



REPUBLIC OF KENYA



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In re Estate of Washington Aggrey Jalango Okumu (Deceased) (Succession Cause E19 of 2021) [2025] KEHC 7248 (KLR) (30 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7248 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE E19 OF 2021
A MABEYA, J
MAY 30, 2025
SUCCESSION CAUSE NO. E19 OF 2021
IN THE MATTER OF THE ESTATE OF WASHINGTON
AGGREY JALANGO OKUMU (DECEASED)**

BETWEEN

**PETER ODIWUOR NGOGE T/A OP NGOGE & ASSOCIATES
ADVOCATE APPLICANT**

AND

**MARTHA RUTH AMONDI OSHOMUVYE 1ST RESPONDENT
DAVID JAIRUS OCHIENG OKUMU 2ND RESPONDENT**

RULING

1. This ruling determines the application dated 5/7/2024. The same was brought under sections 1A, 1B & 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya and Section 47 of the *Law of Succession Act*. It sought warrants of attachment over the deceased's immovable assets being land parcels LR. South Sakwa/Migwena/1411 & 1423 plus all the fixtures therein so as to satisfy debts owed to the applicant the deceased's estate.
2. The application was based on the grounds set out in the body thereof and in the supporting affidavit Peter O. Ngoge. The applicant averred that despite a ruling rendered by this Court on October 17, 2022, the respondents served him with a draft Summons for Confirmation of Grant threatening to have the grant issued in their favour before settling his debts.
3. That the parcel of land known as LR. South Sakwa/Migwena/1411 ("the said land") was deliberately omitted from the List of Assets of the deceased's estate with the aim of defrauding him as a creditor. That the deceased received said land as a gift from his biological mother who pre-deceased him and had



since developed the said parcel such that its value exceeded Kshs. 150,000,000/- and was thus enough to settle all his debts.

4. The respondents opposed the application vide a replying affidavit sworn on 23/7/2024 by the 1st respondent. She stated that the applicant's supporting affidavit was filled with half-truths and falsehoods meant to mislead the Court. That she had tried to administer the deceased's estate in accordance with the directions of the Court and the law.
5. That vide its ruling of 17/10/2022, the Court directed the respondents to set aside an amount equivalent to the applicant's/creditor's claim which the creditor could only access upon proof of his claim. That she had filed an Affidavit of Accounts dated 1/12/2022 declaring the status of the estate of the deceased as insolvent. That in the course of discharging her duties as an administrator of the deceased's estate, she shared a proposal of their application for confirmation of grant with the applicant which the applicant ignored instead of offering any proposal.
6. It was further deposed that the said land in which the deceased built his home is ancestral land that was yet to be divided amongst the beneficiaries and thus does not belong to the deceased. That she cannot settle any debt without the grant being confirmed first and that the applicant is not a beneficiary of the deceased's estate or a decree holder against the deceased's estate to make an application for issuance of warrants of attachments against the deceased's estate.
7. The Court has considered the rival contestations and the submissions on record. The main issue for consideration is whether the applicant merits grant of the warrants of attachment over land parcels Nos. LR. South Sakwa/Migwena/1411 & 1423.
8. There is no doubt that the applicant has a claim against the deceased's estate as was established by Aburili J in the ruling of 17/10/2022. The applicant has sought to have warrants of attachment issued over land parcels LR. South Sakwa/Migwena/1411 & 1423 which he asserts belong to the deceased's estate. However, the respondents have denied that the said parcels form part of the deceased's estate.
9. The 1st respondent deposed that LR. South Sakwa/Migwena/1423 in which the deceased built his home is ancestral land belonging to their grandparents and which is yet to be divided between their beneficiaries.
10. In her Further Affidavit of Accounts sworn on 18/10/2023, the 1st respondent produced the title deed over LR. South Sakwa/Migwena/1411 that showed that the said parcel is registered in the name of Mariam Odera while LR. South Sakwa/Migwena/1423 is registered in the name of the deceased, Washington Aggrey Jalang'o Okumu.
11. Based on the foregoing, only LR. South Sakwa/Migwena/1423 that forms part of the deceased's estate. Any assertions by the applicant to the contrary can only be ventilated before the court that deals with ownership of land and not a Family Court, which this is.
12. The applicant claimed that the respondents had not included him in the distribution of the deceased's estate as proposed in the draft Summons for Confirmation of Grant. On their part, the respondents contended that the applicant could only access what is due to him upon proof of the same.
13. This Court notes that in the ruling of 17/10/2022 at paragraphs 40, 41 and 46, the Court was categorical that the that administrators were to appropriate and/or set aside a portion of property amounting to the amounts claimed in the applicant's certificates of taxation.



14. At paragraph 22, the Court had noted that the applicant had obtained two Certificates of Taxation against the deceased's estate namely;
- “i) One dated 8th August 2007 for the Applicant's costs against the deceased in Misc. Civil Application No. 260 of 2007 were taxed at Kshs. 1,568,479
 - ii) One dated 8th August 2007 stating the applicant's costs against the deceased in Misc. Civil Application No. 259 of 2007 were taxed at Kshs. 1,297, 939.”
15. The rights of the applicant, as creditor, are protected by the law. Section 39 of the *Civil Procedure Act* is clear on that and comes to aid the Applicant. Further, Sections 83 and 86 of the *Law of Succession Act* come to the aid of a creditor who has proved his claim as such a creditor.
16. There is no evidence that those Certificates of Taxation issued to the applicant have either been satisfied, varied or set aside. They remain valid and enforceable.
17. Should the Court then proceed to grant Warrants of Attachment as sought by the applicant? I think not. Naturally, ascertaining what the assets of a deceased's estate are must of necessity involve the gathering of the net sum of assets and net sum of liabilities, to arrive at the net estate as detailed in Rule 7(1) of the Probate and Administration Rules. These details in the case of intestacy as herein will be captured in Form PA5 in the First Schedule to the Probate and Administration Rules.
18. My clear understanding of this requirement is that once a Petitioner is notified of the existence of a liability (debt) by a creditor or once the Petitioner comes to learn of an existing proven liability (debt) owed by the estate, it is mandatory to include such a liability or debt as is required by law.
19. A decree against a deceased person, in the absence of a variation, setting aside or otherwise being stayed is in my view a proven liability against the estate of the deceased. It must be included in the list of liabilities in Form no PA5 alluded to above.
20. Such a debt shall, as provided for in section 86 of the *Law of Succession Act*, be paid before any legacy. The section provides: -
- “Debts of every description enforceable at Law and owed by or out of an estate shall be paid before any legacy”
21. Section 83 of the *Law of Succession Act* provides, inter-alia, that: -
- “Personal representatives shall have the following duties -
- 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. ...
 - 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. ...
- 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.
...”

- 22. From the foregoing, it is quite clear that the duties of personal representatives includes, getting in all free property of the deceased including debts owing to him and to ascertain and pay out of the estate of the deceased, all his debts.
- 23. Execution of a decree against a personal representative should follow the procedure under Section 37(1) of the *Civil Procedure Act*. That, in the view of this Court, does not preclude a personal representative from listing a decree as a liability (if decree is not challenged) and paying out such a decree as a debt within the meaning of Section 83(d) of the *Law of Succession Act*.
- 24. In the present case, the respondents have not filed a Summons for Confirmation of Grant. What is on record is a draft shared by the respondents to the applicant which does not include the debts of the deceased to the applicant. That is contrary to what Aburili J held and directed on 17/10/2022.
- 25. Be that as it may, I think the applicant cannot at the same time hold the proceedings in abeyance. He should by now have had those Certificates of taxation adopted as a judgment then proceed with execution in the normal manner.
- 26. In the circumstances, the Court’s view is that the application dated 5/7/2024 is premature and is dismissed with costs.

It is so ordered.

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

A. MABEYA, FCI Arb

JUDGE

