



REPUBLIC OF KENYA



In re Estate of David Oduor Odhiambo (Deceased) (Succession Cause E003 of 2024) [2024] KEHC 946 (KLR) (7 February 2024) (Ruling)

Neutral citation: [2024] KEHC 946 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE E003 OF 2024
RE ABURILI, J
FEBRUARY 7, 2024**

**IN THE MATTER OF THE ESTATE OF DAVID ODUOR ODHIAMBO (DECEASED)
IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION
AD COLLIGENDA BONA UNDER SECTION 67 OF THE LAW OF SUCCESSION
ACT AND RULE 36 OF THE PROBATE AND ADMINISTRATION RULES**

BY

PETRONILLA AKINYI ODONDE.....APPLICANT/PETITIONER

RULING

1. The applicant herein Petronilla Akinyi Odonde by her application for a limited grant of representation ad colligenda bona dated 5th February, 2024 seeks orders that she be allowed to withdraw from the deceased's Bank account number 11XXXX88 at KCB Kisumu Branch the sum of kshs 3,000,000 to cover the deceased's funeral expenses, the fees for their daughter admitted at an American University and to settle debts arising from supplies to the business which the deceased was operating.
2. Counsel for the applicant Mr. Okoth did argue the application orally reiterating the depositions in the affidavit in support of the application and the grounds on the face of the application.
3. I have considered the application as filed and argued.
4. As a general principle of the law of succession, grants may only be made with notice under section 67 of the *Law of Succession Act* which provides as follows:

“67. Notice of application for grant

- (1) No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for such grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.”



5. This position has been invoked in many cases including. *In Re Estate of Mary Syokwia Kyalili* [2015] eKLR and *Mary Waithera v Ann Ndegwa & Another* [2014] eKLR.
6. However, where special circumstances exist, the *Law of Succession Act* allows application for a limited grant of letters of administration *ad colligenda bona* for purposes of collecting and preservation of the estate. This is entrenched under Rule 36 of the *Probate and Administration Rules* which provides that:

“Where owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration *ad colligenda bona* defunct of the estate of the deceased.”
7. I note from the application and the affidavit in support and the oral submissions by her counsel on record that the applicant primarily seeks grant of letters *ad colligenda bona* in order to access funds from the deceased’s Bank account in a vast estate, for purposes of paying school fees for her daughter Lauren Atieno Oduor who has been admitted at a United States of America University to pursue her Master’s Degree, to meet funeral or burial expenses of the deceased whose body is still in the mortuary and to settle some outstanding debts for supplies made to the family business so that it remains a going concern.
8. There is no doubt that issues pertaining to the education of children are issues that require the attention and urgency of the court, considering that it pertains to the rights of children especially the right to education. This is a right entrenched under Article 53(1) of the *Constitution* which underlines the fact that children are entitled to compulsory basic education and thus, this Court appreciates that the payment of school fees and related expenses is an urgent matter which may necessitate the filing of an application as presently before the court in terms of Rule 36 (1) of the *Probate and Administration*.
9. This position was shared by court *In Re Estate of Mary Syokwia Kyalili* [2015] e KLR.
10. There is no dispute that the applicant is the widow of the deceased David Oduor Odhiambo as per the marriage Certificate annexed to the applicant’s affidavit in support. The needy student’s birth certificate has also been annexed to show that she is the child of the deceased together with the college invoice and the admission letter together with the air ticket which was procured prior to the death of the deceased.
11. There is no contention that the deceased was to pay the fees for his daughter prior to his death.
12. The issue is that the applicant has not listed before this court all the beneficiaries of the deceased, whose consent she has obtained to petition for a limited grant. She has also not told this court of what the deceased owned in what she calls a vast estate.
13. In addition, this court cannot allow the applicant to withdraw money from the account of the deceased for purposes of funeral expenses at this stage or to pay debts or suppliers even before the deceased is buried. Those are expenses which are not urgent as the applicant can still file for a full grant and apply for orders under Rule 36 of the *Probate and Administration Rules* for a limited grant.
14. Thus, the estate of the deceased must be preserved until all assets and liabilities are identified and the beneficiaries are listed so that any expenditure is accounted for. There is no budget for the funeral exhibited by the applicant to show that unless she gets the money from the deceased’s account, then the deceased will not be buried. A dead person belongs to the community of relatives and friends who



- raise funds to bury one of their own and it cannot be expected that one set aside funds just for their own burial. If that were to be the case, then the deceased would have left a will to that effect.
15. Intestates have a myriad of issues and this court refuses to be trapped into any issues that may arise after the order for withdrawal of funds from the deceased's account is issued and money is withdrawn.
 16. Where there are contracts entered into by the deceased, these contracts will be performed after his burial and the estate is administered in the normal way, with the list of creditors being placed before court.
 17. For the above reasons, I would only grant a limited grant allowing the applicant herein Petronilla Akinyi Odonde the prayer for withdrawal and payment of college fees and related expenses for Lauren Atieno Oduor to New England University Hanniker Campus New Hampshire USA for the semester commencing March 2024, an amount not exceeding (Kshs 1,500,000) One million, five hundred Thousand only.
 18. I decline to allow the withdrawal of any monies for burial expenses and or settling of debts to suppliers of Dalu Energy Sytems until a full grant and full disclosure of the assets of the estate and their beneficiaries is made.I am of the view that these other needs can be fully dealt with at hearing of the succession cause once filed.
 19. For avoidance of doubt, this Grant of Letters of Administration ad colligenda bona authorizes the withdrawal from the deceased's account No. 11XXXX788 at KCB Kisumu Branch a sum of money not exceeding Kshs 1,500,000- (One Million, Five Hundred Thousand Only and no further or other sums of money may be withdrawn from the said account until a full grant of representation duly confirmed or further orders of this Court are made to a duly appointed administrator of the estate of the deceased David Oduor Odhiambo.
 20. The Manager, Kenya Commercial bank, Kisumu shall be served with this order for compliance.
 21. I so order.
 22. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 7TH DAY OF FEBRUARY, 2024

R.E. ABURILI

JUDGE

