



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Succession Cause 505 of 2002

IN THE MATTER OF THE ESTATE OF EPHER OKELLO OPERE (DECEASED)

JACQUELINE ANYANGO OKELLO

IRENE AKINYI OKELLO.....APPLICANTS

VERSUS

ANTONY OMONDI OKELLORESPONDENT

R U L I N G

By summons dated 06.04.06 stated to be brought under rules 47, 49, 83 (sic) and 86 (sic) of the Probate and Administration Rules made under the Law of Succession Act, Cap.160, the applicants applied for the following orders:-

1. That the respondent, Antony Omondi Okello, do forthwith deliver to the court and the applicants within one (1) week of the order or within such time as the court may direct, a full and true accounts in respect of all income and outgoings of the deceased's estate from the date of the grant till now.
2. That the respondent do supply to court a full and true inventory of all assets of the estate.
3. That Mr. John Ayeicho Kich t/a Hectares & Associates, Valuers and Estate Agents be appointed forthwith to collect the rent and manage the deceased's estate.
4. That the respondent be restrained from collecting rent from the deceased's estate.
5. That the respondent be ordered to apply for confirmation of the grant within thirty (30) days from the date of the order or within such shorter or longer time as this honourable court may impose.

The grounds upon which the application is based are contained in the affidavit of Jacqueline Anyango Okello sworn on 06.04.06. The said grounds are essentially that the applicants are children of the deceased and listed among the deceased's beneficiaries; that their step-mother, Pamella Okello and their elder brother Antony Omondi Okello (respondent) were appointed administrators of the estate of Epher Okello Opere, who was the applicants' and the respondent's father, on 08.07.02; that Pamela Okello was the applicants' step-mother who died in 2003 leaving the respondent as sole administrator of the deceased's estate; that the deceased left several landed properties plus motor vehicles some of which are listed in the affidavit of Jacqueline Anyango Okello (1st applicant) sworn on 06.04.06 but that the

respondents never mentioned any of the said assets; that previously the respondent had filed Succession Cause No.2646 of 2001 on 30.10.01 seeking limited grant for purposes of running the deceased's estate and named in that cause some properties of the deceased including L.R. No.92/1089/8 but failed to name any properties of the deceased when applying for grant in the present cause despite being aware of such properties; that all title documents for all the deceased's parcels of land are held by the respondent and the applicants are apprehensive that the respondent may illegally sell the properties as he has already sold the deceased's motor vehicles; and that the respondent continues to receive rent for the Nairobi South 'B' property (Rental House – Riverbank Estate) and the applicants do not know where the rent goes.

Arising from the applicants' apprehension based on the foregoing, the applicants urge that pending confirmation of the grant, the respondent be not allowed to continue collecting rent from the deceased's properties and that the role be left to an estate agent.

Hearing of the application took place before me on 05.12.06 whereat the applicants were represented by learned counsel, Mr. O.J. Nyawara while the respondent was represented by learned counsel, Mr. A.O. Weda. The two Advocates made submissions in support of their respective clients' cases.

Respondent's counsel informed the court that the respondent has no problem in rendering accounts as per prayer 1; no problem in supplying a full and true inventory of all the deceased's assets in terms of prayer 2 as long as he knows the said assets. Counsel, however, said the respondent objected to prayer 3 asking that an estate agent be appointed to collect rent from and manage the deceased's estate. Counsel also said the respondent objected to being restrained from collecting rent from the deceased's estate. In respondent's counsel's view, the granting of prayers 3 and 4 would derogate from his role as a beneficiary and administrator of the deceased's estate.

As regards prayer 5 that the respondent be ordered to apply for confirmation of the subject grant within 30 days or within such shorter or longer period as the court may impose, respondent's counsel opposed the prayer on the ground that in his view it conflicts with prayers 3 and 4. Counsel said the respondent was not opposed to applying for confirmation of the grant to him but maintained that the conditions precedent for an application for confirmation had not been fulfilled and that this would be clear when he files accounts of moneys handled by him as administrator.

Respondent's counsel urged as follows:-

- (a) That prayer 1 be modified in accordance with the concession he had made.
- (b) That prayers 3 and 4 be refused.
- (c) That the court withholds a decision on prayer 5 pending filing by the respondent of the accounts and inventory called for under prayers 1 and 2.

In reply, applicants' counsel submitted that there is no conflict between prayer 5 on one hand and prayers 3 and 4 on the other. As regards prayers 1 and 2, applicants' counsel submitted that the furnishing of accounts and inventory are statutory duties required of an administrator and that the applicants did not come to court to get concessions on prayers 1,2 and 5. Applicants' counsel reiterated the prayers in the summons.

I have given due consideration to the arguments and counter-arguments of the parties through their respective Advocates.

In the affidavit of Antony Omondi Okello and Pamela Okello sworn on 30.10.01 in support of their petition for letters of administration *ad colligenda* bona under section 67 of the Law of Succession Act in High Court (Nairobi) Succession Cause No.2646 of 2001, the petitioners therein stated at paragraph 6(c) that:

'The deceased (Epher Okello Opere) was the registered owner of the property known as L.R.

No.92/1089/8 Riverbank Estate, Nairobi among others, which are currently rented out and it is therefore necessary that the rent be collected monthly' [underlining added.]

However, when petitioning for full grant regarding the same deceased's estate under the present High Court Succession Cause No.505 of 2002, Pamela Okello and Antony Omondi Okello (same petitioners as in High Court Succession Cause No.2646 of 2001) stated as follows under paragraph 6 of their supporting affidavit sworn on 25.02.02:

'The following is a full inventory of all assets and liabilities by the deceased at the date of his death (including assets, if any] as have arisen or become known since that date.

Assets

(a) GENERAL DAMAGES

Total estimated value Shs.100,000/= [underlining added].

The applicants herein interpret the omission to list in the affidavit sworn on 25.02.02 L.R. No.92/1089/8 among the deceased's assets as a deliberate ploy by the administrators to conceal the existence of L.R. No. 92/1089/8. When that omission is viewed in light of the subsequent non-accounting by the administrators for the deceased's estate the omission is rendered highly suspicious, to say the least.

The affidavit of Pamela Okello and Antony Omondi Okello sworn on 25.02.02 and filed on 01.03.02 acknowledges the applicants herein, Jacqueline Anyango Okello and Irene Akinyi Okello as being among those who survived the deceased. The applicants are certainly entitled to be informed of how the deceased's estate is being managed. The respondent as the only remaining administrator has failed in not giving an account to the other beneficiaries on how he is managing the estate. I also note that there are minors among those who survived the deceased, Epher Okello Opere. The law requires that there should be at least two administrators where minor beneficiaries are involved. The respondent does not seem to have arranged for his co-administrator who subsequently died to be substituted as such administrator. That is another failure on the respondent's part.

I make the following orders:-

- (a) The respondent, Antony Omondi Okello to file and serve within 30 (thirty) days full and true accounts in respect of all income and outgoings of the deceased's estate from the date of the grant issued on 08.07.02 until 31.12.06 (Prayer 1);
- (b) The respondent, Antony Omondi Okello to file and serve a full and true inventory of all assets of the estate (Prayer 2).
- (c) Consideration of prayers 3,4 and 5 is deferred pending filing and service of the accounts and inventory ordered at Prayers 1 and 2 above.
- (d) Mention on 22.01.07.

Orders accordingly.

Delivered at Nairobi this 18th day of December 2006.

B.P. KUBO

JUDGE