Achapa Akelo
- 5) Janet Akumu Akelo
- 6) Jared Okuku Akelo

3rd wife

- 3) Gaudensia Adhiambo Akelo (deceased)

Children

- 1) Maureen Atieno Akelo
- 2) Emmanuel Omondi Akelo

3. At the time of his death, the deceased's estate comprised of the following assets:

- 1) LR. NO. 1148/1059 (*disputed property*)
- 2) KISUMU/TAMU/246
- 3) KISUMU/TAMU/646
- 4) KISUMU/MANYATTA/747
- 5) KISUMU/MANYATTA/1218
- 6) SIAYA/KOKWIRI/2055
- 7) SIAYA/KOKWIRI/2219

5. On 08.05.1998, letters of administration were issued to **Harrison Ouma Akelo (Harrison)** and was confirmed on 24.06. 2002 in his favour for the only disclosed asset LR. NO. 1148/1059.

6. **Robert Achapa Akelo (Robert)** on 19.12.2016 filed a Notice of Motion dated 28.10.2016 seeking revocation of the letters of administration and confirmation of the grant issued to the 1st Administrator/Respondent.

7. On 21.03.2017, I gave directions that the objection be heard by way of *viva voce* evidence.

8. When the cause came up for hearing on 08.03.18 and after the Objector had partially testified, I considered the law under section 76 of the Law of Succession Act (***the Act***) relating to revocation and having satisfied myself that Harrison had failed to proceed diligently with the administration of the estate gave orders revoking the letters of administration and the grant issued in favour of the Harrison Ouma Akelo (***Harrison***). With the consent of the parties, Harrison Ouma Akelo (***Harrison***), Herine Akinyi Akelo (***Herine***) and Emmanuel Omondi Akelo (***Emmanuel***) were appointed as 1st, 2nd and 3rd Administrators of deceased's estate respectively representing each of the deceased's 3 houses.

9. Section 42 of the Act provides for the taking into account during distribution, gifts made to beneficiaries by the Deceased during his life, as follows:

Previous benefits to be brought into account

Where—

- (a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or
- (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

10. Prior to his death, deceased had settled part of his estate in favor of some of his children i.e. Jane Akelo, Patricia Akelo, Harrison Akelo, Amos Akelo, Patrick Akelo, Malaki Okelo, Robert Akelo and Jared Akelo.

11. This court directed the administrators to convene a family meeting and agree on the mode of distribution of the residue of the estate taking into account previous benefits to some of deceased's children. Indeed a meeting was held on 03.06.2018 subsequent to which the minutes of the meeting were filed in court on 26.06.2018. The minutes were reduced into a consent on 16.10.2020 settling distribution of ₱ of the ₱ of deceased's assets as follows:

1) KISUMU/TAMU/246 equally to:

- i. Emmanuel Omondi Akelo**
- ii. Amos Otieno Akelo**
- iii. Jared Okuku Akelo**

2) KISUMU/TAMU/646 equally to:

- i. Emmanuel Omondi Akelo**
- ii. Amos Otieno Akelo**
- iii. Jared Okuku Akelo**

3) KISUMU/MANYATTA/747 to:

Amos Otieno Akelo

4) KISUMU/MANYATTA/1218 equally to:

- i. Herine Akelo**
- ii. Janet Akelo**
- iii. Maureen Atieno**

5) SIAYA/KOKWIRI/1982 equally to:

- i. Emmanuel Omondi Akelo**
- ii. Amos Otieno Akelo**

6) SIAYA/KOKWIRI/2055 to:

Jared Okuku Akelo

7) SIAYA/KOKWIRI/2219 to:

- i. Emmanuel Omondi Akelo**
- ii. Amos Otieno Akelo**
- iii. Jared Okuku Akelo**

12. The cause proceeded for hearing concerning the distribution of **LR. NO. 1148/1059 (disputed property)** with the court giving orders that a joint account be opened in the name of the 3 administrators and that all rents collected from the disputed asset be deposited into that account and further that Harrison renders an account of his management of the estate since 1998 when he was appointed an administrator of the estate.

13. Section 83 of the Law of Succession Act on the duties of personal representatives provides as follows:

Personal representatives shall have the following duties—

(a) to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;

(b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;

(c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);

(d) to ascertain and pay, out of the estate of the deceased, all his debts;

(e) within six months from the date 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 the account;

(f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;

(g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;

(h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, 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 the account;

(i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

14. In support of how he has managed the asset since 1998 when he appointed administrator, Harrison on 09.04.2029 filed a revenue and expenditure account and in his testimony stated that he had expended the collected revenue for the widows' upkeep, medical expenses for deceased's daughters Patricia Atieno and Jane Akelo, repairs and maintenance of the asset, payment of rates for the asset, maintenance of the deceased's rural home and legal fees among other expenses.

15. As a noun, the word "account" is defined in Black's Law Dictionary 8th Ed. in the following terms:

"A detailed statement of debits and credits between parties to a contract or to a fiduciary relationship."

16. Section 35 of the Law of Succession Act entitled the deceased's widows to means of livelihood or maintenance payable from the estate during their lifetime and section 86 provides for payment of debts owing to the estate and expenses of obtaining the grant of representation, and all other reasonable expenses.

17. It appears to me that Harrison did not open an estate account and operated the income from the disputed asset as his own. I say this because whereas it was expected that he would provided a statement of account showing credits and debits in support of the purported expenditures, none was filed. Infact, other than rates receipts for Kshs. 526,542/-, Harrison did not tender any evidence in support of his assertion that he had expended part of the earnings from the deceased's asset for the widows' upkeep and medical expenses for his two sisters. He similarly did not tender Bills of Quantities or receipts for purchase of materials in support of repairs and maintenance costs. Of the Kshs. 10,706,000/-, Harrison only accounted for Kshs. 526,542/-, leaving the balance of 10,179,458/- unaccounted for.

18. From the foregoing, I find that Harrison who was the personal representative of the deceased and his heirs failed in his fiduciary duty which arises both in Equity and under the Law of Succession, to account for the estate of the deceased.

19. I have considered the evidence on record and submissions filed for the parties. Harrison proposes that the disputed asset be sold and the proceeds be shared equally amongst the children of the deceased whereas the objector and the 2nd and 3rd Administrators propose that other family members who have not benefited from the rent collected from the asset be allowed to manage it to the exclusion of Harrison.

20. From the material placed before the court, Harrison and the co-administrators and the Objector do not see eye to eye. Harrison has in the past unlawfully managed the disputed asset as his own to the exclusion of all the other heirs of the deceased and has as stated hereinabove failed to account for proceeds from the said property. The proposal by **Robert, Herine** and **Emmanuel** though reasonable does not appear viable. The fact that there are numerous beneficiaries leaves no doubt in the kind of the court that management and accountability by either of them is bound to cause misunderstanding amongst them.

It does not appear that the beneficiaries can co-exist peacefully on the suit property nor can it be partitioned due to its nature.

21. In the circumstances, it appears that the most prudent way to have the disputed asset valued, sold and proceeds shared by the beneficiaries. I have considered the interests of all the parties and the fact that Harrison has not accounted for over 10 million collected from the disputed asset and made the following orders:

1) Harrison, Herine and Emmanuel are to procure a recent valuation of LR. NO. 1148/1059 (both the land and buildings thereon) by their preferred licensed valuer within 60 days of today's date

2) The valuation reports are to be filed into court within the stated period alongside a list of two names by each side to the dispute, of their preferred licensed auctioneers to undertake the sale of the suit property as will be directed by the court.

3) Further to the foregoing, Harrison, Herine and Emmanuel shall also file a detailed statement of account for the joint rent collection account.

4) Whatever proceeds will be realized from the sale and rents shall be shared equally amongst the surviving children of the deceased except Harrison Ouma Akelo who has benefited from the asset for the last 22 years

5) This matter shall be mentioned on 25.01.2021 to confirm compliance

6) Certificate of confirmation of grant shall issue in terms of Paragraph 11 and 21(4) above

DATED AT KISUMU THIS 21st DAY OF *October* 2020

T. W. CHERERE

JUDGE

Court Assistants

- Amondi/Okodoi

For 1st Administrator

- Mr. Odongo for Odongo Awino & Company Advs

2nd Administrator

- Present in person

3rd Administrator

- Present in person

Objector

- Present in person