



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 OKELO NYANGÓR (DECEASED)

BETWEEN

ROBERT ACHAPA AKELLO.....OBJECTOR/APPLICANT

AND

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

AND

IN THE MATTER OF HARRISON OUMA AKELO,

HERINE AKINYI AKELO AND

EMMANUEL OMONDI AKELO.....JOINT ADMINISTRATORS

RULING ON APPLICATION DATED MADE BY THE OBJECTOR/APPLICANT ON 08TH APRIL, 2019

TO CROSS-EXAMINE THE 1ST ADMINISTRATOR/RESPONDENT

Background

1. **HARRISON OUMA AKELO** (*hereinafter referred to as the 1st Administrator/Respondent*) was issued with letters of administration of estate of **EDWARD OKELO NYANGÓR** (*hereinafter referred to as the deceased*) on 08th May, 1998.
2. The 1st Administrator/Respondent was issued with a Certificate of Confirmation of the grant in his favour on 24th June, 2002.

Application

3. **ROBERT ACHAPA AKELO** (*hereinafter referred to as the Objector/Applicant*) on 19th December, 2016 filed a Notice of Motion dated 28th October, 2016 and filed moved the court seeking revocation of the letters of administration issued to the 1st Administrator/Respondent.
4. On 21st March, 2017, I gave directions that the objection be heard by way of *viva voce* evidence.
5. When the cause came up for hearing on 08th March, 2018 and after the Objector/Applicant had partially testified, I gave orders revoking the letters of administration and the grant issued in favour of the 1st Administrator/Respondent. With the consent of the parties, the Administrator/Respondent, Herine Akinyi Akelo and Emmanuel Omondi Akelo were appointed 1st, 2nd and 3rd Administrators of deceased's estate respectively representing each of the deceased's 3 houses.
6. The hearing resumed on 08th April, 2019 starting with the 1st Administrator/Respondent's case. though served did not oppose the application or attend court when it came up for hearing on 6th May, 2019. The 1st Administrator/Respondent and his witness were cross-

examined by the 2nd and 3rd administrators.

7. On that day, Mr. Odongo for the 1st Administrator/Respondent applied for an adjournment and when the Objector/Applicant asked for leave to cross-examine the 1st Administrator/Respondent which Mr. Odongo opposed and I reserved the ruling.

8. I have considered the application in the light of Order 18 of the Civil Procedure Rules relating to hearing of suit and examination of witnesses. The main parties to these objection proceedings are essentially the Administrator/Respondent and the Objector/Applicant. I acknowledge that there was an inadvertence on the part of the court in allowing the co-administrators to cross-examine the 1st Administrator/Respondent and his witness in place of the Objector/Applicant who's the main party to this cause.

9. The provisions of Section 3A of the Civil Procedure Act gives this court inherent power to make such orders as may be necessary for the ends of justice to be met. Ends of justice cannot be seen or be said to be met if the Objector/Applicant is denied a right to a fair hearing guaranteed by Article 50(1) of the Constitution.

10. Accordingly, for reasons set out above, the Court makes the following orders:

1) The evidence by the 1st Administrator/Respondent and his witness taken in cross-examination by the co-administrators is expunged from the record

2) The 1st Administrator/Respondent and his witness shall be recalled for cross-examination by the Objector/Applicant

3) Any other witness that the 1st Administrator/Respondent shall present will *mutatis mutandis* be cross-examined by the Objector/Applicant

4) The Objector/Applicant shall present his case and if he so wishes may call the 2nd and 3rd Administrators or any other person as his witness.

11. It is hereby ordered

DELIVERED AND SIGNED IN KISUMU THIS 27th DAY OF June, 2019

T. W. CHERERE

JUDGE

In the presence of:

Court Assistant - Felix

Objector/Applicant - Present

1st Administrator/Respondent - N/A

2nd Administrator - N/A

3rd Administrator - N/A

For the 1st Administrator/Respondent - Mr. Kaniaru hb for Mr. Odongo