



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 503 OF 1992**

**IN THE MATTER OF THE ESTATE OF GAMALIEL HERBERT OMONDI (DECEASED)**

**RULING**

The deceased herein Gamaliel Herbert Omondi died intestate on 16/9/1991 leaving behind a widow Judith Anyango Omondi and a son Kevin Ceaser Okongo the only survivors surviving him.

Subsequently, the widow herein petitioned this court for grant of letters of administration jointly with his brother in law (brother to deceased) Meshack Ouma Okong'o. The joinder of Meshack Ouma a brother in law was made necessary by virtue of the fact that Kevin the only child to the deceased was then a minor aged 13 years old.

On 30/6/1996, a grant of letters of administration was issued intestate to the two applicants jointly.

Since 30/6/1992 when the grant was issued and despite the expiry of six months, the administrators never moved the court for confirmation of the grant.

Consequently, the court issued a notice to show cause why the grant cannot be revoked for want of prosecution. The notice is dated 28/5/2015.

Despite service of the said notice upon petitioners/applicants, nobody responded hence the dismissal of the petition on 25/6/2015. It is this dismissal order that the 1<sup>st</sup> applicant herein one Judith Anyango Omondi through her application filed under certificate of urgency dated 30/11/2016 is seeking to have set aside.

The said application herein brought under Section 71(1) 73 and 76(d) (i) of the Law of Succession Cap 160 and Rule 40 of the same act is seeking for orders certifying the application as urgent, reinstatement of the grant of letters of administration, confirmation of grant of the said letters of administration and lastly costs in the cause. Application is supported by an affidavit deponed by the applicant herein on 30<sup>th</sup> November, 2016.

The applicant avered that her co-administrator one Meshack Ouma died on 8/8/2008. A death certificate was attached to that effect and marked annexure "JOO-2". It was further revealed that the other beneficiary Kevin Ceaser Okongo the only surviving son died on 26/3/2016 and a death certificate marked annexure "JOO.3" was attached.

It was the applicant's contention that she was never served with the notice to show cause and that if it was ever served upon her former advocate, then, she was not notified. She attributed the delay in prosecuting the petition herein due to poor health as a result of systematic hypertension hence rendered immobile most of the time. She further averred that the death of the co-administrator was the other contributory

factor.

In a nutshell, the applicant pleaded with the court to reinstate the revoked grant arguing that the delay was not deliberate but due to poor health and misfortune that befell the family.

In her prayer to confirm the grant, the applicant prayed that the other administrator Meshack Ouma Okongo's name be deleted from the grant so that she can remain as the sole administrator and that the property herein land parcel No. North Gem/Got – Regea/771 measuring 5.0 hectares be given to Philip Okonga Ouma a nephew to the deceased as a purchaser.

I have considered the application herein and the affidavit in support together with submissions by counsel for the applicant.

It is clear from the record that a grant intestate was issued on 30/6/1992. Same was dismissed on 25/6/2015 about 13 years down the line for want of prosecution. Although the notice to show cause was issued, it is not clear to whom it was served as there is no return of service nor is the mode of service reflected in the file. On that ground alone, it is not clear whether the applicant was served so as to be aware of the intended dismissal or not.

Secondly, assuming that it was served upon her former advocates Otieno and Abdul, it is also not clear. For these reasons, I am of the opinion that the applicant was not aware of the said notice hence the dismissal of the grant herein was not properly granted and the orders of 25/6/2015 dismissing the grant are hereby set aside.

Having restored the position to pre-dismissal orders, was the delay in prosecuting the application/petition justified. The applicant gave the reasons as poor health and the demise of her co-administrator. To prove her assertion on poor health. She attached medical report from St. Mary's hospital (annexure "JOO.5"). To that extent I am convinced that indeed she has poor health as she is undergoing monthly clinic for what the doctor described to as MOPC.

Regarding the death of her co-administrator the year 2008, the death certificate attached is sufficient proof. Although Meshack died the year 2008 six years down the line since the grant was issued in 1992, I will nevertheless indulge her.

Accordingly, the reasons adduced for the delay in prosecuting the application for confirmation of grant are convincing. Subsequently, I do allow the application in terms of prayers two with regard to reinstatement of the revoked grant.

The 3<sup>rd</sup> prayer was confirmation of the grant and distribution of the estate. The applicant proposed that the land in issue be given to a nephew who was never listed as a dependant or beneficiary from the initial stage. The applicant equally did not tell the court where and how some of the assets of the estate listed in form P and A 5 was dealt with as they are not listed in the list of the assets available for distribution. Among the assets omitted is motor vehicle registration No. KAD 553. The applicant equally did not tell the court how the property was sold and when without authority from the court. It is clear from form P & A 5 that the estate had no liability meaning there was no creditor. Where has the purchaser come from?

This court will not be used to effect illegalities. Any sale during the pendency of these proceedings after the death of the deceased will amount to intermeddling with the estate which is a criminal offence. For these reasons, I will not give the property of the deceased to a stranger one Philip Okongo Ouma. Instead, I will give L.R. North Gem/Got – Regea/771 to the applicant one Judith Anyango Omondi, as the sole beneficiary. She can transfer to whoever she wants later after acquiring ownership.

For the above stated reasons, application dated 30/11/2016 be and is hereby allowed with orders as follows:-

(a) That the order of the court dated 25/6/2015 revoking the grant of letters of administration dated

30/6/1992 be and is hereby set aside and the said grant reinstated.

(b) That the name of Meshack Ouma Okongo a co-administrator now deceased be and is hereby removed from the said grant and the same be rectified and an amendment to reflect Judith Anyango Omondi as the sole administrator.

(c) That the grant dated 30/6/1992 be and is hereby confirmed and land reference No. North Gem/Got Regea/771 be inherited by Judith Okongo Ouma as the sole beneficiary.

(d) The applicant to bear her own costs.

Orders accordingly.

**DATED AT NAIROBI THIS 22<sup>ND</sup> DAY OF FEBRUARY 2017.**

**J. N. ONYIEGO (JUDGE)**