



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**SUCCESSION NO.370 OF 2006**

**IN THE MATTER OF THE ESTATE OF: PHILIP LEO APOPA.....DECEASED**

**AND**

**IN THE MATTER OF AN APPLICATION BY:**

**GEORGE ONYANGO APOPA**

**FREDRICK APOPA.....PETITIONERS**

**JULIUS APOPA**

**DOMINIC APOPA**

**AND**

**IN THE MATTER OF AN OBJECTION**

**THOMAS OCHIENG APOPA**

**ROBERT ONYANGO APOPA.....OBJECTORS**

**R U L I N G**

On 20.4.2015 this court ordered that this matter be heard by way of viva voce evidence. The same has not been heard to date due to various intervening factors including the applications which are pending in this matter. The objector subsequently on 3.11.2015 filed a motion seeking the following orders:

- 1. Pending the hearing and determination of the application dated 27th October 2014 for confirmation of grant, the 1st objector's application be and is hereby allowed by the High Court to sell the property Kisumu Plot No.Block 5/75 Municipality and to collect the monies for paying the University fees for the 1st objectors/applicant's son.**
- 2. All the monies that have been collected by the petitioners for their own use since November 2005 to date is Kshs.6 million and that the respondents be stopped from collecting the same.**

His affidavit dated 2.11.2015 contains as part of the annexures the University documents for his son. He claims that the rent collected from the property which belonged to the deceased is enjoyed by the respondents. The respondents apparently did not file any response even after this court granted them several adjournments.

The court has also perused the entire record which shows that there are pending applications which

the parties choose not to prosecute. This informed the court to order that the best way for the matter to proceed by way of viva voce evidence so as to ventilate all the issues once and for all.

The applicants application cannot be granted as prayed for the simple reason that Block 5/75 forms part of the capital assets of the estate. This can only be dealt with once all the parties including those who are not administrators are heard. However it appears that the respondents who are co-petitioners with the applicant are enjoying rents from the estate as claimed by the applicant. This fact was not controverted at all.

The amount so far collected is only within the respondents knowledge. However an account ought to be produced even if it is for the benefit of the ultimate distribution.

The applicant alleges that they have todate collected Kshs.6 million since the year 2007.

In support of his contention he has attached a copy of a receipt dated 11.2.2006 for one Teresa Bosire who seemed to be a tenant in the premises. Its the duty therefore for the respondent to collect and preserve the deceased's estate as per the grant issued to them. The said grant in which the applicant is still a party has not been revoked or annulled. They therefore have an obligation to the court to provide accounts for all that they have collected and how they have utilised

Consequently, the court in protecting both the interest of the estate as well as the applicant makes the following orders:

1. **That within the next 21 days the respondents jointly and severally ought to provide accurate record of all the rents collected from the year 2005 todate and how the same has been utilised.**
2. **From the rents collected a cheque should be prepared within the next 21 days in favour of Moi University being fees payment for Apopa Kenneth Otieno.**
3. **The parties should proceed to set the matter for hearing without further delay.**
4. **Costs in the cause.**

**Dated, signed and delivered this 16th day of March 2016**

**H. K. CHEMITEI**

**J U D G E**