



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 188 of 2018

IN THE MATTER OF THE ESTATE OF JOE WANDAGO OKWACH

RULING

1. The Court has before it two petitions filed relating to the Estate of Joe Wandago Okwach (“the Deceased”). The background to this matter is one that holds resonance for the legal profession. The Deceased was an Advocate who had a thriving practice. Sadly, he passed away on 2nd July 2017 after a long battle with cancer. Notwithstanding he was able to carry on working and build a substantial client base.

2. The Deceased was a “sole practitioner”. As required by the Rules of the Law Society of Kenya, when the Deceased applied for his practicing certificate, he was required to appoint one or more advocates who could take over his practice should he be unable to run the same for whatever reason. The Deceased had, in his application for a practicing certificate for the year 2017 appointed “*Rachier & Amolo Advocates to manage and conclude all pending work and wind up the law firm in the event he was unable to practice for whatever reason.*”. That is confirmed in a Letter dated 24th July 2017 from the Compliance and Ethics Committee of the Law Society of Kenya. The Letter appears at **Exhibit ADOR-3**. Notwithstanding such appointment, by reason of the Court of Appeal decision in ***Amboko v Standard Chartered Bank and Law Society of Kenya***, the process is not automatic. The intended administrator/manager must seek appointment from the Court in order to comply with the Law of Succession Act Cap 100.

3. The Deceased nominated a firm not an individual Advocate. The Court questioned whether the entire firm of Messrs Rachier & Amolo could act as administrator/manager raising issues of accountability. The Petitioning firm has therefore it has nominated its Senior Partner Mr AMBROSE DICKSON OTIENO RACHIER Advocate to manage the firm and wind it up. The Petition before the Court is dated 15th February 2018 and was filed on 16th February 2018. It seeks for a special limited Grant for the purposes of accessing the Bank Accounts that were in the Name of Messrs OKWACH & COMPANY ADVOCATES for which the Deceased was the sole signatory. The List runs to 20 accounts. These were both office accounts and client accounts. The Petitioner states in his Affidavit that he has been and continues to administer the office of the Deceased since his demise, without access to the Bank Accounts, and that the process is becoming increasingly more and more difficult without funds.

4. The Petitioner states at paragraph 9 of his Supporting Affidavit that he would like to access the bank accounts. As anyone who has run a legal practice will appreciate, there are numerous day to day expenses as well as overheads to be met. That includes utility bills, rent and running costs. In addition, there is the issue of staff, either salaries will have to be paid, if not the question of severance pay arises. Further, the Clients of the firm would at some point either want their matters dealt with or transferred to a different Advocate meaning payments on account will have to be refunded. The Petitioner states in his Supporting Affidavit that the payments he needs to make are:

- (a) To offset salaries in arrears and accruing of the members of staff of Okwach & Company Advocates;
- (b) To pay office utility bills and running costs that are in arrears and accruing; and
- (c) To remit monies held on behalf of clients in the clients’ accounts.

5. At the same time the family and dependants of the Deceased have also filed a Petition for letters of administration intestate for the residual estate. It is intended that the Widow (JULIA AKINYI OKWACH), the Deceased’s Mother and two Children shall be the administrators.

6. The intended advocate-administrator/manager filed a further Petition on 26th February 2018 for letters of administration ad litem. That sought appointment for the administrator/manager to stand in the shoes of the Deceased in ***Malindi Civil Appeal (CA) No 38 of 2017*** in which the Deceased was, before his death, a Respondent.

7. **Section 54** of the **Law of Succession Act** gives the Court jurisdiction to issue limited grants from particular purposes. It provides

“54. A Court may, according to the circumstances of each case limit any grant of representation which it has jurisdiction to make,

in any of the forms described in the Fifth Schedule to this Rule.”.

Rule 36 of the **Probate and Administration Rules** provides;

“36. (1) Where owing to special circumstances, the urgency of the matter is so great as it would not be possible for the Court to make a full grant of representation to the person who would be by law entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defuncti of the estate of the deceased

(2) Every such grant shall be in Form 47 and be expressly limited for the purpose only of collecting in and receiving the estate and doing such acts as may be necessary for the preservation of the estate and until a further grant is made

(5) Copies of the proceedings and of the grant when issued shall be served upon such persons (if any) and in such manner as the court shall direct.”.

8. It is clear from the Law Society’s Rules and the prescription for appointment of an Advocate *inter vivos* that any deceased advocate’s practice must be managed and wound up in a manner that is equitable to his or her clients and any potential beneficiaries. By law, the only person who can run a law firm is an Advocate with the requisite qualifications and current practicing certificate. In this case, it appears that none of the persons who would be entitled to petition for full grant fall within that category. In the circumstances, the Court must appoint an advocate. As stated, the operation of the *inter vivos* appointment is not automatic by reason of the dicta of the Court of Appeal in **Civil Appeal No 162 of 1999 Administrators of the Estate of Maxwell Maurice Ombogo vs Standard Chartered Bank Kenya Ltd and Law Society of Kenya.**

9. This Court is satisfied that there is a real and pressing need for the appointment of an Advocate to manage, run and eventually wind up the practice of the Deceased. The Deceased during his lifetime appointed such a person. This Court interprets that as a partial Will. That will as expressed is not challenged. In fact the Petitioner/Applicant is supported both by the Widow and Dependents as well as the Law Society in this Application.

10. In the circumstances, on the Application filed on 16th February 2018, this Court does grant Letters of Administration ad colligenda bona defuncti to the Petitioner, Ambrose Dickson Otieno Rachier. Such Letters of Administration shall authorise the Applicant to do the following acts:

- (1) Carry out an Inspection and Audit of the firm to ascertain how many files/clients with matters pending are on the firm’s books;
- (2) Contact those clients and inform them that he will manage and run the firm until such time that it is appropriate to wind it up
- (3) Access the Bank Accounts of the firm limited to Client Accounts and Office accounts as set out in the Application;
- (4) Pay salaries to existing employees of the firm, that is those that were employed before the Deceased passed away;
- (5) Pay outstanding utility bill and overheads including rent and service charges.
- (6) Charge and be paid a reasonable fee for the work done;
- (7) Wind up the firm within a reasonable period.
- (8) Should the Administrator-Advocate use the Headed notepaper of Messrs Okwach & Company Advocates, he should signify on that document that he does so as administrator ad colligenda bona defunctis

11. Further, the Advocate/Administrator shall upon winding up the firm, account to the Widow and Dependents for any profits remaining. Such profits to fall to the Estate automatically upon winding up. He shall also file an Affidavit setting out the following:

- (a) a full and accurate inventory of the assets and liabilities of the Deceased’s Firm and
- (b) a full and accurate account of all dealings therewith from the date of death up to the date of the account
- (c) a full and accurate inventory of such of the assets and liabilities of the deceased’s firm with which they have had dealing and
- (d) a full and accurate account of all those dealing from the date of death up to the date of the account including those debts that have been paid;

It is noted that by the Administrator-Advocate’s Affidavit filed on 15th March 2018, he has complied with those requirements in part.

12. For the sake of completeness it should be recorded that the Petitioner filed a second application relating to outstanding litigation where the Deceased was a party. In relation to the Second Application filed on 26th February 2018, this Court has already made its Order granting

the Application on the terms this Court considers most efficacious and least likely to attract challenge. The Court has on 28th February 2018 made such an order appointing the Advocate –Administrator, Letters of Administration ad litem within the meaning of paragraph 14 of the Fifth Schedule. That paragraph provides:

“When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein and carried into complete execution.”.

13. Notwithstanding that the Order has already been made, in the interests of clarity and ease of reference the exact terms of that Order are set out hereunder:

*“**THAT** the Petitioner AMBROSE DICKSON OTIENO RACHIER be and is hereby appointed Administrator ad litem for the Estate of the Late JOE WANDAGO OKWACH SC who died 2nd July 2017. The Appointment is limited to the purposes of being named as Administrator for the purposes of all litigation associated with Malindi Civil Appeal (CA) No. 38 of 2017 and thereafter to represent the Deceased and/or the Estate in that matter and do all necessary acts associated with such representation until a final decree has been made therein and carried on to complete execution. The Administrator ad litem shall as soon as feasible thereafter provide a true and just account of the outcome of the litigation to the Court and the Estate of the Deceased.”.*

Addendum: The Court is not inclined to make a blanket order for All litigation in which the Deceased may have been a Party. The Court takes the view that such an Order would engender confusion and lack of accountability. In the circumstances, the Petitioner is at leave to extract an order for letters of administration ad litem in relation to each file where it transpires that the Deceased was a party as and when that evidence is filed. This Court deems that a separate application is not required as the blanket order was enunciated on 28th February 2018.

It is so Ordered,

FARAH S. M. AMIN

JUDGE

Dated, Delivered and Signed on this the 28th March 2018.

In the Presence of:

Court Assistant: Patrick Mwangi

Petitioner: Mr Ngoloma and Mr Munyuwa