



REPUBLIC OF KENYA



**KENYA LAW**

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**In re Estate of Nathan Barnaba Onduto (Deceased) (Succession Cause  
108 of 2002) [2024] KEHC 274 (KLR) (24 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 274 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KITALE**

**SUCCESSION CAUSE 108 OF 2002**

**AC MRIMA, J**

**JANUARY 24, 2024**

**SUCCESSION CAUSE NO. 108 OF 2002**

**IN THE MATTER OF: THE ESTATE OF NATHAN BARNABA ONDUTO [DECEASED]**

**-BETWEEN-**

**STANLEY PATRICK ONDUTO..... 1ST ADMINISTRATOR/APPLICANT**

**BETWEEN**

**STANLEY PATRICK ONDUTO ..... APPLICANT**

**AND**

**PAUL ONDUTO ..... 1<sup>ST</sup> RESPONDENT**

**MARGARET NAFULA OMUMBWA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The parties herein are all siblings. They are children of the deceased in this cause one Nathan Barnaba Onduto.
2. There, however, seems to be a deep-seated animosity between Stanley Patrick Onduto on one hand, and the rest of his siblings, on the other hand. In fact, both Paul Onduto and Stanley Patrick Onduto confirmed that despite that they are blood brothers and their houses are barely 20 metres apart, they do not see eye to eye.
3. A Grant of Letters of Administration Intestate in respect of the estate was issued on October 5, 2021 to Stanley Patrick Onduto, Paul Onduto and Margaret Nafula Omumbwa.



4. The Grant was confirmed on December 8, 2022 and the estate property distributed accordingly. Although the applicant did not attend court, he was nevertheless allotted his share which was the same as that one allotted to his brother, Paul Onduto.
5. The applicant later filed a Summons dated 7<sup>th</sup> March 2023 seeking the following orders: -
  1. That this honourable court be pleased to certify this application urgent and hear the same exparte in the first instance.
  2. That this honourable court be pleased to recall the certificate of confirmation of grant dated 13<sup>th</sup> December 2022 as the same has discrepancies and or omissions and the same be rectified in terms of the annexed copy of the list of distribution.
  3. That this honourable court be pleased to stay the registration of the mutation in regard to the survey exercise conducted on title No.Kakamega/Mabusi 18/15 the 28<sup>th</sup> December 2022 pending hearing and determination of this application.
  4. That this honourable court be pleased to issue a temporary order restraining the respondents, their agents and or servants or anyone claiming through them from intermeddling with the properties more particularly title No.Kakamega/Mabusi 18/15 of the deceased pending the hearing and determination of this application.
  5. That costs of this application be in the cause.
6. The application was opposed by the Respondents through two Affidavits sworn by Paul Onduto.
7. On the directions of this court, the application was heard by way of viva voce evidence. Both Stanley and Paul testified. None called any witness.
8. The applicant contended that he had not been involved in the confirmation of the Grant and prayed that his proposed distribution be instead adopted.
9. At the hearing, the applicant took issue with the shares allocated to his sisters. According to him, they were not to get any share and as a result he instead proposed to reduce their shares in his favour. In fact, according to his proposed distribution, the applicant allocated himself the lion's share of the estate.
10. This court has considered the application alongside the evidence and the record.
11. This matter has been in court since 2002. That is for over 20 years. The distribution adopted by the court was proposed by the rest of the beneficiaries save the applicant who clearly could not co-operate with the rest due to the animosity. He was, however, well taken care of and he was allotted a share similar to that of Paul Onduto.
12. The applicant was displeased with his share. He bitterly averred that his sisters ought not to get anything from the estate. In the long run, he however, proposed smaller shares to them.
13. It is, hence, apparent that the main reason why the applicant came to court was his insatiable desire to get the biggest share of the estate. That is apparent from his proposed distribution and his testimony before court.



14. According to this court, the proposal by the rest of the beneficiaries which this court adopted during the confirmation proceedings remains the best for the estate. All parties were so fairly catered for.
15. Therefore, even if this court is to find that the applicant was not aware of the confirmation proceedings and proceeds to set-aside the distribution, high are chances that it will eventually settle for the same distribution. Doing it in any other way or as proposed by the applicant will be visiting an injustice to the daughters of the deceased who are also entitled to inherit from the estate of their father, the deceased herein.
16. It is for that reason that this court is not persuaded that the application is merited. As such, the following orders do issue: -
  - a. The Summons dated 7<sup>th</sup> March 2023 is hereby dismissed.
  - b. The estate of the deceased herein shall be distributed as ordered on 8<sup>th</sup> December, 2022.
  - c. The Administrators shall transfer the estate without any further delay. In the event any of the Administrators is unwilling to comply with this order, he or she shall be deemed removed from the administration of the estate and the remaining two Administrators will proceed to effect the transfers accordingly, the absence of the other Administrator notwithstanding.
  - d. This matter is hereby fixed for a Mention on a date to issue to ascertain the status of transfer and for further orders towards discharging the Administrators and closure of the file.
  - e. Each party shall bear its own costs.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 24<sup>TH</sup> DAY OF JANUARY, 2024.**

**A. C. MRIMA**

**JUDGE**

Ruling No. 1 virtually delivered in the presence of:

Miss. Arunga, Learned Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Administrators/Respondents.

Stanley Patrick Onduto, the 1<sup>st</sup> Administrator/applicant in person.

Chemosop/Duke – court Assistants.

