



In re Estate of Elikana choro Osuka alias Elikana Choro (Deceased) (Succession Cause 252 of 1994) [2023] KEHC 23959 (KLR) (16 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23959 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 252 OF 1994
RE ABURILI, J
OCTOBER 16, 2023
IN THE MATTER OF THE ESTATE OF ELIKANA
CHORO OSUKA ALIAS ELIKANA CHORO (DECEASED)**

BETWEEN

BETHA ANYANGO ADERA APPLICANT

AND

MESHACK OWIRA OSUKA 1ST RESPONDENT

PETER OMONDI CHORO 2ND RESPONDENT

RULING

1. The applicant is Bertha Anyango Adera a daughter to Patrick Adera Choro who is one of the sons of the deceased Elikana Choro Osuka. The latter is now deceased but was a beneficiary of the estate of his late father Elikana Choro Osuka who died on May 1, 1994.
2. On November 6, 1995, the Applicant's now late father Patrick Adera Choro was issued with a grant of letters of administration intestate to administer the estate of his father Elikana Choro Osuka who was polygamous with 4 wives.
3. Upon the demise of Patrick Adera Choro, the deceased administrator was substituted with Meshack Owira Osuka and Peter Omondi Choro on July 13, 2017. That grant was eventually confirmed on November 15, 2017.
4. On December 14, 2020, Betha Anyango Adera filed summons for revocation of grant of letters of administration and certificate of confirmation of grant issued in favour of the substituted administrators herein above and that instead, the court issues a fresh grant in favour of the deceased's widows children who were left out by the administrator namely; Betha Anyango Adira, Martha Okoth,



Victor Otieno Okoth, Collins Odhiambo, Denis Odhiambo, Eunice Akinyi, Caren Awino, Jacob Osuka, Bernard Ochieng Osuka, Peter Omondi Odero and others.

5. That is the main prayer sought, plus costs.
6. When the matter came up for directions on June 20, 2023, only the 1st Petitioner was present and the court directed him to serve the Objector and 2nd Petitioner to file submissions which were to be done within 14 days of that date.
7. I fixed the matter for mention on July 31, 2023 before the Deputy Registrar as I was on leave. On the latter date, both Petitioners appeared before the Deputy Registrar but again the Objector was absent. They were reminded of the earlier directions given on May 23, 2023. They were given September 18, 2023 for mention.
8. On the latter date, only the 1st Administrator appeared and stated that he had filed submissions on July 27, 2023 as directed by the court on June 20, 2023. He also demonstrated that he had served the Objector and he had filed an affidavit of service electronically. He prayed for the ruling date and this court reserved the ruling for today.
9. Albeit the Objector raised very serious issues regarding the administration of the estate of Elikana Choro Osuka alias Elikana Choro vide her sworn supporting and supplementary affidavits, the Objector must be available to prosecute her summons for revocation of grant whether orally, or by way of written submissions. He who alleges is under a duty to prove his allegations by prosecuting the filed application.
10. The court gave directions for canvassing of the summons for revocation of grant by way of written submissions.
11. Only the 1st Petitioner/Respondent complied with the directive. However, the first petitioner cannot prosecute the summons for the Objector and neither can this court do so.
12. For the above reasons, I hereby find that the summons for revocation of grant as accompanied by affidavit of protest filed on January 24, 2022 are hereby dismissed for non-attendance to prosecute the same with no orders as to costs.
13. However, as the administrators of the estate of the deceased Elikana Choro are under a statutory duty to give a true and accurate accounts to court on the administration and distribution of the estate of the deceased, and as the said administrators claim in their Replying affidavits that they have fully distributed the estate of the deceased, I hereby order that a true and accurate accounts of the administration and distribution of the estate of the deceased Elikana Choro Osura be filed into this court within thirty (30) days of today by Meshack Owira Osuka and Peter Omondi Choro.
14. Mention on November 20, 2023 to confirm compliance with this order.
15. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 16TH DAY OF OCTOBER, 2023

R. E. ABURILI

JUDGE

