



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**SUCCESSION CAUSE 2106 OF 2003**

**IN THE MATTER OF THE ESTATE OF JOYCE AKINYI HAFLIGER (DECEASED)**

**JUDGMENT**

On 23.09.03 Hannah Odera Ayieko filed summons under rules 17 (1) and 16 (1) of the Probate and Administration Rules as well as under section 68 (1) of the Law of succession Act (Cap. 160) applying for leave to file objection out of time to a petition filed by one Bob Rashid Ayieko Ochilla alias Bob Marley Rashid Ayieko (“Bob”) on 30.07.03 for a grant to him of letters of administration intestate of the estate of the deceased herein. The summons by Hannah Odera Ayieko was supported by her affidavit sworn on 22.09.03. In the said affidavit the applicant, inter alia, deponed that she became aware only on 15.09.03 that Bob had petitioned for the subject grant and that the said Bob had claimed to be son of the deceased, former Joyce Akinyi Ayieko who later became Joyce Akinyi Hafliger. The applicant said she made her discovery a day after expiry of the period for filing objection to issuance of the grant applied for by Bob. It was the applicant’s case that Bob based his petition for letters of administration of the deceased’s estate principally on the false claim that he was the deceased’s son.

On 08.10.04 the applicant was granted leave by the High Court to file objection to issuance of the subject grant. She was represented by Miss Ruth Wanyoyi of Wasuna & Co. Advocates while Bob Rashid Ayieko alias Bob Marley Rashid Ayieko was represented by Mr. Kwame of Kwame & Associates Advocates who had filed grounds of opposition to the objector’s application.

On 15.10.03 Hannah Odera Ayieko filed her objection to issuance of the grant of letters of administration to Bob Rashid Ayieko Ochilla alias Bob Marley Rashid Ayieko as administrator of the deceased’s estate on the following grounds :-

1. That the objector ranks first in priority for grant of letters of administration to the estate of the deceased.
2. That the application of Bob together with the supporting documents are tainted with outright falsehoods, misinformation and non-disclosure of material facts.
3. That the objector had neither renounced her rights to apply for grant nor consented to the application by Bob.

The bottom line of the objector’s application was that no grant should be issued to the petitioner, Bob Rashid Ayieko Ochilla alias Bob Marley Rashid Ayieko.

On 14.11.03 Hannah Odera Ayieko filed petition by way of cross-application/petition for grant to herself of letters of administration intestate of the estate of the deceased Joyce Akinyi Hafliger. The cross-application or petition was supported by the applicant’s affidavit sworn on 14.11.03. The principal

grounds relied on in the cross-application are that Bob Rashid Ayieko Ochilla alias Bob Marley Rashid Ayieko was not the son of the deceased Joyce Akinyi Hafliger as Joyce never gave birth. The applicant Hannah deponed that Bob was her grandson, being the son of her son Joash Ayieko who used to live in Nairobi but later shifted to Mombasa and Bob went to live with his Muslim uncles but the objector did not know where. Accordingly to the objector and cross-petitioner, she was the sole dependant of the deceased Joyce Akinyi Holier.

Hannah Odera Ayieko the objector/cross petitioner proceeded to aver that the deceased died in London on 24.01.03 where she used to reside with her husband Hans Peter Hafliger whose home was, however, in Switzerland. Hannah proceeded to London following the deceased's death and thereafter to Switzerland where the deceased's body was buried. Hannah produced her passport which showed that she left Nairobi on 04.02.03, arrived in Switzerland on 05.02.03, left Switzerland on 16.02.03 and arrived back in Nairobi on 17.02.03. She also produced two coloured photographs, one of which showed her holding the head of someone she said was her deceased daughter Joyce Akinyi Hafliger and a second photograph showing her (Hannah) holding a wreath of flowers. Hannah said both photographs were taken of her in Switzerland where she had gone to attend the deceased's funeral.

Hannah added that after the burial of the deceased in Switzerland, she and her son-in-law, Hans Peter Hafliger discussed how she was to survive after her daughter's death and the son-in-law authorized her to administer the deceased's property in Mombasa, Kenya. The said property comprised a rented house her son-in-law had built for the deceased during her lifetime on plot No. L.R. MN/II/2545 Title No.CR 19106 situated at Kiembeni in Mombasa North. Hannah stated that she was given to understand there was accumulated rent amounting to Kshs.300,000/= from the house and the money was in the possession of For Properties Limited, Housing Estate Developers who used to collect rent for the deceased's Kiembeni house on agency basis for the deceased during her lifetime. Hannah said her son-in-law authorized her to administer the house and derive her livelihood from its rental income.

Regarding her grandson, Bob, Hannah pointed out that he told lies by describing himself as the deceased's son and that he told a further lie by claiming to have been born in Karachuonyo Location and by filing a birth certificate purporting that he was born in Karachuonyo Location on 05.10.83.

In addition to her affidavit evidence, Hannah Odera Ayieko the objector/cross-petitioner appeared and testified before me twice. The first time was on 18.10.04. I have already summarized above the evidence she gave on oath. Her evidence was supported in material particulars by the evidence of her son Walter Ayieko, former Senior Chief of West Kanyaulo Location, Rachuonyo District. Walter accompanied her to Switzerland for the deceased's funeral and he confirmed that the deceased's widower Hans Peter Hafliger authorized the objector/cross-petitioner Hannah Odera Ayieko to administer the deceased's Kiembeni, Mombasa house. Walter produced a postal search showing that the house in question was indeed registered in the name of Joyce Akinyi Hafliger the deceased herein.

At the conclusion of the testimony of Hannah and Walter on 18.10.04 I set the cause down for judgment on 03.11.04. However, upon perusing the file to prepare the Judgment, I came across disturbing documents ascribed to Hannah Odera Ayieko to the effect that she had never instructed Miss Wanyonyi to act for her in this matter. The documents included a letter dated 05.11.03 addressed to the High Court Registrar, Nairobi. The letter purported to have been thumb – printed by the said Hannah Odera Ayieko. I also came across an undated affidavit ascribed to the same Hannah which purported to have been sworn by her before J.R. Kowade, Commissioner for oaths. On 03.11.04 I did not deliver the Judgment but drew Miss Wanyonyi's attention to the above documents. She was taken aback and said she was not aware of their existence. At her suggestion I summoned Hannah Odera Ayieko back to court and also summoned Mr. J.R. Kowade, Advocate and Commissioner for Oaths. Hannah disowned the letter and the affidavit ascribed to her. Mr. Kowade acknowledged the seal and signature ascribed to him on the undated affidavit as his. He, however, clarified that as Commissioner for Oaths he gets numerous affidavits like that, prepared elsewhere for him merely to commission. He described the subject affidavit as one such affidavit and disowned having had anything to do with its contents.

Miss Wanyonyi confirmed that Hannah Odera Ayieko instructed her to act for her in this matter from

beginning to end. She (Miss Wanyonyi), however, recalled an anonymous letter purportedly from the Ayieko family threatening her with dire consequences if she did not stop acting for Hannah Odero Ayieko. When Hannah was shown the anonymous letter she denied having anything to do with it.

It seems to me that there have been several other vested interests in the deceased's estate eager to take a foothold in it.

When this matter first came before me on 18.10.04 Miss Wanyonyi appeared for the objector Hannah Odero Ayieko. There was no appearance for Bob Rashid Ayieko Ochilla alias Bob Marley Rashid Ayieko, neither did he himself attend. The court was informed by Miss Wanyonyi that the firm of Kwame & Associates was on record as acting for Bob Rashid Ayieko Ochilla alias Bob Marley Rashid Ayieko and that 18.10.04 was taken as hearing date by consent between the two law firms at the Registry. Hearing, therefore, proceeded without the participation of Bob or his advocates.

The objector/cross-petitioner Hannah Odero Ayieko told this court that she is semi-literate and can read only the Bible in Luo. She gave her age as around 80 years. She was very clear and consistent in her evidence and came through as a straightforward old lady whose only interest was to pursue what she genuinely believed to be her entitlement. Her claim that her son-in-law Hans Peter Hafliger authorized her to be sole administrator and beneficiary of the deceased's estate consisting of Plot No.LR. MN/II/2545 at Kiembeni, Mombasa being Title No.CR. 19106 measuring approximately 0.0180 hectares was fully supported by her son, Walter Ayieko Ochilla, ex-Senior Chief of West Kanyaulo Location, Rachuonyo District who retired from being Senior Chief early this year.

I believe that Hannah Odero Ayieko and her son Walter Ayieko Ochilla told the truth and I accept their evidence in support of Hannah's objection to issuance to Bob of a grant of letters of administration intestate of the deceased's estate and also in support of Hannah's cross-petition for issuance to herself of a grant of letters of administration intestate of the deceased's estate. Accordingly, I make the following orders:-

1. The objection filed on 15.10.03 by Hannah Odero Ayieko to issuance of a grant of letters of administration intestate to Bob Rashid Ayieko Ochilla alias Bob Marley Rashid Ayieko of the estate of Joyce Akinyi Hafliger (deceased) is hereby upheld and the petition filed on 30.07.03 by the said Bob Rashid Ayieko Ochilla alias Bob Marley Rashid Ayieko for a grant to him of letters of administration intestate of the estate of the said Joyce Akinyi Hafliger (deceased) is hereby dismissed.
2. The petition by way of cross-application filed by Hannah Odero Ayieko on 14.11.03 for a grant to her of letters of administration intestate of the estate of Joyce Akinyi Hafliger (deceased) is hereby granted.
3. Costs in the cause.

Orders accordingly.

**Delivered at Nairobi this 30<sup>th</sup> day of November, 2004.**

**B.P. KUBO**

JUDGE