



In re Estate of the Late Richard Ochieng Olwenge (Deceased) (Family Cause E003 of 2023) [2025] KEHC 5852 (KLR) (9 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5852 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
FAMILY CAUSE E003 OF 2023**

**DK KEMEL, J
MAY 9, 2025**

BETWEEN

**FANUEL ODHIAMBO OCHIENG 1ST PETITIONER
JORAM OMONDI OCHIENG 2ND PETITIONER
IAN OCHIENG SEDA 3RD PETITIONER
ANN ATIENO ONYANGO 4TH PETITIONER**

AND

**JEANNETE AUMA OCHIENG 1ST OBJECTOR
MARGARERT ATIENO OCHIENG 2ND OBJECTOR
GRACE AKINYI OCHIENG 3RD OBJECTOR
SHEILA ADHIAMBO OCHIENG 4TH OBJECTOR**

RULING

1. This ruling relates two applications. The first application is an Objection to the making of a grant filed by the Objectors herein as against the Petitioners dated 1st September 2023 while the second application filed by the 4th Objector herein is dated 20/12/2024 and which seeks for an order to compel the Petitioners to furnish statements of account in respect of the estate of the deceased and that the net estate be distributed to the beneficiaries. I will determine the said applications sequentially.
2. As regards the first application dated 1/9/2023, the 1st Objector on behalf of the rest of the Objectors' gravamen is inter alia; that the succession proceedings ought to have been instituted in Eldoret High Court and not Siaya High court; that the petitioners were discriminating against the objectors on account of their being women; that the petitioners did not obtain the consent of the objectors before applying for the said letters of administration; that the Petitioners left out a huge chunk of



the deceased's assets, which is tantamount to non-disclosure of material facts to the court; that the Petitioners have sidelined the Objectors from the management of the estate on the ground that they are women and not entitled to inheritance; that there is need to appoint two of the Objectors as administrators so as to ensure transparency and accountability.

3. The application was opposed by the Petitioners who filed a response through the affidavit of the 2nd Petitioner sworn on 17/11/2023 who averred inter alia; that the deceased's last and preferred place of residence was Uhembo South Village in Siaya County where he was buried together with his wife and hence Siaya High Court is the suitable place of suing; that the Objectors filed a Citation at Eldoret High Court vide Citation Cause No. E015 of 2023 and cited the Petitioners and other beneficiaries and sought to process succession proceedings; that the family members met including all the Objectors herein wherein a vote was taken wherein the four Petitioners herein were proposed as the administrators of the estate of the deceased; that the apprehension of the Objectors is misplaced since upon the issuance of grant, the administrators would proceed to file summons for confirmation of grant wherein the issue of distribution will be addressed and that anybody would be at liberty to lodge a protest if need be for the court's consideration; that the objection should be dismissed to enable the process to go forward.
4. The Objectors' application dated 1/9/2023 was canvassed by way of viva voce evidence. The 1st Objector herein testified on behalf of the Objectors and reiterated her averments in the supporting affidavit which she wholly adopted as her evidence in chief. Likewise the 2nd Petitioner herein testified on behalf of the Petitioners and reiterated the contents of his replying affidavit which he adopted as his evidence in chief.
5. The said application was canvassed by way of written submissions. Both parties duly filed and exchanged submissions.
6. I have given due consideration to the first application dated 1st September 2023, the various affidavits filed in support of the same and against it, plus the rival submissions of the parties, including the authorities relied on. It is not in dispute that the parties herein had litigated at Eldoret High Court vide Citation Cause No. E015 of 2023 wherein the Petitioners were allowed to file Succession Cause. It is also not in dispute that prior to the determination of the said citation cause, the family of the deceased had sat and came up with the four petitioners herein who were mandated to take up letters of grant. It is also not in dispute that the Objector's request to be included as petitioners in that citation proceedings was declined by the court. The issue for determination is whether the application has merit.
7. Section 7(3) of the Probate and Administration Rules provides that:

“The petition may be filed in the principal registry or a High Court district registry or, in the case of a deceased the gross value of whose estate does not exceed one hundred thousand shillings, in a resident magistrate's registry or, in the case of an application to the Resident Magistrate's Court under section 49 of the Act, in a resident magistrate's registry within the area of that court in which the deceased had his last known place of residence; and upon its being so filed and until it has been considered and determined, the court may, upon request and payment of the prescribed fee, afford inspection of the will or copy will to any person having an interest in the estate; and any such inspection shall take place during office hours in the registry in the presence of an officer of the registry.”
8. It is noted that in the Petitioners' replying affidavit dated 17/11/2023 sworn by Joram Omondi Ochieng, annexure JOO1© is a chief's letter dated 23rd June 2023. The said letter recognizes the deceased to have hailed from Uhembo South Village, Kogeyo sub-location, central Alego location,



Boro Division within Siaya County. The details on the deceased's identity card showed that indeed he hailed from that area and had his residence where his remains and those of his wife are interred. It transpired from the rival affidavits and the viva voce evidence that indeed the deceased was buried in his home at Siaya next to the remains of his wife who had predeceased him and that the said graves are within his residence. The Objectors vouched for Eldoret High Court as the proper place of suing in that the deceased had earlier filed a succession cause in that court over the death of his wife and thus the same should happen to the deceased herein. Even though the Objectors are of the view that the cause should have been lodged at Eldoret High Court, I find that this court is the appropriate place of suing since the deceased's remains and other properties are located within Siaya. In any case, once the estate is distributed among the beneficiaries, the issue of the place of suing then ceases to be a matter of concern as the beneficiaries will then be taking charge of the assets that have been allocated to them regardless of the places they are located. It is instructive that the contents of the chief's introductory letter aforesaid was never rebutted by the objectors. It is my considered view that the Succession Cause herein was properly filed in this court as the deceased had a permanent residence in Siaya County within the jurisdiction of the Siaya High Court.

9. On the prayer for inclusion of two of the objectors as administrators, Section 29(a) of the [Law of Succession Act](#) is very clear.

“For the purposes of this Part, "dependent" means—

- a. the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- b. such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- c. where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”

10. It thus goes without saying from the above legal provision that a biological daughter to the deceased who are the Objectors, rank higher in the degree of consanguinity as compared to the grandchildren of the deceased. Further, it is not in contention that the deceased was blessed with ten (10) children who comprised of five sons and five daughters. The Objectors have urged this court that for purposes of inclusivity and fairness, the two grandchildren included as administrators be removed and replaced by two of the Objectors herein. Whereas this could be an ideal suggestion, it is noted that the family had already met during the pendency of the citation proceedings lodged by the Objectors and that a vote was taken wherein the names of the four petitioners were fronted to take up letters of grant of administration intestate. That being the position, this court must respect the decision of the majority of the beneficiaries in selecting the four petitioners herein. In any event, there is no hard and fast rule that there must be a maximum number of petitioners in a succession cause or that grandchildren should not be appointed as petitioners as long as the family has decided so. It is noted that the 3rd and 4th Petitioners herein are children of deceased sons of the deceased and that they come in as representatives of their households. I do not see any prejudice caused to the Objectors over the said two petitioners being appointed by the family. The petitioners once appointed of course are under obligation to administer the estate appropriately and to render accounts for scrutiny by the beneficiaries and the court and that upon distribution of the estate, their roles come to an end.



11. The Objectors also raised the issue of non-disclosure by the petitioners in that they failed to list all the assets of the deceased and that some of the assets are in possession of the beneficiaries. Indeed, the petitioners are under obligation to list all the assets of the estate as provided for under Section 51(2)(h) of the Law of Succession Act as follows:

(2) An application shall include information as to:

(h) a full inventory of all the assets and liabilities of the deceased;

The Objectors cited the case of *Re Estate of Joseph Mapesa Nakuku (deceased)* [2019] eKLR, where the court noted that the provision of Section 51(2)(h) of the Law of Succession Act Cap 160 Laws of Kenya is quoted in mandatory terms and thus it must be complied with. Even though this is the position, I find that the full inventory must be available at the time of distribution of the estate of the deceased. It is instructive that the Petitioners once appointed have the onerous duty of coming up with the inventory of the assets and liabilities before the issue of distribution is carried out. In most cases, all the assets of a deceased may not be available at the time of lodging the succession cause and that the petitioners have to go out and search for the assets in readiness for the hearing of summons for confirmation of grant where the estate is finally distributed among the beneficiaries. It is also noted that the estate of the deceased is quite vast and thus the need for the Petitioners to carry out an inventory of all assets of the deceased and file the same. It is still quite early in the proceedings as the petitioners need to be formally appointed by the court before they can embark on the task in earnest. In that regard, I find the Objectors' contention to be premature and that they should wait for the Petitioners to be formally appointed by the court and thereafter they will be at liberty to call them to render an account regarding the issue of the inventory of the assets.

12. In view of the foregoing observations, it is my finding that the Objectors' application dated 1/9/2023 lacks merit. The same is dismissed with no order as to costs.

13. The second application is by the 4th Objector vide a chamber summons dated 20th December 2023, supported by an affidavit bearing the same date and sworn by the 4th Objector wherein she sought several reliefs inter alia; that the court orders the Petitioners to file a statement of accounts in respect of the deceased's estate; that upon granting the above prayer, and pending the hearing and determination of the instant succession cause, the Honorable Court be pleased to direct and order that the net income of the deceased's estate shall be distributed to his beneficiaries on a monthly basis; that the costs of the application be provided.

14. The 4th Objector/Applicant's gravamen is that the estate of the deceased is making a very good amount of money in terms of rent and other daily incomes from the deceased's investments in the sugarcane and jaggery businesses. That there is a very high likelihood of misappropriation of the same without accountability. That the petitioners have denied other beneficiaries of the estate their respective shares of the estate.

15. The first to third Objectors filed affidavits in response to the 4th Objector's application. The thread that ran through the said affidavits was that the deceased supported all his children including the 4th Objector, in different ways prior to his death. That the 4th Objector has for a very long time lived a very reckless life summed up with drunkardness. The Objectors averred that the 4th Objector abdicated her responsibilities of taking care of her children and/or family such as providing them with basic needs as food, clothing, rent, school fees. That the 4th Objector's behavior necessitated a resolution by the family to save the 4th Objector's children from their mother's acts and omissions by providing the needs



- of her children from the amount the 4th Objector always received from the estate and that the residue of her share would later be given to her.
16. It was the 1st, 2nd and 3rd Objectors' view that the issue of the accounts is premature and that the same should be looked into upon the appointment of the administrators and that they are of the view that the 4th Objector herein is now creating confusion at this stage when the court is to consider the Objectors' earlier application dated 1/9/2023. They sought for dismissal of the application.
 17. The Petitioners opposed the application. The 1st Petitioner filed a replying affidavit sworn on 4/3/2025 wherein he averred inter alia; that the deceased was the chairman of board of director of several companies that were formed and which ran the businesses and that the shares therein will be considered during the determination of the summons for confirmation of grant; that the assets are currently being managed through the said companies and that the issue of accounts will be rendered at the appropriate time when called upon; that the Objectors are currently receiving rent from some of the flats pursuant to agreement by the family and thus if there is an issue over the same, then the Objectors should be able to resolve themselves and not bother the Petitioners.
 18. The said application by the 4th Objector was canvassed by way of written submissions.
 19. The 4th Objector submitted that the issue of accounts is critical as the estate is being wasted by the Petitioners and that she stands to suffer prejudice if statements are not provided for. It is the view of the 4th Objector that the beneficiaries have been kept in the dark and that the Petitioners should be called to order as they have intermeddled with the estate and that the court should intervene to prevent further wastage and ensure the beneficiaries get their shares.
 20. The 1st to 3rd Objectors submitted that the 4th objector's application is a waste of judicial time. Further, the Objectors submitted that the prayers in the said application ought to come after the estate administrators are in place. In conclusion, the 1st -3rd Objectors submitted that the said application is superfluous and lacks merit and prayed that the same be dismissed to pave way for the appointment of the administrators.
 21. The Petitioners submissions are in tandem with the views of the 1st, 2nd and 3rd Objectors who are opposed to the application by the 4th Objector and contend that the same is premature and can only be made upon the appointment of the administrators.
 22. I have given due considerations to the second application as well as the rival affidavits and submissions. I find the issue for determination is whether the application dated 20/12/2024 has merit.
 23. On the issues/prayers made in the application made by the 4th Objector, I agree with the 1st -3rd Objectors' submissions that the same is premature. The issue of rendering accounts is quite important but it should come after the estate administrators are already in office and be in a position to attend and respond to all issues affecting the estate. I find that the said application is premature. The 4th Objector should be patient and wait for the appointment of the administrators, after which she can then train her guns at them regarding the manner in which they are administering the estate of the deceased.
 24. In light of the foregoing, I find the 4th Objector's Application dated 20/12/2024 is bereft of merit and that the same is dismissed with no orders as to costs.
 25. As the two applications have now been determined, I proceed to issue the following orders:
 - a) Fanuel Odhiambo Ochieng, Joram Omondi Ochieng, Ian Ochieng Seda and Anne Atieno Onyango are hereby appointed as Administrators of the estate of the deceased herein, Richard Ochieng Olwenge.



- b) The probate registry is hereby directed to proceed and have the cause herein gazetted in the usual manner so as to pave way for the issuance of the grant to the Administrators herein.
- c) Upon the issuance of the grant, the Administrators shall file the requisite summons for confirmation of grant within fourteen (14) days thereafter and serve it upon all the beneficiaries.
- d) Upon the issuance of the grant, the Administrators are directed to file a statement of accounts over the estate of the deceased within fourteen (14) days thereafter.
- e) As parties are members of one family, each party to bear their own costs.

Dated and delivered at Siaya this 9th day of May 2025.

D. KEMEI

JUDGE

In the presence of:

M/s Anuro....for Petitioners

M/s Kemboi for Mutiso.....for 1st, 2nd and 3rd Objectors

Chumba.....for 4th Objector

Okumu.....Court Assistant

