



REPUBLIC OF KENYA



**In re Estate of Okeya Omunyin Ebaale (Deceased) (Succession Cause  
236 of 2008) [2024] KEHC 5580 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5580 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 236 OF 2008**

**WM MUSYOKA, J**

**MAY 8, 2024**

**IN THE MATTER OF THE ESTATE OF OKEYA OMUNYIN EBAALE  
(DECEASED)**

**RULING**

1. On 6<sup>th</sup> July 2022, a ruling was delivered herein, where the court ordered that fresh administrators be appointed, and after which a summons for confirmation of grant was to be filed.
2. The record is vague on whether new administrators were ever appointed, based on the ruling of 6<sup>th</sup> July 2022. There is an amended grant of letters of administration, made on 6<sup>th</sup> July 2022, and issued on even date, appointing Paul Okeya, Peter Omunyin, Simon Emongor and Charles Orupi as administrators. I do not understand how those appointments came about, given that the ruling of 6<sup>th</sup> July 2022 did not appoint any administrators, and no subsequent proceedings were conducted on 6<sup>th</sup> July 2022, after the delivery of the ruling, appointing the 4 alleged administrators.
3. For avoidance of doubt, the last paragraph of the ruling of 6<sup>th</sup> July 2022, paragraph 8, reads as follows:

“In sum, both the protest dated 19<sup>th</sup> April, 2022 and the application for Confirmation of Grant dated 6<sup>th</sup> October, 2021 are hereby dismissed with each party bearing their own costs.

The parties are directed to agree on the issuance of a fresh Grant of Letters of Administration to one or two or three or even four of the proper and rightful beneficiaries after which they may agree on distribution and take out necessary summons for Confirmation of Grant. In any event, not later than six (6) months from the date hereof. The matter shall be given a mention date on its status and/or further orders.”

4. Although I see an amended grant of letters of administration, made and issued on 6<sup>th</sup> July 2022, purportedly signed by Karanjah J, I am not persuaded that the same issued out of the orders made on or on proceedings conducted on 6<sup>th</sup> July 2022, for there were no orders made on that date or proceedings conducted on that date, according to the record before me, which would have presented a foundation for the said appointments, and the issuance of the said letters of administration. The said



appointments are suspicious in the circumstances. The parties had been given 6 months to resolve the issue of appointment of fresh administrators, it cannot be that on the same date, when those directions were given, they got those appointments without the benefit of having appeared before the Judge, for the court to endorse the appointments. I am not persuaded that the right procedure was followed in the circumstances, and I am not satisfied that there was compliance with the orders of 6<sup>th</sup> July 2022, with respect to appointment of fresh administrators. There were proceedings conducted before L. Mugambi J, on 7<sup>th</sup> March 2023, but they had nothing to do with appointment of new administrators, and, in any event, those proceedings could not have been the basis upon which the court purportedly issued a grant on 6<sup>th</sup> July 2022. I believe that the document, dated 6<sup>th</sup> July 2022, was procured without due process.

5. The other component of the orders, of 6<sup>th</sup> July 2022, was dismissal of the confirmation application, dated 6<sup>th</sup> October 2021, and the protest to it, dated 19<sup>th</sup> April 2022. There were directions, that upon the parties agreeing on fresh administrators, the new administrators do proceed, upon their appointment, to file a necessary summons for confirmation of their grant. No fresh summons for confirmation of grant was filed. The matter was mentioned on 7<sup>th</sup> March 2023, for them to agree on distribution, but there was no agreement, and the next mention was fixed for 18<sup>th</sup> April 2023. On 18<sup>th</sup> April 2023 and 23<sup>rd</sup> May 2023, the parties proposed to distribute the estate based on a summons for confirmation of grant, dated 6<sup>th</sup> October 2021. The matter proceeded on the basis of that application, and was thereafter held up on the basis that the parties were to have survey works carried out on the assets of the estate.
6. The record herein, from my perusal, is very clear, that the orders that were made by Karanjah J, on 6<sup>th</sup> July 2022, were not complied with. The confirmation application, dated 6<sup>th</sup> October 2021, and the protest to it, were dismissed by the court in the ruling of 6<sup>th</sup> July 2021. That then meant that it was no longer available for any proceedings to be carried based on them thereafter. It would then mean that the proceedings, conducted on the basis of that application and protest, after 6<sup>th</sup> July 2022, were null and void, and no orders on distribution of the estate can be granted based on it.
7. More fundamentally, the court, on 6<sup>th</sup> July 2022, directed the parties to agree on new administrators. Apparently, new administrators were appointed that same day, for an amended grant of letters of administrators was issued that day, 6<sup>th</sup> July 2022. However, Karanjah J did not order the said amendment, and did not preside over proceedings for the appointment of those administrators, going by the record herein. As it is, no administrators were appointed on 6<sup>th</sup> July 2022, and whatever document was procured on 6<sup>th</sup> July 2022, was not in compliance with the orders in the ruling of 6<sup>th</sup> July 2022. The court merely delivered a ruling on 6<sup>th</sup> July 2022, it did not conduct proceedings where new administrators were appointed. Consequently, I find and hold that the document, purported to be an amended grant of letters of administration, dated 6<sup>th</sup> July 2022, be and is hereby expunged from the record.
8. What has happened in these proceedings after 6<sup>th</sup> July 2022 is messy, and there is need to straighten the record. Consequently, I give the following orders and directions:
  - a. That new administrators shall be appointed, in line with the ruling of 6<sup>th</sup> July 2022, in an exercise which shall involve all the members of the family of the deceased, being present in court;
  - b. That the new administrators shall then file an application for confirmation of their grant, and whoever shall not agree with the proposals in that application, shall have liberty to file an affidavit of protest;



- c. That all the proceedings that were conducted and recorded, after 6<sup>th</sup> July 2022 and up to 24<sup>th</sup> April 2024, save for that with respect to the conduct of survey works, are hereby declared irregular and
- d. That the matter shall be mentioned on 30<sup>th</sup> May 2024 for compliance, with order (a), above, and further directions.

**DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS AT BUSIA THIS 8<sup>TH</sup> DAY OF MAY 2024**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Paul Okeya, the petitioner, in person.

Advocates

Mr. Okeyo, instructed by Okeyo Ochiel & Company, Advocates for the respondent.

