



In re Estate of Henry Mumero Onditho alias Otitio Mumero (Succession Cause 1 of 2023) [2024] KEHC 14461 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14461 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 1 OF 2023
SC CHIRCHIR, J
NOVEMBER 14, 2024**

IN THE ESTATE OF HENRY MUMERO ONDITHO ALIAS OTITIO MUMERO

BETWEEN

CHRISTINA DAMARIS MUKOLWE ODITYO PETITIONER

AND

NELSON WEKULO ODITYO 1ST RESPONDENT

TOM MUMERO ODITYO 2ND RESPONDENT

RULING

1. There are two Applications coming up for determination. One is dated 7/6/2023 and the other dated 9/11/2023. The Application dated 9/11/2023 seeks for the following orders:
 - a. That the orders of this court dated 6/2/2023 revoking the Grant on record be reviewed.
 - b. That upon review, a fresh grant of letters of Administration intestate be issued and the three named persons be appointed as the new Administrators Nelson Wekulo Opiyo, John Osama Odinyo and Tom Mumero Odityo.
2. It is supported by the Affidavit of Nelson Wekulo Odityo the 1st Respondent. The Application is not opposed.
3. It is the Applicants case that they are sons of the deceased. They further stated that the court grants prayers as per paragraph 2 of the Application. The grounds for review are not stated.
4. Under order 45(1) of the civil procedure rules a party seeking review must demonstrate to the court that;



- a) There has been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed; or
 - (b) That there has been some mistake or error apparent on the face of the record; or
 - (c) That there is any other sufficient reason.
5. On 6/2/2023 Justice Musyoka made orders as follows:-
- a. No reasons is being given for failure to transmit the estate 22 years after confirmation.
 - b. The grant on record is hereby revoked.
 - c. Mention on 2/5/2023 for appointment of new Administrators to complete Administration.
6. The Applicants have not given any reason for seeking a review of the above stated orders. They have approached the court as though they are entitled to a review without the need to lay grounds for it. An Applicant seeking review must demonstrate that the order, the subject of review, had an error on the face of the record ;that new evidence that was outside the knowledge of the Applicant is now available; or for any other sufficient reason.
7. The Applicants have not bothered to tell the court why the orders of 6/2/2023 should be reviewed. It appears to me that this Application is purely an attempt to circumvent the order as the court had directed that new Administrators be appointed.
8. The Application has no merit. It is hereby dismissed.

The Application dated 9/11/2022.

9. The Application dated 9/11/2022 has been brought by Christine Damarine Mukolwe Otindyo and Christopher Joel Kabechi Odityo, who described themselves as the beneficiaries of the estate. The Application seeks for the following orders.
1. The Grant issued to the Petitioners on 13/1/2003 and confirmed on 16/11/2005 be revoked on grounds that the Petitioners have failed to provide for and conclude the transfers of assets to the beneficiaries, 17 years after filing.
 2. The interested parties be granted letters of Administration intestate in place of the Petitioners to wind up the estate.
 3. The Petitioners, having occasioned the delay too bear/pay the costs of the transfers.
10. The Application is supported by an Affidavit sworn jointly by the Applicants on 9/11/2022. It is the Applicants case that they are personal representatives of the estate of their late father George Odityo Mumbero who died on 13/2/2022; that their father's estate is comprised in the deceased's estate herein; that despite the Grant having been confirmed on 16/11/2015, the Respondents have not made any effort to distribute the estate. It is further stated that attempts to discuss the issue with the Respondent's have borne no fruit. A letter dated 17/10/2022 addressed to the Respondent's is attached to the Affidavit.
11. The Applicants state that failure to distribute the deceased assets have hampered the distribution of their own father's Estate.
12. There was no response filed to the Application.



13. I have considered the said Application. prayer 1 of the Application has been overtaken by events as the subject Grant has since been revoked by the court of 6/2/2023.
14. On the prayer to be appointed as Administrators of the Estate, there is evidence that the Applicants are Legal representatives of George Odityo Mumbero. The representation was obtained through an Ad Litem Grant issued by the Chief Magistrate's Court at Kakamega on 16/9/2023 (Annexure Do. 1 to the Applicants' Affidavit).
15. The Certificate of Confirmation of grant issued on 16/11/2005 in respect of the deceased's estate herein shows that George Odityo is indeed a beneficiary of the Deceased's estate and is supposed to get shares from plot No. Kakamega/Municipality/Block/243, Kakamega/Municipality 11/4 and Isukha/Shimere/68.
16. The Applicants have approached the court in their capacity as the personal representatives of one of the beneficiaries of the estate. I am in agreement that the delay in the transmission of the estate herein has direct effect of delaying the administration of their own father's estate. The Application is unopposed and it follows that the Applicant averments remains uncontested. Further following the courts orders of 06/2/2023, new Administrators need to be appointed.
17. The prayer to Administer the Estate is justifiable. The Application is merited and I hereby proceed to make orders as follows.
 - a. The Application dated 7/6/2023 is hereby dismissed with no orders as to costs.
 - b. Prayer 2 of the chambers summons dated 9/11/2022 is hereby allowed with no orders as to costs.
 - c. Consequently Christina Damarine Mikolwe Odityo and Christopher Joel Katiechi Odityo are hereby Appointed as Administrators of the Estate of Henry Mumbero Odityo Alias Otitio Mumbero and a fresh grant to issue forthwith.
 - d. The new Administrator to file summons for confirmation of Grant within 45 days from the date of this Ruling.
 - e. This matter will be given a mention date at the delivery of this Ruling to confirm compliance.

DATED, SIGNED AT DELIVERED AT KAKAMEGA ON THIS 14TH DAY OF NOVEMBER, 2024.

S. CHIRCHIR

JUDGE.

In the Presence of:-

Godwin Luyundi- Court Assistant.

The respondents.

