



**In re Estate of Hemresiana Omolo Ochogo (Deceased) (Probate & Administration
132 of 2002) [2024] KEHC 4033 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4033 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
PROBATE & ADMINISTRATION 132 OF 2002**

KW KIARIE, J

APRIL 25, 2024

IN THE MATTER OF THE ESTATE OF HEMRESIANA OMOLO OCHOGO (DECEASED)

BETWEEN

GILBERT OTIENO OKITE PETITIONER

AND

MOSES ODERO ONDITI 1ST OBJECTOR

DALMAS OCOGO ONDITI 2ND OBJECTOR

ROBERT ONYANGO ONDITI 3RD OBJECTOR

RULING

1. Moses Odero Onditi, Dalmas Ochogo Onditi and Robert Onyango Onditi, the applicants herein, moved the court by way of summons for revocation of the grant dated the 19th day of October 2023. The application was brought under sections 76 (d) (ii) & (iii), and (e) of the *Law of Succession Act*. The firm G.S. Okoth & Company Advocates represented them. They are seeking the revocation of the grant on the following grounds:
 - a. The petitioner has failed to proceed diligently with administrating the deceased's estate.
 - b. The petitioner has failed to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of Section 83.
 - c. The grant issued herein has become useless and inoperative through subsequent circumstances.
2. The firm of Advocates practising as Olel, Onyango & Ingutia LLP represented the respondents. The application was opposed on the following grounds:



- a. That the applicants are joint co-administrators of the estate.
 - b. That the applicants are estopped by their previous conduct from making the allegations.
 - c. That the application is res judicata.
3. This matter has a long history. It was filed in court in 1997. The parties herein have refused to wind up the estate partly out of self-interest and sibling rivalry. Each party is keen on accusing the other of wrongdoing.
4. After perusing the application and the parties' submissions, I consider that revocation will only confuse an already convoluted matter. I am therefore directing that the administrators render accounts as provided for under section 83 of the [Law of Succession Act](#) within six months. The section provides:

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) 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.
5. Any party that frustrates the efforts to speedily conclude this matter will be liable to sanctions, including exclusion from the estate administration.



6. Each party is to bear its costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 25TH DAY OF APRIL 2024

KIARIE WAWERU KIARIE

JUDGE

