



**In re Estate of Henry Maduma Obudho (Deceased) (Probate & Administration
70 of 2014) [2023] KEHC 2477 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2477 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
PROBATE & ADMINISTRATION 70 OF 2014
KW KIARIE, J
MARCH 23, 2023
IN THE MATTER OF THE ESTATE OF**

BETWEEN

SAMWEL ADONGO MADUMA APPLICANT

AND

MAURICE OMULO MADUMA & 15 OTHERS OBJECTOR

RULING

1. There are three applications in this matter. The first is dated June 9, 2021. It was brought under sections 47 & 48 of the *Law of Succession Act*, Rules 49, 59, 63& 73 of *Probate and Administration Rules*. The petitioner/applicant is seeking the following orders:
 - a) That the honourable court be pleased to order and/or direct the beneficiaries of the estate of the deceased as pertains to LR Nos Kamagambo/Kanyajuok/399 and LR Nos Kamagambo/Kanyajuok/1556, respectively, with exception of Samwel Adongo Maduma (petitioner/applicant) and Patricia Ogola Maduma, to provide and/or otherwise avail, provide and or furnish the support documents, to facilitate the alienation, sub-division and consequential transfer and registration of the resultant subdivisions to and/or in favor of the respective beneficiaries in accordance with the amended certificate of confirmation of grant.
 - b) For the avoidance of doubt the honourable court be pleased to order and/or direct the respective beneficiaries of the estate of the deceased,(subject to prayer 1 hereof) to provide the following requisite documents;
 - i) Copy of national identity card
 - ii) Copy of the personal identification certificate(PIN)
 - iii) Two sets of passport size photographs



- c) In the alternative and without prejudice to the foregoing, the honourable court be pleased to call upon the beneficiaries in respect of the estate of the deceased pertaining to and/or concerning LR Nos Kamagambo/Kanyajuok/399 and 1566, respectively, to show cause why same should not avail, provide and/or surrender the requisite documents in terms of prayer 2 hereof, for purposes of facilitating the subdivision, alienation, transfer and registration of the resultant sub- divisions in accordance with the amended certificate of confirmation of grant.
- d) Further in the alternative and without prejudice to the foregoing, the honourable court be pleased to order and/or direct that the requisite documents for purposes of effecting the distribution of estate of the deceased in accordance with the amended certificate of confirmation of grant, be availed, supplied and/or provided for by the relevant beneficiaries within a stipulated period of time, as the honourable court may deem fit, just and expedient.
- e) In default of provision of the requisite documents(details in terms of prayer 2 hereof),the honourable court be pleased to order and/or direct the land registrar, Migori County to proceed with partial registration of the subdivisions arising from the estate of the deceased to and/or in favor of the compliant beneficiaries.
- f) The honourable court be pleased to further order and/or direct that the portions of the estate of the deceased particularly LR Nos Kamagambo/Kanyajuok/399 and 1566 respectively which ought to be transferred to the non-compliant beneficiaries, be held in the name of the petitioner/applicant pending provision of the requisite documents by the beneficiaries.
- g) The honourable court be pleased to issue further and/or other orders and/or directions towards facilitating the distribution of the estate of the deceased, in accordance with the stipulated timelines in terms of section 71 of the Law of Succession Act chapter 160, Laws of Kenya.
- h) Cost of this application be borne by the objectors/respondents.

2. The application is premised on the following grounds:

- a) The subject matter touches on and/or concerns the estate of one Henry Maduma Obudho, now deceased.
- b) Following the death of the deceased herein, the petitioner/ applicant herein, filed and/or lodged the subject Succession matter, for purposes of issuance with the Grant of letters of administration.
- c) Pursuant to the filing of the Succession Cause, the honourable court entertained and/or adjudicated upon the subject dispute and thereafter rendered a decision.
- d) Following the decision by the honourable court, a grant of letters of representation, was duly issued to and/or in favor of the petitioner/applicant on the May 4, 2016.
- e) Subsequently, the petitioner/applicant took out and /or filed summons for confirmation of grant.
- f) Later, the summons for confirmation of grant. (Details in terms of paragraph (e) hereof, was heard and allowed.
- g) Consequently, a certificate of confirmation of grant was duly issued on the March 6, 2019.



- h) Be that as it may, the objectors /respondents herein, thereafter challenged the scheme of distribution at the foot of the certificate of confirmation of grant issued on the March 6, 2019.
- i) Pursuant to and following the challenge (details in terms of paragraph (h) hereof) the honourable court proceeded to and indeed adjudicated upon the objection to the scheme of distribution.
- j) Upon the conclusion of the proceedings, pertaining to and/or concerning the challenge to the scheme of distribution.
- k) For clarity, the amended certificate of grant, was issued on the December 3, 2020.
- l) Following the issuance of the amended certificate of confirmation grant, it was incumbent upon the petitioner/applicant to proceed with the alienation, sub division and effective distribution of the estate of the deceased.
- m) Pursuant to and in line with the mandate conferred upon the petitioner/applicant, same requested the beneficiaries of the estate of the deceased, to avail various documents to facilitate alienation, transfer and registration.
- n) However, only the beneficiaries in respect of LR Nos Kamagambo/Kanyajuok/411 (being one of the Assets of the Estate) have compiled and availed the documents.
- o) Nevertheless, the rest of the beneficiaries of the estate of the deceased, have failed neglected and/or otherwise refused to comply with the request by the petitioner/applicant.
- p) Owing to the failure and/or refused to surrender and/or avail the relevant documents, the petitioner/applicant has not been able to complete and/or conclude the distribution of the Estate of the deceased.
- q) In any event, the alienation, transfer and registration of the resultant sub division of the estate of the estate of the deceased, cannot be carried out and/or undertaken without provision and/or supply of the relevant documents.
- r) Nevertheless, the beneficiaries of the estate of the deceased with the exception of the beneficiaries in respect of LR Nos Kamagambo/Kanyajuok/411, have failed and/or declined to avail the requisite documents.
- s) Owing to the foregoing, the administration and distribution of the estate of the deceased, is not likely to be implemented and /or undertaken.
- t) Be that as it may, it is incumbent upon the petitioner/applicant to ensure effective distribution of the Estate of the deceased and render accounts.
- u) In any event, the petitioner/applicant is obliged to render accounts to the honourable court within six months from the date of confirmation of the grant of letters of administration.
- v) In view of the foregoing, the administration of the estate of the deceased and in particular, the distribution thereof, is being frustrated by some of the beneficiaries of the estate of the deceased.
- w) In the premises, unless the honourable court intervenes, the requisite documents may not be availed and/or surrendered, either timeously or at all.



- x) At any rate, the failure to avail and /or surrender the requisite documents as by law required, shall affect and/or otherwise hinder the seamless administration and distribution of the estate.
 - y) In any event, the refusal by and/or at the instance of the other beneficiaries, to surrender the requisite documents, is not just, reasonable and/or justifiable, whatsoever.
 - z) Owing to the foregoing, it is thus incumbent upon the honourable court to intervene and ensure that requisite documents are availed and/or provided for.
 - aa. Besides, it is incumbent upon the honorable court to set timelines for the provisions and/or surrender of the said documents.
 - ab. Unless the honourable court intervenes, the noncompliant beneficiaries, are bound to continue with the refusal and/or failure.
 - ac. As a result of the foregoing, the estate of the deceased herein, shall be exposed to wastage.
 - ad. Consequently, it is in the interest of justice that the orders sought herein be granted.
 - ae. In any event, the subject application has been made in good faith and with a view to ensure that the petitioner/applicant complies with the time lines set under the *Law of Succession Act*, chapter 160, laws of Kenya.
 - af. Unless the application is granted, the petitioner/applicant and the compliant beneficiaries, shall be subjected to great hardship, prejudice and/or injustice.
 - ag. Conversely, the non-compliant beneficiaries, shall not suffer any prejudice and/or any injustice at all.
 - ah. Consequently, it is in the interest of justice that the instant application be allowed.
3. The application was opposed on the following grounds:
- a) That the applicant has no locus standi to prosecute this application.
 - b) That this court lacks jurisdiction to hear this application.
4. On June 14, 2022, this court gave the applicant 60 days within which to render accounts and failure to do so, the grant was going to be revoked automatically. The applicant did not seek court's extension of time within which to comply. This therefore means that his application dated June 9, 2021 was overtaken by events.
5. I therefore dismiss this application.
6. The second application is dated September 1, 2022. It was by way of Notice of motion under section 71 (2) (b) of the *Law of Succession Act* and Rule 41 (6) of *Probate and Administration Rules*. The applicants are Linus Obudho Maduma, Kiliopas Majunga Maduma and Samuel Adongo Maduma. They are seeking the following orders:
- a) That this honourable court be pleased to issue the confirmed grant of letters of administration intestate to Linus Obudho Maduma, Kiliopas Ojunga Maduma and Samuel Adongo Maduma.
 - b) That the application be heard together with the respondents pending application dated June 9, 2021 and filed on the June 15, 2022.



- c) That pending the hearing and determination of this application, this Honourable Court be pleased to issue a temporary injunction restraining the respondents either by himself, his agents, servants, assigns or any other person from intermeddling with the estate of the deceased.
 - d) That this Honourable Court be pleased to issue such further orders as it may deem just.
 - e) That the cost of this application be provided for.
7. The application is based on the following grounds:
- a) That the applicants and the respondent are sons to the deceased.
 - b) That grant of letters of administration was issued to the respondent on the May 4, 2016, the certificate of the confirmed grant on the May 6, 2019 and the amended certificate of confirmed grant was issued on the December 3, 2020.
 - c) That on the June 14, 2022, the respondent was ordered by the court to render accounts within 60 days failure to which the grant shall be automatically revoked.
 - d) That however, despite the respondent having partially administered the estate, the respondent never rendered the accounts thereto as ordered and the 60 days lapsed on the August 14, 2022.
 - e) That as such, the grant of letters of administration issued to the respondents on the May 4, 2016 stands revoked.
 - f) That section 71(2) (b) of the *Law of Succession Act* and Rule 41(6) of the *Probate and Administration Rules* empowers the Court to, “issue to some other person or persons, in accordance with the provisions of sections 56 to 60 of this Act, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered” where the grant has been revoked.
 - g) That it is on that premise that the applicants have filed this application seeking to have this honourable court issue a fresh confirmed grant in the names of the parties herein.
 - h) That the respondent shall not suffer any prejudice because he is one of the proposed co-administrators to the deceased’s estate and the mode of distribution had been agreed on by all the beneficiaries as per the Amended Certificate of the Confirmed Grant issued on the December 3, 2020.
 - i) That the deceased had three wives and the proposed administrators represent each of the three families respectively.
 - j) That all other beneficiaries have no objection to the same or to the mode of distribution as is thereof.
 - k) That the respondents pending application dated June 9, 2021 and coming up for hearing on the September 26, 2022 was filed on the June 15, 2021, a year before the court’s order of June 15, 2022.
8. The third application was for enlargement of time and reinstatement of orders issued on June 14, 2022.
9. The sixty days window granted on June 14, 2022 lapsed in August, 2022. It was incumbent upon the petitioner/applicant to seek extension of time before the lapse. He cannot come late in the day to seek the extension. The order of June 14, 2022 took effect after the expiry of 60 days. This application is therefore dismissed.



10. From the foregoing analysis. I find that the application dated September 1, 2022 is merited. I appoint Linus Obudho Maduma, Kiliopas Majunga Maduma and Samuel Adongo Maduma as administrators of the estate of Henry Maduma Obudho. I am directing that they file a proposal of the mode of distribution within 30 days failure to do so this appointment will automatically be revoked.

11. Since this is a family dispute, each party will bear own costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 23RD DAY OF MARCH, 2023

KIARIE WAWERU KIARIE

JUDGE

