



REPUBLIC OF KENYA



**Amoth & another v Amoth & 2 others (Succession Cause
341 of 2002) [2024] KEHC 7559 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7559 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 341 OF 2002
RE ABURILI, J
JUNE 19, 2024**

BETWEEN

LIVINGSTONE RAGEN AMOTH 1ST APPLICANT

CORNEL RASANGA AMOTH 2ND APPLICANT

AND

JOACHIM OWIRA AMOTH 1ST RESPONDENT

ERIC WANGO AMOTH 2ND RESPONDENT

REBMAN OWIRA AMOTH 3RD RESPONDENT

RULING

1. Vide Notice of Motion dated 21st October 2022, the Applicants sought orders against the Respondents that the court orders the latter to among others, to be in contempt of court orders dated 14th March 2022 and to fine them Kshs 200,000. *Vide* a Ruling of this court dated 30th October 2023, this court found the Respondents to be in contempt of court orders of 14th March 2022 and convicted them accordingly.
2. The court then directed the contemnors to appear for mitigation and sentencing. The contemnors filed written mitigations jointly on 11th February 2024. In the intervening period, the contemnors were also granted time to purge the contempt as the orders which they had violated were clearly spelt out in the Ruling by Hon. F. A. Ochieng J as he then was, on 14th March 2022.
3. The brief history of this matter is that the contemnors were the administrator of the estate of the deceased Amoth Owira Ragen.



4. Upon obtaining the grant of letters of administration intestate in this age-old matter, they were unable to account for their dealings in the estate. They failed to file into court a full and accurate accounts of the estate as stipulated in Section 83 of the *Law of Succession Act*.
5. The court, then presided over by F.A.Ochieng J, issued orders directing the Respondents to file accounts into court as there was no documentary proof of quantum of money they had received and disbursed during the period that they were administering the estate.
6. The court found that the Respondents who were administrators had failed to discharge their statutory duties in administering the estate of the deceased.
7. The learned Judge therefore proceeded and revoked the grant by invoking Section 76 (d) (iii) of the *Law of Succession Act* and directed the administrators to file and serve a complete and accurate statement of accounts within 30 days, which accounts were to be accompanied by supporting documents, such as Bank Statements, Lease Agreements, Receipts, invoices and certificates of official search.
8. The court also made it clear by reiterating that the accounts must incorporate the details which were set out by the court on 14th February 2019 as the documents filed by the administrators failed to meet the threshold which had been set.
9. It is worth noting that despite the matter being referred to mediation in 2021, mediation did not take off as the Respondents herein did not attend the scheduled mediation meetings hence the subsequent Court proceedings.
10. So many Judges have handled this matter and despite the contemnors being given all the time to purge the contempt by complying with the orders of the court subject of the contempt proceedings, they have not filed into court the documents stated in the Ruling at aforesaid.
11. The written mitigations have not made any effort to comply with the said orders yet the respondents have no option or discretion but to comply. The respondents have instead laid blame to some of the beneficiaries for allegedly taking money from the District Commissioners's Office and alleging that it was the contemnors who took the money.
12. Further, that one of the beneficiaries, Mr. Rasanga transferred one property from their late father into his name without their knowledge. That they have other 34 siblings who want peace.
13. The Applicants maintain that the contempt has not been purged to date. That the documents filed do not qualify to mitigate hence the respondents should be punished for contempt as they are only giving excuses.
14. I have considered all the above submissions. I am aware that this is a family matter and that the estate of the deceased Amoth Owira Ragen who died on 7th April 2001 has never been distributed. I am also conscious of the fact that whereas majority of the estate's beneficiaries were willing to have the dispute resolved via mediation, the respondents herein refused to attend mediation sessions thereby frustrating any attempts to resolve the matter amicably.
15. Instead, from the material placed on record, and which gave rise to the orders of 14th March, 2022 by F.A.Ochieng J (as he then was), the administrators decided to intermeddle with the estate of the deceased by utilising the assets of the estate without accounting for the same.
16. All that the Court asked was what is required by statute. The court was not making any suggestions to the respondents. Without that accountability as directed by the court, strictly speaking, the estate



of the deceased cannot be distributed to the over 34 beneficiaries, the contemnors included. The three contemnors herein made it difficult for the intervenors to get accounts of the estate.

17. The contemnors have refused to comply with court orders and despite the court reminding them that compliance with Section 83 of the *Law of Succession Act* is a mandatory statutory duty and obligation and not an optional duty, they have selectively filed their own statements without attaching the documents directed by the court in the ruling of 14/3/2022. They are instead telling the court that they are old, sick etc, etc, etc. Age is respected and sickness is regretted. However, giving a full and accurate account of how they managed the estate of the deceased is mandatory.
18. This court having found the Respondents to be in contempt of court orders, the only way they could successfully mitigate the contempt is by fully complying with the orders disobeyed. It is not impossible to comply with those orders. Short of that, this court has no option but to punish them for contempt.
19. Having said all the above, I hereby sentence the contemnors to each pay a fine of Kshs.200,000 Two hundred thousand Kenya Shillings only, into this court and in default, they shall each serve a prison term of two months at Kisumu Medium Prison.
20. The applicants are now at liberty to engage an independent auditor to audit the estate and file the same into court upon which summons for confirmation of grant shall be filed.
21. As the respondents have not accounted for the estate property, in the proper distribution of the estate of the deceased, the administrators shall ensure that that distribution takes into account any unaccounted for assets by the contemnors and charge to the account of the contemnors herein, who are personally liable for any loss to the estate.
22. The administrators are directed to file summons for confirmation of grant within 60 days of today, listing all assets of the deceased's estate and identifying all the beneficiaries of the estate with their respective shares.
23. Meanwhile, the contemnors are directed to sign personal bonds of Kshs 200,000 to pay the fines imposed within 30 days of this date. The 3rd Contemnor who is absent to be informed by the other two contemnors as they claim that he is sick and was unable to attend court.
24. Mention on 26th September, 2024 to confirm compliance.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 19TH DAY OF JUNE, 2024

R.E. ABURILI

JUDGE

