



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**(CORAM: CHERERE-J)**

**SUCCESSION CAUSE NO. 430 OF 2011**

**IN THE MATTER OF THE ESTATE OF JOHN JOSEPH OOKO ODULA (DECEASED)**

**BETWEEN**

CONNIE ADHIAMBO ODULA.....1<sup>ST</sup> APPLICANT

CAROLINE APIYO ODULA.....2<sup>ND</sup> APPLICANT

GAUDENTIA ATIENO ODULA.....3<sup>RD</sup> APPLICANT

**AND**

VINCENT OGUTU ODULA.....ADMINISTRATOR/ RESPONDENT

**RULING**

**Background**

1. **VINCENT OGUTU ODULA** (hereinafter referred to as **Administrator/ Respondent**) was appointed the administrator of the deceased's estate on 29<sup>th</sup> June 2015.
2. A Certificate of Confirmation of Grant identifying respective shares for the beneficiaries including the Applicants herein was issued on 6<sup>th</sup> December, 2016.

**Application**

3. The applicants have by Notice of Motion dated 23<sup>rd</sup> January, 2019 moved the court seeking orders that the **Administrator/Respondent** be substituted with the 1<sup>st</sup> Applicant.
4. The application is based on grounds among others that the **Administrator/Respondent** has mismanaged the estate, leased portions of the estate, denied the Applicants access to their rightful shares and failed to distribute the estate.
5. The application is also supported by an affidavit sworn on 23<sup>rd</sup> January, 2019 by the Applicants in which they reiterate the grounds on the face of the application.
6. The **Administrator/Respondent** though served did not oppose the application or attend court when it came up for hearing on 6<sup>th</sup> May, 2019.

**Analysis and Determination**

7. I have considered the application in the light of the supporting affidavit and the applicable law.
8. Section 82 of **Law of Succession Act** (hereinafter referred to as **the Act**) provides the duties of the Personal representatives which

include TO:

**(g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.** (Emphasis added).

9. I have perused the court record and there is no order extending the period for completion of the administration of the estate hereof beyond 6 months and the **Administrator/Respondent** is no doubt in breach of clear provisions of the law.

10. Section 76 of **the Act** provides as that:

**“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-**

**(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—**

**(ii) to proceed diligently with the administration of the estate.**

11. The foregoing section gives this court powers to revoke or annul a grant such as the one in this case and to substitute the administrator on account of the administrator’s failure to complete the administration.

12. The foregoing notwithstanding, the court takes the view that to revoke or annul the grant and to substitute the administrator might the effect of further delaying this cause whose grant was confirmed close to 3 years ago.

### **Disposition**

13. From the foregoing, this court declines to allow the Notice of Motion dated 23<sup>rd</sup> January, 2019 and in its place orders that:

**1. The Administrator/Respondent is hereby granted 60 days to complete the administration of the deceased’s estate in terms of the Certificate of Confirmation of Grant dated 6<sup>th</sup> December, 2016.**

**2. The Administrator/Respondent is hereby put on notice that the court will not hesitate to revoke or annul the grant in the event that order (1) above is not complied with**

**3. Summons to issue to the Administrator/respondent for mention on ...29<sup>th</sup> July, 2019....to confirm compliance**

**4. The DR of this court is directed to ensure that this order and the summons are served on the Administrator/Respondent through the Chief God-Nyathindo Location and that an affidavit of service to that effect is filed**

**5. The Administrator/Respondent shall pay the costs of this application**

**DELIVERED AND SIGNED IN KISUMU THIS 9TH DAY OF MAY 2019**

**T. W. CHERERE**

**JUDGE**

In the presence of:

**Court Assistant** - Felix

**Applicants** - Present in person

**Respondent** - Absent