



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 928 OF 2000**

**IN THE MATTER OF THE ESTATE OF ONYANGO**

**OGUTU alias BENEDCIT ONYANGO (DECEASED)**

**RULING**

1. I delivered a judgment herein on 23<sup>rd</sup> May 2014, where I revoked a grant that had been obtained without involving one of the children of the deceased and appointed new administrators. I also set aside the orders made upon the confirmation of the grant that I had just revoked as, apparently, key assets of the estate had not been placed on the table for distribution. I directed the new administrators to apply for the confirmation of their fresh grant. I note that four years down the line, the said administrators, contrary to my orders of 23<sup>rd</sup> May 2014, have not moved the court for confirmation of their grant. Instead they have resorted to having wrangles between themselves and filing numerous applications on diverse subjects.

2. The primary role of the probate court is distribution of the estate of the dead person, but not to superintend over wrangles between family members. It is for this reason that the Law of Succession Act, Cap 160, Laws of Kenya, has a very clear roadmap for administrators to follow. After grant is made to them they are expected to apply for confirmation of grant, by dint of section 71, after expiration of six months. Upon the grant being confirmed they have another six months to distribute the estate and wind up the administration. Administrators who stick to this programme should be able to wind up administration within one year of the grant being made to them. The Law of Succession Act does not envisage that administration of estates goes on for generations. Indeed, the policy behind the law is that administration should be completed as soon as possible so that every survivor of the deceased gets their share of the estate and moves on with their lives. An administration can drag on for years on end in cases where the administrators do not do the right thing, either because of incompetence or truancy.

3. As the law does not plan for an endless administration, it has put in place mechanisms for dealing with cases where administrators fail in their duties. Section 71 requires the administrators to apply for confirmation of grant after expiry of six (6) months after the grant was made. That gives them ample time to collect the assets, ascertain debts and liabilities ascertain beneficiaries and work out a mode of distribution of the assets. If an administrator fails to move the court for confirmation of their grant upon expiry of the six months envisaged in section 71, the court is mandated under section 73 to give notice to the administrator to apply for confirmation. Failure to comply with section 71 is one of the grounds upon which a grant may be revoked. Section 76(d) (i) states that ground – the failure to apply for confirmation of grant within one year from the date of its making.

4. The administrators in this case are no doubt in default of section 71 of the Law of Succession Act. They do not require prompting for them to apply for confirmation of their grant. I shall take the opportunity of the applications that I am supposed to rule on in this case to give them notice that if they do not comply with section 71 of the Act, there could consequences, which include that stated in section 76(d) (i).

5. I am tasked with determining applications dated 5<sup>th</sup> October 2015 and 11<sup>th</sup> December 2015. The application dated 5<sup>th</sup> October 2015 is brought at the instance of one administrators seeking orders against the other administrators for injunctions, accounts, leave to lease or rent out estate property, among others. The application dated 11<sup>th</sup> December 2015 is by the other two administrators, the respondents in the application dated 5<sup>th</sup> October 2015, seeking a variety of orders against the applicant in the application dated 11<sup>th</sup> December 2015, for injunctions, eviction and deposit of rents in a joint estate account. No doubt these are copycat applications. Both sides have filed their responses. They were directed to file written submissions, which they have done. I have read through them and noted the arguments advanced. It is unfortunate that the administrators have resorted to these kinds of maneuvers instead of getting to their primary duty of distributing the estate. There is no doubt that the assets of the estate have been ascertained, and there is no dispute as to who the administrators of the estate are. There cannot be nay good reason as to why the administrators have failed to apply for confirmation of their grant.

6. I note that the issues raised in the two applications have something to do with alleged intermeddling. The persons accused of intermeddling are administrators. The estate of a dead person vests in the personal representatives that the court appoints through a grant of representation. That is the effect of section 79 of the Law of Succession Act. Under section 45 it is clear that an administrator has authority, derived from the grant, to handle estate property, so he or she cannot possibly be accused of intermeddling, and an injunction is not an ideal remedy against a person in whom the estate of the deceased is vested.

7. I believe the best thing in the circumstances is to require the administrators herein account for their administration of the estate during the period that they have acted as such. Rendering accounts is a statutory requirement. It is stated in the Law of Succession Act, as well as in the Trustee Act, Cap 167, Laws of Kenya. Accounts ought to be rendered by administrators whether called for or not. It is duty that the administrators incur upon their appointment.

8. The orders that I am moved to make in the circumstances of this case are –

(a) That the administrators shall file for confirmation of their grant within ninety (90) days of the date of this order, in default of which the grant made to them shall stand automatically revoked;

(b) That either of the administrators is at liberty to apply for confirmation, and the other administrators and the non-administrators survivors shall have liberty, upon service, to file affidavits of protest should they not agree with the proposals made in the application;

(c) That the three administrators are hereby directed to render accounts, either jointly or severally, of their administration of the estate for the duration that they have been administrators, covering an inventory of the assets, the rents collected, the expenditures incurred, among others;

(d) That the account referred to in (c) above shall be in affidavit form, supported by appropriate documentation, and shall be lodged in court within thirty (30) days of date hereof; and

(e) That the matter shall thereafter be mentioned before any Judge in the Division for compliance.

DATED, SIGNED and DELIVERED at NAIROBI this 5<sup>TH</sup> DAY OF OCTOBER, 2018.

W. MUSYOKA

JUDGE