



REPUBLIC OF KENYA



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In re Estate of Amoth Owira Ragen (Deceased) (Succession Cause E002 of 2025) [2025] KEHC 7499 (KLR) (30 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7499 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
SUCCESSION CAUSE E002 OF 2025**

DK KEMEL, J

MAY 30, 2025

IN THE MATTER OF THE ESTATE OF AMOTH OWIRA RAGEN (DECEASED)

BETWEEN

DUNCAN ANGAYU AMOTH 1ST APPLICANT

GEORGE ONYANGO AMOTH 2ND APPLICANT

AND

LIVINGSTONE RAGEN AMOTH 1ST OBJECTOR

CORNEL RASANGA AMOTH 2ND OBJECTOR

AND

JOACHIM OWIRA AMOTH PETITIONER

ERIC WANGO AMOTH PETITIONER

RBMAN OWIRA AMOTH PETITIONER

RULING

1. The two Applicants herein filed an application dated 6/5/2022 seeking for a raft of reliefs namely;
 - i. That the Applicants be enjoined in the suit.
 - ii. That the case be transferred to Siaya High Court to provide all the beneficiaries an opportunity to attend court sessions.
 - iii. That the Honourable Judge Justice Fred Ochieng disqualify himself from the case.
 - iv. That the first application made by the 1st and 2nd Objectors be heard and determined before any orders can be given.



- v. That the grant be reinstated.
 - vi. That the court vacate all previous orders issued because they have caused wastage of the estate.
 - vii. That the 2nd Objector be compelled to return the industrial plot belonging to the estate in Siaya town that he gave to SAMCO Traders.
 - viii. That the 1st Objector be compelled to account for the money he withdrew from KCB before closing account.
 - ix. That the 1st Objector be compelled to surrender the Post Office Savings Account Book No KYY to the administrators to enable them recover the money from the Unclaimed Assets Authority.
 - x. That the 1st Objector be compelled to return the vehicle registration Number KAL 914F that he illegally took from the estate.
 - xi. That the 1st objector be compelled to account for the animals that he illegally took from the estate.
 - xii. That the 1st objector be compelled to produce the title deed that came into his possession as the chief of Central Alego.
2. The application is supported by the affidavit of the 1st Applicant sworn on even date wherein he averred inter alia; that the initial application made by the 1st and 2nd Objectors has never been finalized; that Justice K. J Tanui had directed that the administrators remain in office and that the family to meet at home and resolve their differences; that the 1st and 2nd Objectors refused to attend the family meeting; that the 1st and 2nd Objectors attempted to perform the deceased's final rites (Nindo e liel) but were stopped by the administrators; that the 1st and 2nd Objectors later filed an application for revocation of grant without first prosecuting their pending application; that the 1st and 2nd Objectors are out to take control of the estate and loot it as they have already grabbed land belonging to the estate; that the matter should be transferred to Siaya High Court for easy access to justice.
 3. The application was opposed by the 1st and 2nd Objectors vide a replying affidavit sworn by the 1st Objector on 4/11/2024 wherein he averred inter alia; that all pending applications have been dealt with and if not then they remain abandoned; that the Objectors filed the application for revocation of grant which was allowed by the court leading to the removal of the administrators; that the application for revocation of grant was necessary to hold the administrators to account; that the objectors do not have any pending applications; that the allegations that the Objectors have snatched the assets of the estate are false; that the matter of disqualification of Justice Ochieng has been overtaken by events as the matter is no longer being handled by Honourable Justice Ochieng; that the administrators have already been removed and punished for being in contempt of court orders; that they do not have control of where the case will be conducted.
 4. The 1st Applicant filed a further affidavit sworn on 15/11/2024 wherein he reiterated his averments in the supporting affidavit and further averred that the Objectors herein are an impediment to the smooth running of the estate as they have vested interests with third parties to destroy the estate.
 5. There was no response by the administrators.
 6. The application was canvassed by way of written submissions.
 7. The Applicants' submissions dated 17/4/2024 are a reiteration of their affidavit and grounds in support of their application. Vide supplementary submissions dated 13/5/2025, the Applicants submitted inter alia; that the Objectors should prosecute their application filed in 2002; that their



application herein would have been finalized in 2022 or 2023 before the recent rulings which has now proceeded to the Court of Appeal Kisumu COA Civil Appeal No E111/2024; that further proceedings should stop pending the outcome of the appeal; that the objectors should be ordered to surrender to court all the assets in their possession not withstanding the role of the administrators; that the said assets should be handed over to the new administrators who will be put in place.

8. Learned counsel for the 1st and 2nd Objectors vide submissions dated 28/3/2025 submitted inter alia; that most of the prayers sought have been overtaken by events; that the objectors' earlier application which is still pending has already been overtaken by events and has become moot; that the request for reinstatement of grant is not feasible as the matter is currently pending at the Court of Appeal vide Case No E111/2024; that the order to compel the Objectors to surrender assets is untenable as there must be administrators to oversee the same but who have now moved to the Court of Appeal and that this court should await a determination from the Court of Appeal; that the Applicants do not have the capacity to purport to act for the estate; that the Applicants are proxies of other persons who are out to delay the course of justice and hence the application should be dismissed with costs.
9. I have considered the Applicants' application together with the rival affidavits and submissions. It is not in dispute that the parties herein had litigated over this matter vide Kisumu High Court Succession Cause Number 341 of 2002 wherein the court issued several orders one of which revoked the grant of letters of administration intestate that had been issued to the three administrators herein and further cited them for being in contempt of court orders for failing to render accurate accounts regarding the estate and that they were finally removed as administrators. It is also not in dispute that the aggrieved administrators lodged an appeal to the Court of Appeal vide No E111/2024 which is currently pending determination. It is also not in dispute that new administrators are yet to be selected by the family for appointment by the court. I find the issue for determination is whether the Applicants' application has merit.
10. A perusal of the record reveals that some of the prayers sought by the Applicants have actually been overtaken by events. For instance, prayer No 1 has been fulfilled as this matter has been transferred from Kisumu to this court while prayer No 2 is overtaken by events since Hon. Justice Fred Ochieng (as he then was) has since been elevated to the Court of Appeal and hence the Applicants apprehension does not arise anymore. As regards prayers No 4 and 5, it is noted that the grant that had been issued to the three administrators was revoked and that the administrators were later cited for contempt of court orders and convicted and subsequently removed as administrators. The said administrators have since moved to the Court of Appeal vide Appeal No E111/2024 which is pending determination. Hence, as matters stand, there is no grant in existence capable of being reinstated. If the Applicant's quest for the reinstatement of the grant means the reappointment of the dismissed administrators, then I must point out that the same is not tenable in view of the fact that the administrators appeal to the Court of Appeal is yet to be determined and further the family is yet to select new administrators for appointment by the court. Again, the Applicants have sought for an order that all previous orders earlier issued be vacated. The Applicants are aware that some of the orders have been appealed by the administrators to the Court of Appeal and that the said appellate court is yet to determine the same. It is proper for the Applicants herein to wait, for the Court of Appeal's outcome.
11. As regards the Applicants prayer that the 1st and 2nd Objector's pending application should be heard and determined before any orders can be given, it is noted that the 1st and 2nd Objectors in their replying affidavit have maintained that the said application has been abandoned and therefore remains moot. It is intriguing to note that the Applicants are not even parties or connected in the said application since it affected only the deposed administrators. The Applicants have not availed evidence regarding the prejudice they stand to suffer if the particular application is not prosecuted. Further, nothing prevented



the Applicants from proceeding to the registry and fixing the said application for hearing and serve the Objectors and that during the hearing, the same could be dismissed for want of prosecution if the Objectors failed to prosecute it. Again, the Applicants have not indicated whether or not they had filed responses in opposition to the said application.

12. As regards the rest of the prayers targeting the 1st and 2nd Objectors to surrender assets belonging to the estate or furnish accounts, it is noted that the said tasks should be addressed to the administrators. Already, the administrators have since been removed and that they have moved to the Court of Appeal for redress. Under Section 82 of the Law of Succession Act, the property of a deceased person vests in the personal representatives who have power to file suits on behalf of such estates. The said Section 82 of the Act provides thus:

“Personal representatives shall subject only to any limitation imposed by their grant, have the following powers –

- a. To enforce by suit or otherwise, all counsels of action which by virtue of any law, survive the deceased or arising out of his death for his personal representative.”

It is clear that the Applicants herein are not administrators of the estate and therefore they lack the locus standi to seek for such prayers. The Applicants are fully aware that the three administrators herein were removed by this court and who have moved to the Court of Appeal and that the appeal is pending determination. As there are no administrators in place, the Applicants should hold their horses until new administrators are appointed by the court or in the event the Court of Appeal reverses this court’s order removing the administrators.

13. Finally, the heading or title of the Applicants application is to the effect that they seek to be enjoined in the suit. However, the affidavits in support or submissions are silent on the issue. Indeed, the Applicants who are children of the deceased are legitimate beneficiaries and entitled to participate in the proceedings without the need to seek to be enjoined since their interest or stake is already known. However, beneficiaries if opposed to the mode of distribution of the estate are entitled to file objections and hence become objectors or protests and hence become protestors. In the present case, the Applicants were required to describe themselves as beneficiaries/Applicants and then proceed to state their case. Hence, I find the prayer for joinder was unnecessary in the circumstances.
14. Finally, it is noted from the submissions of the Applicants that they are in favour of having this matter do await the outcome of the Court of Appeal Case No E111/2024. That being the position, the Applicants application fails to meet the threshold for the grant of the orders sought.
15. The sum total of the foregoing observation is that I find no merit in the Applicants’ application dated 6/5/2022. The same is dismissed with no orders as to costs.

DATED AND DELIVERED THIS 30TH DAY OF MAY, 2025.

D. KEMEI

JUDGE

In the presence of:

Duncan Amoth.....1st Applicant

George Onyango.....2nd Applicant

Quefor 1st and 2nd Objector



N/A.....1st Administrator

N/A.....2nd Administrator

N/A.....3rd Administrator

Okumu.....Court Assistant

