



REPUBLIC OF KENYA



**In re Estate of Sukhdev Singh Mangat (Deceased) (Succession Cause E006 of 2020) [2025] KEHC 5279 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5279 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
SUCCESSION CAUSE E006 OF 2020**

**A MABEYA, J**

**APRIL 30, 2025**

**IN THE MATTER OF THE ESTATE OF SUKHDEV SINGH MANGAT (DECEASED)**

**RULING**

1. Sukhdev Singh Mangat (the deceased) died testate on 14<sup>th</sup> December, 2020. He left a Will that was propounded and a Grant of Probate of Written Will issued on 17<sup>th</sup> December, 2020 to Dilip M. Patel and Tripat Singh Mangat. Dilip M. Patel died subsequently leaving Tripat Singh Mangat as the sole Administrator.
2. The grant was subsequently confirmed on 23<sup>rd</sup> February, 2021 and the estate was to be distributed to the various beneficiaries as identified in the Will. For reasons on record, the distribution of the estate has never been concluded.
3. Throughout the proceedings, the firm of Owiti, Otieno & Ragot Advocates was acting for the estate and represented the administrator(s). However, on 8<sup>th</sup> April, 2025, Dr. Ekuru Aukot Advocate appeared and sought to represent the estate and the Administrator. Since the proceedings had been concluded by the confirmation of the grant, the Court directed him to make a formal application.
4. By a Motion on Notice dated 9<sup>th</sup> April, 2025, the firm of Ekuru Aukot and Company Advocates sought to come on record on behalf of the administrator, and therefore the estate, in the place of the firm of Owiti, Otieno and Ragot Advocates. This ruling is in respect of the said Motion.
5. The Motion was brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*. It sought that the firm of Ekuru Aukot & Company Advocates come on record for the Administrator and the Notice of change of Advocates dated 4<sup>th</sup> February, 2025 be deemed to have been filed properly on record and served upon the grant of the orders.
6. The grounds were set in the body of the Motion and the Affidavit of Dr. Ekuru Aukot sworn on 9<sup>th</sup> April, 2025. It was contended that the Administrator had instructed that firm to take over the conduct of the matter in the place of Owiti, Otieno & Ragot Advocates. That pursuant thereto, the said firm had filed and served a Notice of Change of Advocates dated 4<sup>th</sup> February, 2025 and now the said firm was seeking leave for the same to be deemed to have been duly filed and served.



7. That the application had been made timeously and in good faith. That if the parties do not agree on fees, the Advocate should tax his fees. That the Administrator intended to make partial distribution of the estate to the surviving beneficiaries. That no prejudice will be suffered if the orders sought are granted.
8. The application was opposed vide the Replying Affidavit and further affidavit of Otieno David of 22<sup>nd</sup> and 24<sup>th</sup> April, 2025, respectively. In the said affidavits, Mr. Otieno detailed the extensive work his firm had done for both the deceased and the estate. He set out the cases he had done for the deceased before his demise as Kisumu ELC No. 7 of 2019, to recover IR No. 7363/1, Law Society of Kenya Disciplinary Cause No. 151 of 2019 for sale of LR No. 10419 and withholding Kshs.63,700,000/= and Law Society of Kenya Disciplinary Cause No. 151 of 2019 on the withholding Kshs.9 million. The acting straddled before and after the demise of the deceased.
9. Mr. Otieno detailed all the services he had offered the estate. The various advise he gave towards the expedited conclusion of the administration and distribution of the estate. The victories he had scored in the aforesaid cases. He also alluded to the unwillingness of the Administrator in concluding the distribution of the estate. That the Administrator and the trustees that the latter had appointed intended to skim off Kshs.30 million from the Estate.
10. He complained that despite being aware that the estate owed him fees, the Administrator continued to pay 3<sup>rd</sup> parties monies from the estate while discriminating against him. That the Administrator intended to change Advocates in order to avoid settling his legal fees and avoid giving accounts.
11. Mr. Otieno set out the various fee notes he had raised against the deceased and estate. He specified those that had been settled and those pending. At paragraph 14 of the Further Affidavit, he produced at pages 20 to 24 of the exhibit thereto fee notes totaling Kshs.15,999,910/= which he contended had not been settled.
12. In the oral submissions made on 8<sup>th</sup> April, 2025, both Dr. Ekuru and Mr. Otieno propounded their respective positions which the Court has carefully considered. The same were as inflammatory as they were controversial. They bordered on accusations and counter accusations. In the view of this Court, the less the Court dealt with them, the better. The crucial issue for consideration is, should the leave sought be granted on the face of fierce protestation by an advocate who has demonstrated the huge workload he has offered the client who has now decided to give him a boot?
13. The Court has considered the opposing views of the parties. The question is what interpretation the Court should give to Order 9 Rule 9 of the Civil Procedure Rules and Section 83 of the Law of Succession Act. Order 9 Rule 9 of the Civil Procedure Act provides:

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

  - (a) upon an application with notice to all the parties; or
  - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”
14. There has been various interpretations of this provision. The cardinal and prevalent of it is that the law will not countenance a situation where a litigant will run away from his/its responsibility to settle an Advocate’s legal fees after the conclusion of a matter. The provision came about when many litigants, feeling that the day of reckoning had come when they were about to enjoy the fruits of litigation



- (judgment) and had not settled their legal fees, pretended to exercise their right of representation by choosing another legal representative than the Advocate who had sweated his way all the way to judgment. Such litigants walked out scot free and left their hitherto superb and hard working Advocates pursuing their costs to empty ends.
15. The provision was therefore enacted to safeguard such Advocates from being left to the peril of the cunning litigants who would leave them gasping for breath after the ultimate end (judgment) had been attained. That the advocates sweat must and should be protected. On the other hand however, the provision was also meant to protect the litigant's right to choose own representation.
  16. In *Serah Wanjiru Kungu vs Petera Munyua Kimani* (2021) eKLR, the Court held: -

“The above framework was introduced in the Civil Procedure Rules to deal with disruptive changes that litigants and advocates used to effect, oftenly for the purpose of unfairly dislodging previous advocates without settling their costs. The provision on filing a consent between the outgoing and incoming law firms was intended to ease the process of effecting change of advocates post judgment. The adoption of the consent as an order of the Court is merely intended to make the Court record clear for avoidance of doubt.”
  17. Here I will add that, in the absence of a consent, the Court will see to it that the advocate being replaced is not left holding a baby on his lap while the incoming advocate and the successful or unsuccessful litigant run with the trophy. The position of the outgoing advocate must be secured.
  18. In the present case, Mr. Otieno's objection was that his fees was a liability under the Will and section 83 of the *Law of Succession Act*. That the same must be settled before the estate is distributed. That distribution of an estate is on the net estate. That in the premises, the intended distribution before his fee notes that had been submitted to the Administrator who had failed to respond with either settlement thereof or a counteroffer should be settled first. He cited, inter alia, the cases of *Mary Rono vs Jane Rono & Another* (2005) eKLR, *Re Estate of JNG (Deceased)* (2021) eKLR and *Re Estate of SMM (Deceased)* (2021) eKLR in supporting of proposition.
  19. Section 83 of the *Law of Succession Act* Cap 160 Laws of Kenya provides:-
    - “(a) to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;
    - (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
    - (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
    - (d) to ascertain and pay, out of the estate of the deceased, all his debts;
    - (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
    - (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to



the respective beneficial interests therein under the will or on intestacy, as the case may be;

- (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;
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”

20. In the view of this Court, the effect of the above provision is that Mr. Otieno is correct, that before distribution of an estate, all liabilities must be settled. In the present case, the legal fees raised by Mr. Otieno is a liability on the estate. The estate cannot be distributed before liabilities attaching to the estate are fully settled.
21. In view of the foregoing, the Court holds that the estate of the deceased is not to be distributed before the liabilities are taken care of. But in the same breath, the Court will not allow the distribution of an Estate to remain in limbo indefinitely. The Court asked Mr. Otieno to file his fee note in Court by way of Further Affidavit.
22. The Court has considered the Further Affidavit of Mr. Otieno. The fee notes alleged not to have been settled are at pages 20 to 24 of the exhibit to the Further Affidavit. They total Kshs. 15,999,910/=. Dr. Aukot argued that Mr. Otieno had been paid a sum in excess of Kshs. 11 million. There was no evidence to this fact.
23. Accordingly, to strike a balance between the opposing parties and for the interests of justice, the application dated 8<sup>th</sup> April, 2024 is allowed in the following terms: -
  - a. Leave is granted to the firm of Ekuru Aukot & Company Advocates to come on record for the Estate of the deceased in the place of Ms. Owiti, Otieno and Ragot Advocates.
  - b. A Notice of Change of Advocates be filed forthwith to regularize the position.
  - c. The Estate of the deceased may proceed to be distributed in accordance with the law BUT subject to a sum of Kshs.15,999,910/= being withheld in abeyance to await the taxing of bills of costs by the firm of Owiti, Otieno & Ragot Advocates.
  - d. In order not to hamstring the Administrator and the Trustees indefinitely, the firm of Owiti, Otieno & Ragot Advocates is to file and serve its bills of costs against the Estate, by whatever nature, within 30 days and have the same taxed within 60 days thereafter, in default, the Administrator to be at liberty to distribute the withheld sum of Kshs.15,999,910/=.
  - e. If and when taxed, the Costs be paid over to Owiti, Otieno & Ragot Advocates and the balance, if any, be distributed accordingly.
  - f. There be liberty to apply.



Orders accordingly.

**DATED, AND DELIVERED AT KISUMU THIS 30<sup>TH</sup> DAY OF APRIL, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

