



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. E021 OF 2020**

**LYDIA ATIENO OGOLA**

**BECKY NYANCHAMA ONYANCHA**

**(Administrators of the estate of the**

**late FREDRICK OTIENO ADUMBO).....CLAIMANTS**

**v**

**GOGNI RAJOPE CONSRUCTION LTD.....1<sup>st</sup> RESPONDENT**

**CEABUD ENGINEERING SERVICES LTD...2<sup>nd</sup> RESPONDENT**

**AND**

**LYDIA ATIENO OGOLA.....APPLICANT**

**v**

**RICHARD ONSONGO t/a**

**ONSONGO AND CO ADVOCATES.....1<sup>st</sup> RESPONDENT**

**BECKY NYANCHAMA ONYANCHA.....2<sup>nd</sup> RESPONDENT**

**RULING**

1. For determination is a Motion dated 29 March 2021 by Lydia Atieno Ogola (the applicant) seeking orders:

(1) Spent.

(2) Spent.

(3) The Honourable Court be pleased to order the striking out of all pleadings filed by Messrs Onsongo & Co. Advocates in the name of the applicant herein.

(4) The costs of this application be provided for and in any event be borne by the law firm of Messrs Onsongo & Co. Advocates.

2. The primary reason advanced by the applicant in support of the Motion seeking the striking out the pleadings herein were that she had not given any instructions, authority or consent to the firm of Onsongo & Co. Advocates to act for her in the Cause.

3. Becky Nyanchama Onyancha filed a replying affidavit in response to the application on 10 May 2021, in which she deposed that she and the applicant were co-administrators of the estate of Fredrick Otieno Adumbo and that pursuant to a grant of administration/confirmation of grant issued by the Chief Magistrates Court in Kisumu, they wrote to the Director of Occupational Safety and Health on 31 August 2018 seeking assistance with respect to payment of compensation under the Work Injury Benefits Act, and that she had instructed the firm of Onsongo & Co. Advocates to sue for the compensation due to the estate after the applicant had declined to consent or approve institution of

the proceedings.

4. On the same day, the firm of Onsongo & Co Advocates filed a Notice of Preliminary Objection contending that:

(1) This Honourable Court lacks the statutory jurisdiction to entertain, hear and determine the issue raised in the said application taking into account that they are issues within the scope of the Law of Succession Act (Cap 160).

(2) The application is within the ambit of sections 47 and 73 of the Law of Succession Act (Cap 160) and Rule 49 of the Probate and Administration Rules, 1980.

5. A director of the 1<sup>st</sup> Respondent also filed a replying affidavit on 19 May 2021, in which he supported the application to strike out the pleadings because the pleadings were filed without the consent or authority of the applicant.

6. Pursuant to Court directives, the applicant filed her submissions on 3 June 2021, the Respondents on 8 June 2021, while the firm of Onsongo & Co. Advocates had filed submission on 7 June 2021.

7. The Court has considered the record, the application, affidavits, Objection and submissions and come to the view that the application should succeed for the following reasons.

8. First, the co-administrator to the estate of Fredrick Otieno Adumbo admitted in her replying affidavit that the applicant had not consented or approved the instructions given to the firm of Onsongo & Co. Advocates to initiate this Cause.

9. In terms of case law, where there are more than 1 administrator, they are expected to act together (see *Estate of Simon Ngugi (deceased)* (2013) eKLR, *In the Estate of Mohamed Makau (deceased)* (2019) eKLR and *R v Nairobi City Council & 3 Ors ex-parte Christine Wangari Gachege suing on behalf of the estate of Rahab Wanjiru Evans* (2014) eKLR.

10. Without the consent of the applicant and/or leave granted by the appropriate Court (if necessary and required), the instant proceedings have no legal legs to stand on.

11. Lastly, if as argued by the firm of Onsongo & Co. Advocates, the Court has no jurisdiction to entertain the Motion dated 29 March 2021, the corollary is that the Court would not have jurisdiction over the Cause, in other words, the objection and argument is self-defeating.

12. The Court however does not accept the argument.

13. The Court gave the parties time to attempt to settle the dispute out of court but no agreement was reached (the Certificate of Grant allocated each of the administrators 50% of the expected Work Injury Benefits Act compensation).

14. While requesting the parties to attempt a mutually acceptable solution, the Court was alive to the fact that the cause of action herein may be caught up by the law of limitation, or other technicalities of the law.

15. From the foregoing, the Court finds merit in the Motion and strikes out the pleadings filed on 24 November 2020. No order on costs considering the protagonists are still co-administrators.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 26<sup>TH</sup> DAY OF JANUARY 2022.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For applicant Ochieng Ogola & Co. Advocates

For Claimants Onsongo & Co. Advocates

For Respondents Rachuonyo & Rachuonyo Advocates

Court Assistant Chrispo Aura