



**In re Estate of Onduko Joseph Zachary (Deceased) (Succession Cause
937 of 2018) [2025] KEHC 11223 (KLR) (Family) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11223 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 937 OF 2018
CJ KENDAGOR, J
JULY 17, 2025
IN THE MATTER OF THE ESTATE OF ONDUKO JOSEPH ZACHARY (DECEASED)**

BETWEEN

BRIAN CONRAD ONDUKO APPLICANT

AND

LILIAN BOSIBORI ONDUKO RESPONDENT

RULING

1. The deceased in this case died on 2nd October, 2027 and Grant of Letters of Administration intestate were issued to Lilian Bosibori Onduko. The grant was confirmed on 16th July, 2019.
2. This Ruling is on an application dated 25th August, 2023 filed by the Applicant against the Respondent, who is the Administrator of the estate. The Applicant and the Respondent are both children of the deceased and beneficiaries of his estate, along with three others. It seeks the following orders;
 - a. Spent
 - b. That pending the hearing and determination of this application an order be issued barring the respondent herein, her agents, personal representatives, assigns or any other person acting under her instructions barring her from selling, disposing off, transferring, wasting away any property of the deceased, including rent collected from the various deceased's estate, prior to consent of both the court and beneficiaries of the deceased estate;
 - c. That the respondent herein, the administrator of the estate be ordered to give and provide accounts for all the funds received from any of the deceased's estate;



- d. That the grant as confirmed on 16th July, 2019 be revoked and annulled;
 - e. That the costs of this application be borne by the respondent.
3. The application is opposed.
 4. Both parties filed submissions which I have duly considered.

The Applicant's case

5. The Applicant accuses the Respondent of lack of diligence in the proper administration of the estate, alleging that she has unlawfully diverted and converted funds belonging to the deceased's estate for her personal benefit, thereby excluding the other beneficiaries from their rightful share.
6. He asserts that the Respondent has consistently refused to provide a detailed accounting for the funds she has received, raising serious concerns about accountability. As a result, he contends that the Grant issued to her should be revoked.
7. The Applicant further contends that the Respondent's actions amount to intermeddling and disregard the rights and interests of the other beneficiaries.

The Respondent's Case

8. The Respondent, on the other hand, contested that the Applicant had failed to provide details of the alleged negligence as well as evidence of dissipation of the estate.
9. The Respondent accused the Applicant of giving incorrect information about the status of the estate and described the intentions as a fishing expedition after failing to verify any of the serious allegations with the administrator or the other beneficiaries.
10. The Respondent detailed her dealings with the properties of the estate in her replying affidavit and maintained that the estate is not under any threat of being wasted away and that, contrary to the Applicant's assertions, she has not refused to provide accounts.

Analysis and Determination

11. The parties have submitted on the issues for determination, and their submissions concur on four key points. The issues for determination are as follows:
 - i. Whether the application is defective;
 - ii. Whether the respondent is intermeddling with the estate;
 - iii. Whether the respondent has provided accounts;
 - iv. Whether the grant issued to the respondent should be revoked.
12. The Applicant argues that they should have filed Summons in Form 107 rather than a Chamber Summons. The Applicant has among other prayers in the application, asked for an order for revocation of the grant, which the Probate and Administration Rules specify should be made by Summons, and the form is prescribed.
13. The Applicant has included 3 different prayers in the application. Form 107 is for Summons for Revocation of Grant. Having prescribed forms aids in clarity regarding what exactly a party has approached the court for and what responses should be elicited.



14. On the other hand, it is generally undesirable to have a multitude of applications, and the Courts typically proceed to determine this kind of applications with several prayers that may not align with a specific type of process without focusing so much on the form.
15. Rule 70 of the *Probate and Administration Rules* states that the forms listed in the First Schedule shall be used in all proceedings under these Rules, with any necessary modifications, additions, or amendments when appropriate.
16. The Court has inherent power and discretion to decide whether the modifications, additions, or amendments are necessary to serve the ends of justice or if they amount to an abuse of the court's process, thereby requiring strict adherence to the Forms.
17. In the present case, after evaluating the prayers in the application and their interconnectedness, I exercise discretion and waive strict compliance with the Form in the interest of justice and have therefore declined to strike out the application on this ground.

Whether the Respondent is Intermeddling with the Estate;

18. Section 45 of the *Law of Succession* cautions against intermeddling with property of deceased person. It provides as follows;
 45.
 - (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
 - (2) Any person who contravenes the provisions of this section shall
 - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.
19. The respondent is the appointed administrator and has therefore been granted authority to deal with the estate of the deceased.
20. In *Benson Mutuma Muriungi v CEO Kenya Police Sacco & Another* [2016] eKLR the court stated that;

“There is no specific definition of the term intermeddling provided for in the *Law of Succession Act*. The Act simply prohibits taking possession of or disposing of, or otherwise intermeddling with, any free property of a deceased person by any person unless with the express authority of the Act, any other written law or a grant of representation under the Act. But in my understanding, the use of wide and general terms such as: “for any purpose” and “or otherwise intermeddle with” in the Act portends that the category of the offensive acts which would amount to intermeddling is not heretically closed or limited to taking possession and disposing of the property of the deceased. I would include in that category such acts as: taking possession, or occupation of, disposing of, transferring, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing



out, interfering with existing lawful liens or charge or mortgage of the free property of the deceased in contravention of the *Law of Succession Act* or any other written law. I do not pretend to close the list either or make it exhaustive. The list could be long. However, any act or acts which will dissipate or diminish or put at risk the free property of the deceased are acts of intermeddling in law.”

21. I have evaluated the reasons provided by the Applicant concerning the ground of intermeddling and further evaluated the specific details outlined in the Certificate of Confirmation of Grant that outline how the estate was to be distributed. The Certificate of Confirmation of Grant specified that certain properties would be sold, with the proceeds used to cover the estate’s liabilities. Other properties would be held by the administrator for future sale, with the proceeds to be shared equally among the beneficiaries. There was only one immovable property that was granted to the Respondent exclusively.
22. The Respondent has detailed her dealings with the properties in her replying affidavit. She has provided information regarding the sale conducted, as well as an overview of the current status of the estate’s properties. After review of the evidence presented by both sides, I found no evidence to suggest that she has engaged in any conduct that would potentially diminish the value of the estate’s properties or pose any risks to their security and preservation.
23. Furthermore, all actions taken appear to align with the terms set forth in the Certificate of Confirmation of Grant.

Whether the Respondent has Provided Accounts;

24. The Respondent has been administering the estate since 9th October, 2018. The Grant was confirmed on 16th July, 2019. As acknowledged above, the Respondent has provided an overview of the status of the estate’s property.
25. As an Administrator of an estate, the Respondent is a Trustee and is accountable to the beneficiaries for her handling of the estate. Section 83 of the [Law of Succession Act](#) sets out the duties of Personal Representatives. Section 83 (e) provides that a personal representative is required:

“to produce to the court, if required by the court, either of its own motion 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 dealings therewith up to the date of the account.”
26. The overview presented lacks some crucial details, for example, it does not specify the sale prices of the properties, nor does it indicate how much was allocated to settle liabilities. Additionally, it fails to outline the distribution amounts for each beneficiary and does not provide insights into the management of the remaining properties.
27. More comprehensive information would enhance understanding of the overall status of the estate.

Whether the Grant Issued to the Respondent should be Revoked;

28. Section 76 provides for instances where a grant may be revoked. In the present case, S 76 (d) ii and iii are applicable;

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion -

.....



- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either
- i.
 - ii. or to proceed diligently with the administration of the estate; or
 - iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 produced any such inventory or account which is false in any material particular...”

29. Revoking a Grant is a discretionary power that must be exercised judiciously. As mentioned in the previous paragraphs, no material has been presented to suggest that the administrator has failed to act diligently. Additionally, the administrator has not been asked to present accounts by the Court, and she has declined to do so. Therefore, the prayer for the Revocation of the Grant is not justified.

Disposition

30. The Court makes the following orders on the application dated 25th August, 2023;

- i. Prayers b, d and e of the application are rejected;
- ii. For purposes of accountability to the beneficiaries and the court, the administrator shall provide a complete inventory of the estate’s assets and liabilities. This inventory should include, but is not limited to, detailed records of all transactions related to the estate’s properties, including sale proceeds, distributions made, liabilities settled, and the current status of the assets, covering the period from 16th July, 2019 to date.
- iii. The Accounts to be filed within 90 days;
- iv. Each party to bear own costs of the application.

31. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THE 17TH DAY OF JULY, 2025.

.....

C. KENDAGOR

JUDGE

In the presence of:

Cc Beryl

Mr. Kotonya Advocate for the Respondent

No attendance for applicant

