



REPUBLIC OF KENYA



**In re Estate of Daniel Omungweso Omudeku (Deceased) (Succession Cause 252 of 2013) [2023] KEHC 21483 (KLR) (1 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21483 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 252 OF 2013  
WM MUSYOKA, J  
AUGUST 1, 2023**

**IN THE MATTER OF THE ESTATE OF DANIEL OMUNGWESO OMUDEKU (DECEASED)**

**RULING**

1. The administrators of the estate of the deceased herein are Setephen Okelo Omungweso and Jackson Omukunda Nyikuli, who were appointed by letters of administration intestate made herein on July 5, 2013, and the grant issued to them, dated July 8, 2013. I revoked that grant by my orders of October 24, 2018. The revocation orders were unmade by a consent, recorded on October 22, 2019, whose effect was to reinstate the grant made on July 5, 2013.
2. The summons for confirmation of grant, dated February 12, 2019, was purportedly filed by Wycliffe Nandwa Omungweso and Stephen Okello Omungweso. Wycliffe Nandwa Omungweso is not an administrator of the estate herein. He appears to be the sole applicant, for Stephen Okello Omungweso, an administrator, filed an affidavit of protest, sworn on October 29, 2019, opposing the proposals in the summons, dated February 12, 2019. It is highly unlikely that he would file a protest to his own summons for confirmation. Since the summons, dated February 12, 2019, was filed by Wycliffe Nandwa Omungweso, who was not an administrator, it is incompetent. He holds no grant, which can be confirmed on an application filed at his instance.
3. Section 71(1) of the *Law of Succession Act*, cap 160, Laws of Kenya, and rule 40(1) of the *Probate and Administration Rules*, provide that the summons for confirmation of grant shall be made by the holder of the grant. For avoidance of doubt, the 2 provisions state as follows :

“After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.”

“where the holder of a grant which has not been confirmed seeks confirmation of the grant, he shall apply for such confirmation by summons in Form 108 in the cause in which the grant was issued...”



4. The application for confirmation of grant is not just about approving a distribution proposal. Under section 83 of the [Law of Succession Act](#), one of the duties of the administrator is to render an account to the court, of the administration, at about the same time when the confirmation application is mounted. The relevant provision states as follows:  
  
“83(e) Personal representatives shall have the following duties...within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.”
5. The duty to account for an administration lies only with an administrator, a person who is not an administrator, cannot account under section 83 of the [Law of Succession Act](#), for the assets of the estate are only vested in the administrator, by virtue of section 79 of the [Law of Succession Act](#). The fact of the vesting of the assets in the administrator, creates in the administrator a corresponding duty to render an account, of his handling of the said assets. Butso/572 does not vest in Wycliffe Nandwa Omungweso, he cannot propose its distribution, and even if confirmation orders were granted in his favour, he does not have the powers, under section 82, to have it transmitted to the beneficiaries.
6. As the summons, dated February 12, 2019, is at the instance of a person who has no capacity to file it, it is hereby struck out. Let a summons for confirmation of grant be properly filed by the persons who hold the grant herein, Setephen Okelo Omungweso and Jackson Omukunda Nyikuli. Each party to bear their own costs. It is accordingly ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 1<sup>ST</sup> DAY OF AUGUST 2023**

**WM MUSYOKA**

**JUDGE**

Mr. Erick Zalo, Court Assistant.

**Appearances**

Mr. Mango, instructed by DSG Mango & Company, Advocates for Wycliffe Nandwa Omungweso.

Mr. Khayumbi, instructed by JJ Khayumbi & Company, Advocates for Setephen Okelo Omungweso.

