



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**PROBATE AND ADMINISTRATION**

**SUCCESSION CAUSE NO. 151 OF 2009**

**IN THE MATTER OF: THE ESTATE OF ALICE ORIEDO OKENG'O alias ALICE AKENG'O  
ORIEDO (Deceased)**

**AND**

**ISAAC INGATI ABONG'**

**CAROLYNE AYOTI ORIEDO.....PETITIONERS**

**VERSUS**

**KENYA COMMERCIAL BANK LIMITED.....RESPONDENT**

**RULING**

The Petitioners filed an application dated 23rd April, 2012 seeking to have the Respondent show cause why it cannot release monies due to the estate herein. The Respondent filed a Notice of Preliminary Objection dated 23rd April, 2013. The main issue being raised in the Preliminary Objection is that the Respondent's Retirement Benefits Scheme has its own dispute settlement mechanism and the Petitioners have not pursued that mechanism. It is further contended that benefits payable under the scheme shall not form part of the assets of a deceased member's estate but shall be dealt with under the rules of the scheme.

I have through through the preliminary objection and the three authorities cited by Mr. Mukele for the Defendant. The preliminary objection herein will not settle the dispute once and for all. By telling the court that the defendant's scheme has its own rules does not preclude the jurisdiction of the court to call upon the Defendant ad find out how much is due to the Petitioners. There is already a confirmed grant which indicates that there is money being held by the Defendant. If the Defendant's position is that it does not hold any money, then the matter can proceed to hearing and determination can be made. If the Defendant acknowledges that it is holding some money but would like the Petitioners to follow the in-house rules, it can provide the petitioners with the relevant forms and procedure to be followed and thereafter record a consent in court.

I do find that the preliminary objection is not capable of resolving the dispute. Even if it is granted the dispute will still subsist and will subsequently end up in court. The Petitioners are simply trying to effect the confirmed grant. In the end, the Preliminary Objection is hereby dismissed with costs to the Petitioners.

Dated and signed this **25th** day of **February, 2015**

**Said J. Chitembwe**

**JUDGE**

Delivered and countersigned on this **18<sup>th</sup>** day of **March 2015**

**Ruth Sitati**

**JUDGE**