



REPUBLIC OF KENYA



**In re Estate of Manfred John Onyango (Deceased) (Succession Cause
1120 of 2014) [2024] KEHC 7990 (KLR) (Civ) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7990 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
SUCCESSION CAUSE 1120 OF 2014
PM NYAUNDI, J
JUNE 28, 2024
IN THE MATTER OF THE ESTATE OF MANFRED JOHN ONYANGO (DECEASED)**

BETWEEN

ALICE OMONDI OCHIENG 1ST APPLICANT

CHARLES OBILA OKUDO 2ND APPLICANT

AND

MESSI JOSEPH MBAYI OBJECTOR

JUDGMENT

1. Manfred John Onyango (The Deceased) died intestate on 4th January 2014. Subsequent to his death, Alice Amondi Ochieng and Charles Obila Okundo petitioned for grant of letters of administration intestate as wife and uncle to the wife of the deceased respectively.
2. The Petition enumerated the following as surviving the deceased-
 - i. Alice Amondi Ochieng Wife
 - ii. Kelly Atieno Onyango Daughter
 - iii. Kelyer Akinyi Onyango Daughter
 - iv. Alsia Anyango Onyango Mother
 - v. Alfred Daman Onyango Father (deceased)
3. The Assets of the Deceased were listed as –
 - i. Benefits held by Kenya Commercial Bank -Sarit Centre- Kshs 134,021



- ii. Property North Ugenya/ Segal/2167
 - iii. Matrimonial Home (3 bedroomed bungalow- Plot No 1457- Mwengeny Settlement Scheme, Kayole Nairobi
 - iv. Two Bedroomed Bungalow at Bumala Shopping Centre under possession of the parents of the Deceased
4. The Grant of Letters of Administration Intestate issued to the Petitioners on 23rd October 2018. The Protestor unsuccessfully sought to revoke the grant vide summons for revocation dated 17th August 2019, as the Court dismissed the Summons vide its ruling dated 17th October 2019
5. Thereafter the Petitioners filed summons for confirmation of grant dated 10th June 2021. The Summons for confirmation identified the following as the beneficiaries of the Estate-
- i. Alice Amondi Ochieng Wife
 - ii. Kelly Atieno Onyango Daughter
 - iii. Kelyer Akinyi Onyango Daughter
 - iv. Alsia Anyango Onyango Mother
 - v. Alfred Daman Onyango Father (Deceased)
 - vi. Joseph Messi Mbayi Son

The assets of the deceased were those listed in the Petition for Grant. On distribution of the Estate paragraph 5 of the supporting affidavit of the Petitioners proposed as hereunder-

That the identification and shares of all persons beneficially entitled to the said estate have been ascertained and determined at 100% to the widow and Administrator, Alice Amondi Ochieng

6. The Protestor filed Protest dated 8th July 2022, in which he stated the assets of the deceased comprised-
- i. Benefits held by Kenya Commercial Bank -Sarit Centre- Kshs 134,021
 - ii. Property North Ugenya/ Segal/2167
 - iii. Matrimonial Home (3 bedroomed bungalow- Plot No 1457- Mwengeny Settlement Scheme, Kayole Nairobi
 - iv. Two Bedroomed Bungalow at Bumala Shopping Centre under possession of the parents of the Deceased
 - v. 2 motor vehicles
 - vi. 3 motor bikes and
 - vii. A Plot at Mwengeny Scheme developed with apartments that generate rental income.
7. He asserts that the Petitioners have not disclosed all the properties of the deceased and that the proposal of the Petitioners is ‘alien to justice, fairness and the law as it is tantamount to disinheriting the beneficiaries otherwise entitled to the fair distribution of the deceased’s estate equitably.’
8. In her response to the Protest the 1st Petitioner avers that she has cited the properties that are known to her. Further it is her assertion that the parents of the deceased have alienated the house at Bumala and land parcel No North Ugenya/ Segal 2167. She reiterates that by virtue of the fact that she is a



widow and the age and requirement of the 2 surviving children of the deceased she is entitled to the properties as enumerated in paragraph 17 of her affidavit. She also contends that the Protestor has not demonstrated that he was a dependant of the deceased.

9. The protest was disposed off by way of *viva voce* evidence.
10. PW1, Alice Amondi Ochieng adopted her supporting affidavit dated 10th June 2021 and her replying affidavit dated 25th August 2022 as her evidence in chief. Her evidence was that her proposal included all the beneficiaries including the protestor. Her initial proposal was that the property in Ugeny and Bumala vest in the protestor but he declined her proposal. She was not aware that the deceased owned motor vehicles and motor cycles. He had borrowed a loan and used them as security. They were confiscated when he defaulted in paying the loan. The plot in Mwengenyne belongs to her and therefore, does not form part of the deceased's estate. She produced proof of ownership, a sale agreement marked as annexure 3. She told the court that she wishes to retain the money in KCB and the matrimonial home. She asked the court to confirm the grant.
11. During cross examination, she stated that she did not know the Protestor at the time of the deceased's death. She opened the KCB account before she married the deceased. The money in KCB was from her proceeds of her business, selling mandazi and githeri. She bought Plot 0420 from proceeds of her business. She and the deceased were joint signatories.
12. The deceased bought North Ugenya/Sega from Otana & Otana Auctioneers. The property has never been transferred to the deceased. The matrimonial home is registered in the deceased's name. The two bedroomed bungalow is registered in the name of the deceased's brother and is managed by the deceased's mother. The only ascertainable assets of the deceased are the money in the bank and plot No 1457.
13. The protestor testified as OW1. He adopted his affidavit of protest as his evidence in chief. He stated that he has known the 1st administrator since he was in primary school. The deceased died when he was 14 years old. The deceased paid his school fees and upkeep while he was alive. He also maintained his grandmother. He has never received any support from the estate after the deceased's death. His grandmother and uncles informed him that the deceased owned two vehicles and 2 motor cycles. His evidence was that the plot in Mwengenyne belongs to his late father. The property in North Ugenya/Sega/2167 is not in the deceased's name. The property in Bumala Shopping Centre is registered in the name of the deceased's brother. The properties he has been offered are not in the deceased's name. He has completed his studies but he is unemployed. He asked the court that there be a fair distribution of the deceased's estate.
14. During cross examination, he stated that he did not know the registration numbers of the deceased's motor vehicles and motor cycles. He asked the court to allocate him the rental apartments and money in the account.
15. In re-examination, he stated that the 1st administrator should retain the matrimonial home and he be compensated for his share.

Administrators Submissions.

16. The Administrators filed written submissions dated 16th January 2024. They identified the following issues for determination;
 - i. Whether the additional properties/assets named by the Respondent in the affidavit of protest are available for distribution.



- ii. Whether the respondent is entitled to a share of the estate.
17. On the first issue, it was submitted that the 1st administrator had proved by way of evidence the assets of the deceased available for distribution. That this court has the duty to only distribute what belongs to the deceased as held in *In re Estate of Atibu Oronje Asioma (deceased)* (Succession Cause No 312 of 2008) [2022] KEHC 11046(KLR). She submitted that the onus of proof that the properties belong to the deceased lied with the Objector. In this case, the objector had not proved that the properties form part of the deceased's estate.
 18. On the second issue, it was submitted that the objector was only entitled to North Ugenya/Sega/2167 and the two bedroomed bungalow in Bumala Shopping Centre.

Protestor's Submissions.

19. The protestor filed written submissions dated 24th January 2024. Relying on the decision in *In re Estate of Sananga Okonda (deceased)* [2020] eKLR, counsel submitted that the administrators have a statutory duty to collect, gather and get in the assets of the deceased. In this case, the administrators have not proved that the properties in the application for confirmation of grant belong to the deceased. Counsel urged the court to distribute only the properties that ownership have been ascertained.

Analysis And Determination

20. I have looked at the Protest, the Reply to the Protest and the submissions by both parties. I discern the following as the issues for determination
 - i. What are the assets of the deceased that are available for distribution
 - ii. Who are the beneficiaries of the Estate and what are their respective shares.
21. On the 1st Issue; It is the protestor's position that the Petitioners excluded some assets of the deceased and he has included them for distribution. The excluded assets are 2 motor vehicles, 2 motorcycles and a plot with residential apartments at Mwengenyu Settlement Scheme. The parties are agreed on the other assets that are enumerated in Summons for confirmation.
22. On the motor vehicles and motorbikes, no registration documents or documents of ownership have been presented to show that the assets belong to the deceased. In the circumstances I find that these assets are not part of the estate of the deceased.
23. With regard to the plot in Mwengenyu. The Protestor describes it as 'a plot developed with apartments that generate rental income.' The 1st Petitioner confirms that such a plot exists and it is her plot and therefore not part of the estate of the deceased. As proof of ownership she submits a sale agreement dated 21st August 2010 between herself as purchaser and Paul D. Kimenyu as the vendor for the purchase of Plot No 0420.
24. At the same time, earlier the Petitioner had Petitioned for grant of Letters Ad Litem. On that occasion she to the Petition ownership certificate for Plot No 0420 at Mwengenyu Settlement Scheme dated 15th May 2002 in the name of Manfred J Onyango (the Deceased). There is no record to show how the property to which the deceased had an ownership certificate changed ownership to the vendor in the sale agreement. It is settled at law that a sale agreement on its own is not sufficient proof of ownership. Even if I were to find that the sale agreement is proof of ownership I must as was Wambwoto J in *Wangui & 2 others v Wangui & another* (Environment and Land Appeal 3 of 2021) [2022] KEELC 3755 (KLR) (29 June 2022) (Judgment), be guided by the maxim of equity "when two equities are



equal, the first in time prevails". On this account I find that the Plot No 0420 is registered in the name of the Deceased, vide Ownership Certificate dated 15th May 2002.

25. In his evidence and submissions, Protestor states that the properties North Ugenya/ Segal/ 2167 and the 2 bed roomed bungalow in Bumala do not belong to the deceased. I find this interesting, in paragraph 2 of his affidavit he enumerates these properties as belonging to the deceased. A party is bound by his or her pleadings. I therefore find that these assets are part of the estate of the deceased and are available for distribution.
26. Both parties are agreed that the money held at KCB is held in the name of the deceased and the Plot No 1457 is registered in the name the deceased and the matrimonial home is constructed thereon.
27. As relates to the assets of the estate, I find the following to be available for distribution-
 - i. Benefits held by Kenya Commercial Bank -Sarit Centre- Kshs 134,021
 - ii. Property North Ugenya/ Segal/2167
 - iii. Matrimonial Home (3 bedroomed bungalow- Plot No 1457- Mwengeny Settlement Scheme, Kayole Nairobi
 - iv. Two Bedroomed Bungalow at Bumala Shopping Centre under possession of the parents of the Deceased
 - v. A Plot at Mwengeny Scheme developed with apartments that generate rental income.
28. On the 2nd Issue, who are the beneficiaries and what are their respective shares.

At paragraph 2 of her supporting affidavit sworn on 10th June 2021, the 1st Petitioner recognizes the following as the beneficiaries of the Estate of the deceased:

- i. Alice Amondi Ochieng Wife
 - ii. Kelly Atieno Onyango Daughter
 - iii. Kelyer Akinyi Onyango Daughter
 - iv. Alsia Anyango Onyango Mother
 - v. Alfred Daman Onyango Father (Deceased)
 - vi. Joseph Messi Mbayi Son
1. This is not challenged by the Protestor. Accordingly, I find that the beneficiaries of the Estate are
 - i. Alice Amondi Ochieng Wife
 - ii. Kelly Atieno Onyango Daughter
 - iii. Kelyer Akinyi Onyango Daughter
 - iv. Alsia Anyango Onyango Mother
 - v. Joseph Messi Mbayi Son
 2. Based on the foregoing this court makes the following findings as relates to distribution; -



- i. It is not in dispute that Mwengeny settlement scheme plot No 1457 is registered in the name of the deceased as per the certificate ownership issued on 15/5/2002. This asset will be held by the Petitioners in trust for the minor children of the deceased namely, Kelly Atieno Onyango and Keyler Akinyi Onyango in equal shares.
- ii. With regard to Plot No 0420, Mwengeny Settlement Scheme. The same shall be shared between the children of the deceased in equal shares. The Petitioners will hold in trust the 1/3 share each for Kelly Atieno Onyango and Keyler Akinyi Onyango and with 1/3 share to the Protestor Joseph Messi Mbayi.
- iii. In the event that the family elects to continue to collecting the rental income, the Petitioners will pay to the Protestor his 1/3 share of the rental income on a monthly basis; effective the rent falling due on 30th June 2024. The rent of each successive month to be paid no later than the 5th day of the subsequent month.
- iv. The Petitioners shall open a joint interest earning saving account to deposit half of the rental income due to the minor children (Kelly Atieno Onyango and Keyler Akinyi Onyango)- for clarity this is 50 per cent of their combined 2/3 share of the rental income. The 50% balance of the rental income due to the minor children to be utilized to meet their maintenance needs.
- v. The Plot No 1457 to be registered in the joint names of the Protestor and the Petitioners in trust for the 2 minor children (Kelly Atieno Onyango and Keyler Akinyi Onyango).
- vi. In the alternative, in the event the parties elect to sale the Plot No 1457, the parties will agree on a valuer to undertake valuation within 21 days. The 1st petitioner will have the first option of buying out the Protestor and shall conclude the purchase within 120 days of the offer being made. In the event the 1st petitioner is unable to purchase the Plot, then the same shall be sold on the open market and the proceeds distributed equally among the children of the deceased, with the Protestor receiving 1/3 share.
- vii. The fees of the valuer to be shared equally between the Protestor and the 1st Administrator.
- viii. The 2 Bedroomed bungalow in Bumala is distributed to the Protestor solely.
- ix. The home at North Ugenya/ Sega/ 2167 to be shared between the children of the deceased equally. The Petitioners to hold the 2/3 share in trust for the minors Kelly Atieno Onyango and Keyler Akinyi Onyango.
- x. The money held at Kenya Commercial Bank- Sarit Centre be shared equally between the 1st Petitioner and the children of the Deceased. The 1st Petitioner to utilize the combined ½ share of the minor children of the deceased Kelly Atieno Onyango and Keyler Akinyi Onyango for their upkeep
- xi. This being a family matter each side will bear its own costs.

It is so ordered

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 28th DAY OF JUNE, 2024.

P M NYAUNDI



JUDGE

In the Presence of:

Fardosa- Court Assistant

