



REPUBLIC OF KENYA



In re Estate of Amos Acklays (Deceased) (Family Miscellaneous Civil Case E070 of 2024) [2025] KEHC 5901 (KLR) (9 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5901 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
FAMILY MISCELLANEOUS CIVIL CASE E070 OF 2024**

A MABEYA, J

MAY 9, 2025

**IN THE MATTER OF THE ESTATE OF AMOS ACKLAYS (DECEASED
AND
IN THE MATTER OF THE PROTEST**

BETWEEN

SAMUEL S OKETCH 1ST PROTESTOR

JEREMIAH J OBIERO 2ND PROTESTOR

AND

PAULINE K KOKY 1ST PETITIONER

JULIAH H MIGOYE 2ND PETITIONER

JENIFFER J WASIANGA 3RD PETITIONER

ABIGAEEL O ANYANGO 4TH PETITIONER

RULING

1. The late Amos Acklays ('the deceased') died intestate on 22/4/1996 at Akala aged 67 years. According to the letter of introduction dated 17/11/2021 by the Chief, Gem Location, the deceased left behind the following as his beneficiaries: -
 - a. Roy S. Akala – Son
 - b. Lilian E. Aloo – Daughter (deceased)
 - c. Dinah L. Juma – Daughter (deceased)
 - d. Pauline R. Koky – Daughter



- e. Abigael O. Onyango – Daughter
 - f. Juliah H. Migoye – Daughter
 - g. Jenifer J. Wasiang'a – Daughter
 - h. Samuel S. Okech – Son
 - i. Steven Oluoch – Son
 - j. Jeremiah J. Obiero – Son
 - k. Felix J. Aganjo - Son
2. On 5/3/2012, Pauline K. Koky, Juliah H. Migoye, Jenifer J. Wasianga and Abigael O. Anyango petitioned for Letters of Administration Intestate. In the Affidavit in support of the Petition sworn on even date, they disclosed the following as the only assets of the deceased: -
- a. Kisumu/Manyatta 'B'/249
 - b. Kisumu/Manyatta 'A'/444
 - c. LR No. 209/8141 – Nairobi (Old Race Course Kariokor).
- They estimated the value of the estate to be Kshs.10,000,000/=.
3. The grant was issued to them on 24/10/2012. On 31/10/2024, Aburili J allowed by consent a Motion dated 16/8/2024. She directed that the Summons for Confirmation of grant dated 8/1/2024 be heard. In that summons, the petitioners proposed at paragraph 8, their preferred mode of distribution. Annexed to the Summons was the consent executed by 3 other beneficiaries, Roy S. Akala, Steven Oluoch and Felix J. Oganjo. The other two beneficiaries, Samuel S. Okech and Jeremiah J. Obiero did not consent and they filed an Affidavit of Protest sworn on 6/3/2025.
4. Although the Affidavit of Protest indicated that it was against the Summons for confirmation dated 3/4/2024, there was no such summons on record. In any event Aburili J had categorically directed on 31/10/2024 that the Summons for confirmation that was for consideration was the one dated 8/1/2024.
5. In the Protest, Samuel S. Okech ('the protestor') deposed that there was no consent for the petitioners to petition for the grant as well as to the mode of distribution proposed by them. He opposed the mode of distribution on the basis that it was incomplete as some of the assets of the estate had been left out; that the families of the deceased beneficiaries had not been substituted, that no accounts had been rendered and that the petitioners had not considered the advancements and/or withdrawals to various beneficiaries which will lead to unfair or unequitable distribution of the estate.
6. He contended that the family had held a meeting and had agreed to the distribution before the demise of the widow of the deceased. That the same was contained in minutes dated 27/12/2010. That he and other beneficiaries had raised an objection to the petitioners petitioning for the grant. That the said objection should be determined first before the grant can be confirmed. That the petitioners had left the Nairobi property in a poor state of disrepair thereby making it difficult to rent it out. That he had taken a loan to renovate the said property and had not yet repaid the same. He confirmed that he had the authority of Jeremiah J. Obiero to make the Protest.
7. The Protest was prosecuted by way of written submissions. As at the time of writing this ruling only the Protestor had filed his submissions dated 25/3/2025.



8. It was submitted on his behalf that any person having the right to petition for a grant, a Citation must be issued to such persons. That the petitioners did not obtain the consent of all the adult members of the family of the deceased including the objectors. That the proceedings were defective for having failed to follow the procedure set out under Rule 26(1) of the *Probate and Administration Rules*. The case of *Re Estate of Aomo Oyowe (Deceased)* (2017) eKLR was cited in support of that proposition.
9. It was further submitted that the application for confirmation was flawed as not all beneficiaries had given their consent. The case of *Re Estate of Ibrahim Likabo Miheso (Deceased)* (2020) eKLR, was cited in support of that proposition. That failure to account made the process flawed. The case of *Re Estate of Adam Haji Ali Talib (Deceased)* (2019) eKLR, was relied on for this proposition.
10. It was further submitted that the legal representative of the late Lilian E. Oloo and Dinah L. Juma had been excluded.
11. The Court has considered the record, the Affidavit of Protest and the Submissions on record. Before making a determination, I would like to make some comments on what is on record.
12. It would seem that immediately after the grant was issued, the family fell into some feud as a result of which; an objection to the grant was lodged on 13/12/2012, there was alleged intermeddling with the estate which led to the filing of a Summons dated 8/2/2013 for various injunctive orders. The Summons resulted in a consent order made on 13/3/2013. By that consent, the rent from the properties forming the estate was agreed to be deposited in an Account No. 011-094-215-796-00 at Cooperative Bank Limited, Harambee Avenue operated by the petitioners. Further, Felix J. Aganjo was to continue collecting rent from two tenants on Kisumu/Manyatta 'A'/444.
13. In April, 2015, the Petitioners attempted to cite Roy S. Akala, Samuel S. Okech and Felix J. Aganjo for contempt for breaching those orders. However, by a ruling made on 28/5/2015, Chemitei J dismissed that application for reasons on record.
14. This brief background is to show that all has not been well or smooth in the administration of this estate. That the earlier its administration is determined, the better.
15. Turning to the protest now, on the lack of consent by all the beneficiaries to the petitioners to petition, it is true that such consent is mandatory. However, in the present case, an objection dated 13/12/2012 was lodged by Roy S. Akala, Samuel S. Okech, Steven Oluoch, Jeremiah J. Obiero and Felix J. Aganjo. That objection has never been prosecuted.
16. Can that objection be a basis for the present protest. I do not think so. Firstly, the same was overtaken by events when the grant was issued to the petitioners on 24/10/2012. Secondly, three of the objectors, Roy S. Akala, Steven Oluoch and Felix J. Aganjo are deemed to have abandoned the same having signed the consent to distribution.
17. In any event, an objection is only efficacious if no grant has been issued. Once a grant has been issued, the only way to challenge it is by an application for revocation. In this regard, making a finding on that objection will be acting in futility. The issues raised therein are moot.
18. The second challenge is that not all the beneficiaries had signed the consent to the distribution. That is the reason for the protest. When any beneficiary is not agreeable to the mode of distribution proposed by an administrator in a succession cause, it is incumbent upon such beneficiary to file a protest, such as the present one by the Protestors and submit own proposed mode of distribution. It does not lead to the Court declining to confirm the grant but to consider the opposing modes of distribution and making a distribution itself in accordance with the law.



19. The next challenge was that the mode of distribution had left out some assets of the estate and other beneficiaries. It should be noted that under section 107 of the *Evidence Act*, it is he who alleges that must prove. The protestors did not disclose the particulars of the alleged assets of the deceased that were left out. Neither did they disclose the names of the beneficiaries that were allegedly left out.
20. It was not alleged that the two deceased beneficiaries disclosed in the letter of the Chief dated 17/11/2011, Lilian E. Aloo and Dinah L. Juma left any estate. Even if that was the case, the names of the alleged personal representatives were not disclosed. The attempt to raise the matter in the submissions came too late in the day and the same cannot be held to be any evidence that can be acted upon. The evidence should have been the Affidavit of protest itself.
21. The fourth challenge was that the family met on 27/12/2010, before the widow of the deceased passed on, and agreed on the mode of distribution. The minutes of the meeting produced as ‘SSO 1’ were relied on as evidence of the alleged meeting.
22. The Court notes that this allegation was neither denied nor challenged. But that does not bar the Court from examining the allegations and make a determination thereon in light of the available evidence.
23. The minutes are not signed. They do not show who was the Secretary of the meeting who took the minutes. Further, from the contents of the minutes, it is not true that, the meeting was called to discuss the distribution of the deceased’s estate. Out of the 11 beneficiaries of the estate only three attended, Roy Akala, Pauline Akinyi Okore and Samuel Okech.
24. A reading of the alleged minutes show that the meeting was called to bring some harmony in the family. Minute 1/27 states: -

“Mr. Sile informed those present that the purpose of the meeting was to clarify and put to rest issues of misunderstanding that had been highlighted to them by Obiero regarding himself and Mama Mercia. Sile mentioned that they (Himself, John Onguru and James Migoye had been sent by Obiero Jeremia to bring the message of reconciliation between Azer and Mum and requested the following: -

 - a. To present the request.
 - b. Offered to provide advise where applicable since peace in the home was of great importance.

...”
25. In view of the foregoing, the Court declines to accept that that was a meeting called to distribute the estate of the deceased. The Court notes that the protestors did not offer their proposed mode of distribution alternative to that of the petitioners.
26. The last and final challenge was that the petitioners had not presented an Account. That they had administered the Estate since 2012 to date. They had not accounted on the free estate of the deceased. That failure to give an account would result in some beneficiaries getting greater shares to the prejudice or detriment of others.
27. Section 83 of the *Law of Succession Act* provided for the duties of the Administrators.
 - “(a) ...
 - (e) to produce the Court if required by the Court, either gits own motive or on the application of any interested party in the estate, a full and accurate inventory



of the assets and liabilities of the deceased and a full and accurate account of all the dealings therewith up to the date of the account.” (Emphasis added).

28. Further, under section 38 of the Law of Succession Act, intestate estates are to be distributed equally. It provides: -

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there is only one, or be equally divided among the surviving children.” (Emphasis added).

29. In the present case, although the deceased left his spouse, she passed on before the estate was administered. There is no evidence that she left any estate separate from what would have been her share from her husband’s estate. In any event, that share would have devolved to all her children who are the beneficiaries herein equally.

30. The Court notes that the Protestors argued that without the account, the distribution might be unfair or unequitable. It is not in dispute that the petitioners have been running the estate for over 10 years now. That there has been income that has been coming to the estate by way of rent and that some of it has been advanced to some of the beneficiaries. It would therefore be prejudicial, as contended by the Protestors, to confirm the distribution before ascertaining the value of the estate and having the accounts presented.

31. In this regard, while I dismiss the Protest as having no merit, I postpone the confirmation of the grant and direct that: -

- a. The administrators do file in court valuation reports on the properties of the deceased.
- b. The administrators do file and serve upon the protestors an account of all the income and expenses of the estate for the period of the administration in accordance with section 81(e) of the Act.
- c. The acts in (a) and (b) above to be complied with within 60 days of the date hereof.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 9TH DAY OF MAY, 2025.

A. MABEYA, FCI Arb

JUDGE

