



REPUBLIC OF KENYA



**In re Estate of Asentus Akuku Ogwella (Deceased) (Probate & Administration E002 of 2022) [2024] KEHC 15579 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15579 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
PROBATE & ADMINISTRATION E002 OF 2022**

**KW KIARIE, J**

**DECEMBER 3, 2024**

**IN THE MATTER OF THE ESTATE OF: ASENTUS AKUKU OGWELLA (DECEASED)**

**BETWEEN**

**MOSES OTIENO AKUKU ..... APPLICANT**

**AND**

**PETERSON CLEMENT AKUKU ..... RESPONDENT**

**RULING**

1. Moses Otiemo Akuku, the applicant herein, moved the court by way of summons for revocation of the grant dated the 27<sup>th</sup> day of August 2024. The application was brought under sections 76 (d) (i) & (ii) of the *Law of Succession Act* & Rule 44(1) & (2) of the Succession Rules. The firm P.R. Ojala & Company Advocates represented him.
2. The application is premised on the following grounds:
  - a. That the petitioner has failed to proceed diligently with the administration of the estate.
  - b. That the petitioner failed to apply for the confirmation of the grant within one year from the date of issue of the grant.
  - c. That the petitioner has been threatening other beneficiaries, especially the applicant herein, with the eviction from the estate of the deceased even though the grant has not been confirmed and the estate has not been distributed.
  - d. The petitioner failed to convene a meeting with all the beneficiaries so that they could agree on how the estate should be distributed.
3. The respondent was in person. He opposed the application and contended that it lacked merits.



4. This succession cause was filed in court on July 14, 2022, and the grant was issued on November 30, 2022. At the time of filing this application, no application for the confirmation of grant had been filed. The applicant has contended that it has taken longer than is necessary.
5. The respondent has explained why it has taken him this long to do what is necessary. Some two beneficiaries passed on, and he was required to substitute them, but before he could apply, he was served with the current application.
6. Upon my perusal of the supporting affidavits by both the applicant and the respondent, it emerges that there are some differences over some property. This can only be addressed by distribution after the grant has been confirmed. Consequently, I find that the application is actuated by self-interest.
7. The explanation that the deaths of some of the beneficiaries contributed to the delay has not been denied. Therefore, the application lacks merits.
8. To speed up the process, I am directing the administrator to file the necessary application within 30 days of this ruling, failure of which the beneficiaries may move the court appropriately.
9. Each party is to bear its costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 3<sup>RD</sup> DAY OF DECEMBER 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

