



**In re Estate of Late Jonah Hezekiah Ougo (Deceased) (Family Miscellaneous Application E005 of 2022) [2023] KEHC 24111 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24111 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
FAMILY MISCELLANEOUS APPLICATION E005 OF 2022  
DO OGEMBO, J  
OCTOBER 19, 2023**

**BETWEEN**

**FRED OUGO ..... 1<sup>ST</sup> APPLICANT**

**JACKSON OCHIENG ..... 2<sup>ND</sup> APPLICANT**

**AND**

**LUCY ADHIAMBO OUGO ..... 1<sup>ST</sup> RESPONDENT**

**DEPARTMENT OF THE ADMINISTRATOR GENERAL PUBLIC TRUSTEE  
KISUMU ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**ALICE ATHIENO OUGO ..... INTERESTED PARTY**

**SOPHIE ATIENO OUGO ..... INTERESTED PARTY**

**DAVID MBOGO OUGO ..... INTERESTED PARTY**

**LOICE MBEWA OUGO ..... INTERESTED PARTY**

**JUNE AKINYI ..... INTERESTED PARTY**

**RULING**

- 1 The applicants herein Fred Ougo and Jackson Ochieng have applied to this court challenging the statement of account filed by the Respondents, being for the period the 1<sup>st</sup> Respondent and interested parties controlled the deceased's estate to the exclusion of the applicants. This was in accordance with the orders of the court issued on 5-4-2023.
2. It was argued by the applicants that the accounts as rendered do not have verifiable supporting documentation and cannot be said to be as true and accurate account.



3. The applicant relied on *Trust Bank Limited Vs Paramount Universal Bank Ltd & 2 Others*, HCCS No. 1243/2001 that where a party fails to call evidence in support of its case, the party's pleadings remain mere statements of fact since in so doing the party fails to substantiate its pleadings.
4. That the 1<sup>st</sup> Respondent has not discharged the evidential burden of proving the expenditure of Kshs. 19,950,054.40. Counsel further quoted the matter of the *Estate of Amoth Owiro Ragen*[2022]eKLR in which Ochieng J gave directions as to the extent of the details of accounts to be rendered, Reference was also made to Section 83 of *Law of Succession Act* that:

“...a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealing there with up to the date of the account.”
5. That the task is to be undertaken within 6 months from the date of the grant.
6. For the Respondents, it was submitted that the 1<sup>st</sup> Interested party is the widow of the deceased and the family matriarch and all the properties were acquired in the course of her marriage with the deceased and are matrimonial property.
7. That deceased was hospitalized for long and bills were spent in accordance with Section 83 of the *Law of Succession Act*. That the deceased provided for his family a role 1<sup>st</sup> Interested party continued with including paying fees for her grandchildren. Petty cash vouchers were shown to prove this, even showing that the applicants were recipients. That she did not expect the children to come up later to challenge expenditure and that there has been no unjust enrichment.
8. That the interested party has severally presented the accounts at family meetings the applicants fail to attend. But that applicants have been beneficiaries.
9. I have considered the submissions of the parties, herein on the matter of accounts as ordered by the court. To decide on this application, it is important to take into account particular circumstances of the case. The 1<sup>st</sup> interested party is an old widow and the matriarch of the family who are the parties to this disputes, including the applicants. The estate subject of this cause are property she built with her deceased husband. It has been submitted by the Respondents' side that the deceased while still alive took care of his family including the payment of fees, a role the 1<sup>st</sup> Interested party took over upon his demise. It was submitted that the applicants themselves have been beneficiaries in the expense utilized out of the estate. And that the deceased was hospitalized for a long with huge bills paid out. Lastly, that the 1<sup>st</sup> Interested party has always declared the accounts at family meetings which the applicants never attend.
10. Deceased died in 2014 and the estate has been administered since then whereas I agree with the submissions of the applicants on submission of detailed accounts based on the authorities cited of *Estate of Amoth Owiro Ragen* [2022]eKLR and Section 83 of the *Law of Succession Act*, among the many authorities cited, the issue is whether the same standards can be applicable. 1<sup>st</sup> Respondent, has managed this estate as a matriarch, not as manager or appointed manager.
11. In the circumstances, it would be foolhardy to expect that 1<sup>st</sup> Respondent as administrator of her own estate would keep a ledger book to account for all expenses including all petty cash expenses. And for that matter for a long period stretching back to 2014.
12. In normal and ordinary circumstances, this would not be practical. And there lies the distinction between this particular case and the authorities cited by the applicants.



13. I have looked and considered the accounts as rendered. They give general expenditure to various beneficiaries including fees, rents, university upkeep, child support, home maintenance, medical expenses, motor vehicle maintenance, insurances, cash assistance to beneficiaries, legal fees etcetera etcetera. The applicants are shown to be the same of the beneficiaries of these expenditure.
14. In my view, the circumstances of this case mitigate against the position taken by the applicants for rendering of detailed accounts to extent of petty cash expenditures running back to 2014. The prayer is unreasonable as much as it is impractical. I therefore find the accounts as rendered by the 1<sup>st</sup> Interested Party reasonable and in strict compliance with the orders of the court.
15. I accordingly therefore find no merit in the plea of the applicants for further particulars of the account of the estate herein. Same is dismissed. Each party shall bear own costs of this application. It is so ordered.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 19<sup>TH</sup> DAY OF OCTOBER, 2023**

**D.O. OGEMBO**

**JUDGE**

19.10.2023

Court:

Ruling read out in court in the presence of Mr. Okatch/Ms. Amutavi for 1<sup>st</sup> Respondent and Interested parties and Mr. Kaula for Applicants.

D.O. Ogembo

Judge

19.10.2023

Kaula:

We need typed copy of the same and proceedings.

Court:

Certified copy of the ruling and Proceedings to be provided to the parties upon payment of fees.

D.O. Ogembo

Judge

19.10.2023

