



**In re Estate of Paul Obingo Olwanga (Deceased) (Probate & Administration
103 of 2015) [2023] KEHC 630 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 630 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
PROBATE & ADMINISTRATION 103 OF 2015**

KW KIARIE, J

FEBRUARY 9, 2023

IN THE MATTER OF THE ESTATE OF: PAUL OBINGO OLWANGA DECEASED

BETWEEN

ELIUD OMOLO NYOLOO PETITIONER

AND

WASHINGTON OMONDI NYOLOO RESPONDENT

RULING

1. Eliud Omolo Nyoloo, the applicant herein, moved the court by way of chamber summons dated November 15, 2021 pursuant to rule 49 of the *Probate and Administration Rules*. He is seeking the following orders:
 - a. The honourable court be pleased to issue summons to Washington Omondi Nyoloo, one of the beneficiaries of the deceased estate to show cause why warrant of arrest and committal to jail cannot be issued against him for preventing the administrator to fully administer the estate of the deceased and enforce the certificate of confirmation of grant issued on the 25th day of September, 2019 and distribute the deceased's estate consist of land Parcel No Kagan/Kamenya/58 to all the beneficiaries listed therein.
 - b. The honorable court be pleased to issue an order directing the county surveyor to implement the order of this court issued on the 25th of September, 2019 and generate land parcels numbers for each beneficiary listed therein as per the mode of distribution.
 - c. The honorable court be pleased to issue an order directing the OCS Homa Bay police station to provide security to the County surveyor and his staff during the visit on land parcel No Kagan/Kamenya/58 for the implementation of the said order.
 - d. The cost of this application be paid out of the estate.



2. The application is premised on ground that the respondent has been chasing the surveyor whenever he goes to the ground.
3. The allegations by the applicant were denied by the respondent.
4. Rule 49 of *Probate and Administration Rules* provides as follows:

A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary by affidavit.
5. Other than his contention, the applicant did not adduce evidence to support his averment. In order for the court to invoke its jurisdiction and commit a party to civil jail, there must be sufficient evidence to the satisfaction of the court. In this application I have accusations and denials; it is the applicant's word against that of the respondent. I will not therefore grant the orders sought.
6. In order to hasten the finalization of the distribution of the estate, I make an order that the OCS Homa Bay police station to provide security to the administrator herein in order to facilitate the survey works required in the course of the distribution of the estate.
7. The administrator is given 90 days to do so and to render accounts on June 12, 2023.
8. Each party to meet own costs

DELIVERED AND SIGNED AT HOMA BAY THIS 9TH DAY OF FEBRUARY, 2023

KIARIE WAWERU KIARIE

JUDGE

