



REPUBLIC OF KENYA



In re Estate of Jonah Hezekiah Ougo (Deceased) (Family Miscellaneous Application E005 of 2022) [2023] KEHC 3041 (KLR) (5 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3041 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
FAMILY MISCELLANEOUS APPLICATION E005 OF 2022**

RE ABURILI, J

APRIL 5, 2023

**N THE MATTER OF THE ESTATE OF JONAH HEZEKIAH OUGO-
(DECEASED)**

BETWEEN

FRED OUGO 1ST APPLICANT

JACKSON OCHIENG 2ND APPLICANT

AND

LUCY ADHIAMBO OUGO 1ST RESPONDENT

**DEPARTMENT OF THE ADMINISTRATOR GENERAL PUBLIC TRUSTEE
KISUMU 2ND RESPONDENT**

AND

ALICE ATHIENO OUGO INTERESTED PARTY

SOPHIE ATIENO OUGO INTERESTED PARTY

DAVID MBOGO OUGO INTERESTED PARTY

LOICE MBEWA OUGO INTERESTED PARTY

JUNE AKINYI INTERESTED PARTY

RULING

1. This ruling determines two applications both dated 3rd October, 2022. One is the Summons for preservation of the estate and rendering of accounts and removal of Lucy Adhiambo Ougo as administrator of the estate of the deceased Jonah Hezekiah Ougo and the other is a notice of motion



seeking for review of the ruling on confirmation of grant dated 14th February, 2022. The applications are considered together, as the issues raised touch on one estate and the same administrators.

2. The 1st applicant in the 3rd October, 2022 Fred Ougo seeks the following reliefs:
 - a. Spent.
 - b. That pending the hearing and determination of this application, this honourable be pleased to order that any subsequent rental proceeds from the Kileleshwa property be deposited in an escrow account opened in the joint name of the parties' advocates and the said rental proceeds be utilized in the first instance to defray the accumulated rates and penalties outstanding with respect to the Kileleshwa property and thereafter be divided equally amongst the seven (7) households/beneficiaries on a monthly basis at all times reserving an amount for paying the property rent and rates as and when the same become due and always giving priority to the deceased's widow, Alice Athieno Ougo, who is to receive a reasonably larger portion for her subsistence.
 - c. That pending the hearing and determination of this application, this honourable court be pleased to order that the sum of ksh 462,412.65 paid to the department of the administrator general, public trustee-Kisumu, the 2nd respondent herein, by KCB Bank Kenya Limited from the deceased's bank account domiciled in KCB Bondo branch be released forthwith and be utilized to partially defray the accumulated rates and penalties of ksh 468,808/= as at 12th September, 2022 with respect to property grant number LR 24622 over LR 209/6899, Nairobi Kileleshwa (the Kileleshwa Property).
 - d. That pending the hearing and determination of this application, this honourable court be pleased to suspend the powers of Ms Lucy Adhiambo Ougo, the 1st respondent herein, as a co-administrator of the estate of the deceased.
 - e. That this honourable court be pleased to remove ms Lucy Adhiambo Ougo from the office of the administratrix of the estate of the deceased.
 - f. That this honourable court be pleased to order ms Lucy Adhiambo Ougo to give an account of all the rent collected from the Kileleshwa property from 19th August, 2014 to date.
 - g. That the honourable court be pleased to order ms Lucy Adhiambo Ougo to give an account of all the rent collected from the Kileleshwa property from 19th August, 2014 to date.
 - h. That this honourable court be pleased to order ms Lucy Adhiambo Ougo to account for at least the sum of ksh 20,160,000 plus interest at court rates collected as rental proceeds from the Kileleshwa property from august, 2014 to date and in the absence of such proper accounts, the said amount be deducted from the 1st respondent and any other implicated beneficiaries fair share of the Kileleshwa property.
 - i. That the honourable court be pleased to grant such other further, incidental and or alternative orders as it may deem just and expedient in the circumstances to give effect to the orders granted herein.
 - j. Costs of the application be provided for.
3. The application is predicated on the grounds on the face of the applications and the supporting affidavits sworn by the applicants herein Fred Ougo and Jackson Ochieng who depose inter alia that the grant in this matter was confirmed in favour of Alice Athieno Ougo, Lucy adhiambo Ougo and



Fred Ougo *vide* a certificate of confirmation of grant issues on 14th February, 2022 and were therefore required by law to complete the administration in terms of Sections 71 and 83 of Cap 160.

4. That upon issuance of the grant aforesaid, the 1st respondent Lucy Adhiambo Ougo has since frustrated the conclusion of administration by engaging in acts calculated to frustrate and delay the said exercise leading to wastage of the estate by:
 - a. Withholding documents that would facilitate the transmission of the estate unjustifiably.
 - b. Withholding information in relation to the joint venture over the Kileleshwa property by providing her own independent valuation report even before the confirmation of the grant.
 - c. Collecting rental income from the Kileleshwa property from the August, 2014 and appropriating it to her own use while failing to pay land rent and rates chargeable on the property and properly accounting to the other beneficiaries.
 - d. Convening family meetings to discuss the succession progress to the exclusion of other family members leading to disinheritance. She has also threatened other beneficiaries on their stand in the succession and distribution process
 - e. Deliberately moved money out of the deceased's bank accounts without the consent of other family members for example the sum ksh 462,412.65/- was paid to the Public Trustee – Kisumu by Kenya commercial bank, Bondo Branch.
 - f. Diverting rental proceeds from the Kileleshwa Property from the Deceased's bank account domiciled in KCB Bondo Branch to unknown bank account
 - g. Attempting to sell the Kileleshwa Property on multiple occasions even before the conclusion of the succession proceedings and obstructing the registration of the Property in the joint names of the Administrators pending the commencement of the proposed joint venture.
 - h. Obstructed the completion of the transfer of Title Number Kasewe/Kabondo/81 to mr Benard Ogwenoh.
 - i. Threatened a Tenant at the Mosque Property vacating the said Property and leaving the same in a dilapidated state.
 - j. Filing Siaya High Court Succession Cause no 2 of 2018: which was dismissed for gross violation of succession procedures and the law, she conveniently omitted various bank accounts from the distribution schedules hoping that the other beneficiaries would not unearth the perpetrated criminal acts
5. The 1st applicant deposes that he has done all within his means to see to it that the process of distribution of the estate is concluded and each beneficiary allocated his or her rightful share. He states that he instructed his advocates to initiate the process by issuing several letters which have elicited no response from the 1st respondent as well as preparing and sending signed copies of transmission instruments which have not been responded to date.
6. He therefore deposes that if the 1st respondent is not removed as an administrator; she will continue abusing her position as an administrator in order to gain an unfair advantage over others.
7. The application by the 1st applicant Fred Ougo is opposed through the affidavit sworn by Lucy Adhiambo Ougo sworn on 21st November, 2022 where she deposes that none of the estate's properties were left out. In relation to the transfer of Kasewe/Kabondo/81 to mr Benard Ogwenoh, she deposes that the said Benard did not pay the full purchase price and the transfer could not therefore materialize



and in an event that the property ought to be transferred to him, the asset has to first devolve to the administrators of the estate

8. She further deposes that from the schedule of distribution in Siaya Succession Cause no 2 of 2018, the 1st applicant intended only the estate of Emily Ougo to benefit from the Kileleshwa property instead of all the beneficiaries. That all the same, the 1st applicant wanted the mosque property alone which he was given and that he is the only beneficiary who has taken possession of what he was given.
9. She accuses the 1st applicant of stalling the process of transmission of the estate because he failed to return the transmission documents together with his passport photographs, copy of identity card and PIN certificate and only returned after filing the instant application.
10. In response to the averments of Jackson Ochieng, the 1st respondent deposed that the said Jackson was involved all through the succession process and signed all the forms required as well as the consent on the schedule of distribution. That even during the confirmation hearing, the matter was adjourned because he had forgotten his identity card and therefore had reasonable opportunity to register his objection.
11. In the second application (hereinafter the review application), the applicant Jackson Ochieng sought the following orders:
 1. That this Honourable Court be pleased to review its Ruling dated 14th February 2022 and the subsequent Certificate of Confirmation of Grant of Representation of the Estate of the late Jonah Hezekiah Ougo issued to the said Fred Ougo, Alice Athieno Ougo and Lucy Adhiambo Ougo in the following respects:
 - a. Review Item no 1 to pay out to Jackson Ochieng (a beneficiary under the estate of the late Emily Atieno Ougo) his equal share of the value of the property title number Kileleshwa LR/209/6899 before the commencement of the proposed joint venture.
 - b. Item no 7 being L.R. no Sakwa/barkowino/3820 in Bondo Township currently allocated to Sophie Ougo, be reallocated equally to Jackson Ochieng and June Akinyi being the beneficiaries under the estate of the late Emily Atieno Ougo.
 - c. Item no 8 being Title Number Kasewe/Kabondo/81 currently allocated in whole to Alice Athieno Ougo be reallocated to include the description that “the said property be registered in the joint names of the Administrators for purposes of transferring the same to its *bona fide* purchaser, Benard Ogwenoh Of Id no xxxx, upon payment of the balance of the Purchase Price of ksh 67,500.”
 - d. Account Number xxxx previously held at KCB Bank Kenya Limited, Bondo Branch in the name of the deceased be included as Item no 10 in the Schedule of Assets of the deceased’s estate and the Court be pleased to provide directions on the apportionment of the account balance as at 19th August 2014 to the beneficiaries.
 2. That a new grant be issued reflecting the reviewed items and allocations as above prayed.
 3. That the costs of this Application be provided for.
12. This application` is supported by the affidavits of Jackson Ochieng and Fred Ougo where they depose inter alia that: he was informed by ms Lucy Adhiambo Ougo and ms Loice Mbewa Ougo, of his late grandfather’s succession proceedings at the tail end of the process where his role would be limited to executing a consent to the agreed mode of distribution as captured in the Certificate of Confirmation



of Grant and was not in a position to address some of the concerns that he had and that as he did not want to hold the process, he proceeded to consent to the agreed mode of distribution

13. That whereas he has no substantive issues with the mode of distribution, he has a concern with the distribution of land parcel Sakwa/Barkowino/3820 allocated to Sophie Ougo. That he is concerned that whereas every other beneficiary received at least 2 properties; being an equal share of the Kileleshwa Property and at least 1 other property, the said Sophie Ougo received 3 properties; a share of the Kileleshwa Property and 2 other properties, including the aforesaid Sakwa/Barkowino/3820 Property and therefore his late mother's estate was unfairly treated.
14. It was further deposed that whereas his sister June could have been the only one involved as a representative of their late mother's family, she does not speak for him as they have not taken out any letters of administration with respect to their late mother's estate. He laments that he presently has no property registered in his name despite other beneficiaries enjoying proceeds from the estate. That he now lives in deplorable conditions at his uncle's house.
15. The application is opposed through the replying affidavits of June Akinyi and Lucy Adhiambo. June Akinyi deposes in her affidavit sworn on 21st November that she and her brother Jackson are all adults with capacity to speak on her own behalf. She avers that she and her brother have been given opportunities individually to execute documents relating to the succession cause.
16. On her part, Lucy Adhiambo deposes that land parcel Sakwa/Barkowino/3820 was given to her sister Sophie by the deceased when Emily Ougo passed on and she was given the responsibility of taking care of June Akinyi and Jackson Ochieng and plans to have the parcel registered in Sophie's name were underway before the death of the deceased. That the applicant herein Jackson Ochieng vandalized the said property prompting the deceased to remove him therefrom and that every beneficiary was aware of this fact.
17. On the assertion that Jackson was side-lined in the process, June Akinyi deposes that the said Jackson executed the necessary documents and attended court sessions alongside other beneficiaries and cannot therefore say that he was side-lined.
18. The twin canvassed by way of written submissions. Both parties complied.
19. The applicants submitted that they have since discovered that following the death of the Deceased on 19th August 2018, there have been several instances of intermeddling with the Estate in violation of section 45 of the *Law of Succession Act* Cap 160 Laws of Kenya and Rule 73 of the *Rules* made thereunder which expressly prohibits the intermeddling with estates of deceased persons. The specific instances of such intermeddling are contained in the supporting affidavit and reiterated in the submissions. That under Section 94 of the Act, any personal representative who misapplies any such asset or subjects it to loss or damage shall be liable to make good any loss or damage so occasioned. Further reliance is placed on Section 95 of the *Law of Succession Act* which provides for the offences of a personal representative of an estate.
 1. In support of the above submissions, the following cases were cited: *Gladys Nkirote M'itunga v Julius Majau M'itunga* [2016] eKLR and *Veronica Njoki Wakagoto (Deceased)* [2013] eKLR.
 2. On the issue of removal of the administrator Lucy Adhiambo Ougo, it was submitted that the duties of an administrator are provided for under Section 83 of the *Law of Succession Act* and that her duty therefore is fiduciary in nature. It was submitted that after confirmation of the grant on 14th February, 2022, the 1st applicant took steps to discharge his duties as an administrator while the 1st respondent proceeded on a wanton intermeddling with the estate and refused to discharge her duties as



- an administrator despite the demands by the 1st applicant that she takes remedial rectification measures. In support of the contention that an administrator owes a fiduciary duty to the estate and other beneficiaries, the cases of *Boardman v Phipps* [1967]2 AC, *Master of the High Court v Executor (Estate of Late Jericho David Matsebula* (1620/2012) 2014, SZHC, *In Re the Estate of TNN (Deceased)* [2014] eKLR were relied on.
3. Counsel for the applicants appreciated that whereas the *Law of Succession Act* and the Rules make no specific provision for the removal of an administrator, the Court can exercise jurisdiction under the Rules 49 and 73 of the *Probate and Administration Rules* in the face of dereliction of duty and violation of a statutory obligation by the 1st respondent. Counsel cited the cases of *In Re Estate of Njue Kamunde (Deceased)* [2018] eKLR, *Rupal Shah & another v Ramesh Bhagwani Shah* [2015] eKLR, *Isaac Gakua Mwangi v Chief Executive Officer Women Enterprise Fund* [2018] eKLR and *In Re Estate of Mwongo Gakira (Deceased)* [2019] eKLR in support of the above submissions.
 4. On the issue of rendering estate accounts, it was submitted that Section 83 of the *Law of Succession Act* imposes upon administrators the duty 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 within six months from the date of confirmation of the grant. That the failure to render such accounts may lead to revocation of grant under Section 76(d)(iii) of the Act.
 5. Further submission was that the failure by the 1st respondent, a co-administrator to render a full and accurate account shall have the effect of contaminating the 1st Applicant's role as a co-administrator going forward. That in the circumstances, it is in the best interest of all the beneficiaries that the 1st Respondent be ordered to give an account of all the rental proceeds collected from the Estate of the deceased from 19th August 2014 to date.
 6. In support of the above submission, counsel relied on the cases of *Re Estate of Julius Mimano (Deceased)* [2019] eKLR and *Re Estate of the Late Mwaura Makuro (Deceased)* [2021] eKLR.
 7. Regarding the review application, it was submitted that Since the confirmation of grant, the 1st Applicant discovered that Bank Account Number xxxx previously held at Kenya Commercial Bank Limited, Bondo Branch in the deceased's name had been intentionally omitted from the Schedule of Assets by some administrators and beneficiaries.
 8. Concerning land parcel Kasewe/Kabondo/81, the applicants asserted in their submissions that during his lifetime, the deceased entered into an agreement for the sale of the Property to Ewago Consulting Limited, a company owned by mr Benard Ogwenoh. That the obligation to transfer the aforesaid property was the deceased upon payment to him of the purchase price by mr Ogwenoh of 50% of the consideration being the sum of ksh 67,500. That the said amount was duly paid on 5th May 2010. That Section 3 of the *Law of Succession Act* recognizes a purchaser's rights. In support of this contention, the cases of *Titus Muraguri Warothe & 2 Others v Naomi Wanjiru Wachira* Nyeri HCSC no 122 of 2002, *In Re Estate of Joseph Mutua Munguti (Deceased)* [2018] eKLR, *Johnson Muinde Ngunza & another v Michael Gitau Kiarie & 12 Others* [2017] eKLR, *Mpatinga Ole Kamuye v Meliyo Tipango & 2 Others* [2017] eKLR were relied on.
 9. In relation to Sakwa/Barkowino/3820 Property, it was submitted that the same was erroneously allocated to Sophie Ougo whereas the said property was occupied by the late Emily Atieno Ougo until her demise. The 2nd Applicant takes issue that whereas every other beneficiary to the Estate of the Deceased received at least two (2) properties – being an equal share of the Kilelesha Property and at least one other property, ms Sophie Ougo, the 2nd Interested Party received three properties; Kilelesha Property and two other properties, including the Atilili Property. The 2nd Applicant's submission that



he was unfairly treated in the whole distribution process in a bid to disinherit him of his rightful inheritance through his late mother's estate including not being effectively involved in the discussions leading up to the final distribution schedule and being made to sign the consent to the mode of distribution of the estate without having sight of the distribution schedule.

10. On the claim by Sophie Ougo that she received a Gift Inter Vivos, it was submitted that the claim that Sophie Ougo was gifted the Property as a result of the alleged appointment is not true. The 2nd Applicant's position was that Sophie Ougo was at no point gifted the Property nor has she ever been in occupation of the said land and that she is only attempting to disinherit the estate of her late sister – a regrettable turn of events by a person who is purportedly the foster parent to the said orphans.
11. On behalf of the 2nd applicant, it was submitted that Sophie Ougo has provided no proof that the purported gift passed as alleged or at all. That on the other hand, the Estate of the late Emily Ougo has shown that they have lived in the Property for several years, beginning from the mid-1990s when both the 2nd Applicant and the 5th Interested Party were minors. Reliance was placed on the following cases: [*Re Estate of Godana Songoro Guyo \(Deceased\)*](#) [2020] eKLR and [*Re Estate of the Late Gedion Manthi Nzioka \(Deceased\)*](#) [2015] eKLR and [*Micheni Aphaxard Nyaga & 2 others v Robert Njue & 2 others*](#) [2021] eKLR.
12. On the issue of the 2nd Applicant's share of the Kileleshwa property, it was submitted that 2nd applicant, a grandson, wishes to be paid his equal share of the value of the Kileleshwa Property before the commencement of the proposed joint venture. That to avoid unnecessary confusion and protracted disputes, the 2nd Applicant's exit ought to take immediate effect and to be processed before the commencement of the project.
13. That according to the case of [*In Re Estate of Mwongo Gakira \(Supra\)*](#), administrators of an estate have a statutory duty to ensure that the Estate is administered expeditiously.

Submissions by the 1st Respondent and the Interested Parties

14. On behalf of the 1st respondent and the interested parties, it was submitted on the issue of revocation of grant as relates to the 1st respondent that an application for removal of an administrator ought to be supported by consent of all other beneficiaries. The case of [*Re Estate of Stephen Chege Kimari \(Deceased\)*](#) [2016] was relied on. It was submitted in contention that in the instant case, no such consent has been obtained from the beneficiaries of the estate and that at least, the interested parties have filed affidavits in stating that they have no complaint with the 1st respondent.
15. Counsel for the 1st respondent and the interested parties invited the Court to take cognizance of the fact that one of the Administrators, the widow, is advanced in age and may not be able to undertake her duties as a beneficiary with as much vigour and is therefore natural that she will need someone to do the work on her behalf.
16. Further submission was that the 1st Applicant has refused to cooperate with any of the other beneficiaries, including his own mother and the 1st Respondent as shown by letters annexed to the affidavits. They submitted that if there is an administrator to be removed, it should be the 1st applicant.
17. In support of their contention, the provisions of Section 76(d) of Cap 160 and the following cases were relied on: [*Re Estate of Elijah Mbondo Ntheketha*](#) (2017) eKLR, [*Re Estate of William Nzyoka Mutisya \(Deceased\)*](#) [2018] eKLR, [*Re Estate of Stephen Chege Kimari \(Deceased\)*](#) [2016] eKLR and [*Willis and Ochieng Odhiambo v Kenya Tourist Development Corporation*](#) (2007).



18. On the alleged intermeddling with the estate, it was submitted that the Deceased had appointed the 1st respondent to be his agent in negotiations on relevant and related matters concerning the Kileleshwa property and it is the 1st Applicant who wished to have the property sold and the proceeds thereof divided amongst the beneficiaries despite the Deceased's wishes that the property be kept for posterity purposes. That this position is buttressed by the fact that the 1st Applicant was the first to indicate that he does not wish to be part of the Joint Venture and opted to be bought-out.
19. On the allegation of collecting rental proceeds from the Kileleshwa property, she submits that the property has not had a tenant since December, 2020 and that when it did have a tenant, the rental proceeds were channelled towards the 1st Interested Party's personal bank account pursuant to a request she made to the tenants and in the circumstances therefore, no evidence in support of the said allegations was adduced as provided for under Section 107 of the *Evidence Act*.
20. On the issue of land parcel Kasewe/Kabondo/81, it was argued that mr Benard Ogwenoh did not complete the transaction as he only paid 50% of the agreed upon purchase price which fact was made known by the deceased during a family meeting held on the 15th and 16th of December, 2013 in the 1st applicant's presence. That the said property is now Estate property and should rightfully be distributed to Mrs Alice Athieno Ougo as per the distribution schedule. That in any event, the court lacks jurisdiction to deal with the issue as that is now a preserve of the environment and land court as stated in *The Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* (1989) KLR 1.
21. On the issue of land parcel no Sakwa/Barkowino/3820, it was submitted in contention that the said parcel was given to Sophie Ougo by the Deceased as a gift inter vivos under Section 42 of Cap 160 after the deceased gave her the responsibility of being Jackson's and June's foster parent after the demise of Emily Atieno Ougo and that it is for that reason that no other beneficiary has raised concerns over the said property. The case of *Lubberts Estate Re* (2014) ABCA 216 was relied on.
22. That however, the deceased could not complete the process due to illness and therefore became an imperfect gift as provided for in *Halsbury's Laws of England*, 4th edition, volume 20(1) para 70 and High Court Succession Cause no 15 of 2015 and *In the Estate of the Late Gichunge M'itwerandu alias Githungu M'Nthiiri*. They therefore urged this Court to direct that the property of the Deceased be distributed in accordance with the deceased's wishes.
23. On rendering of accounts, counsel submitted that the 1st respondent and the 1st interested party have tried their best to discharge their duties as provided for under Section 83 of Cap 160 and the proceeds of the Deceased's Estate have helped each and every beneficiary. She denies withdrawing money from the deceased's bank account since she did not have the Pin to the ATM and that the sums withdrawn shortly before and after the deceased passed on could possibly have gone to settle his hospital bills contrary to the 1st applicant's allegations.

Analysis and determination.

24. Having comprehensively set out the parties' respective cases, I propose to first deal with the application by Fred Ougo seeking *inter alia* a rendering of accounts and preservation of the estate of the deceased. The first prayer sought is to the effect that any subsequent rental proceeds from the Kileleshwa property be deposited in an escrow account and partially be utilized to defray accumulated rates.
25. The 1st applicant asserts that the property has accumulated rates and penalties to the tune of ksh 468, 808/- and is at risk of being repossessed by the government. The 1st respondent on her part avers that the family is aware of the rates arrears and plans are underway to settle the same before the commencement of the joint venture.



26. The applicant asserts that the rent collected from the property is in the sum of ksh 210,000/- per month. On her part, the 1st respondent averred that the rental proceeds have been deposited into the 1st interested party's personal bank account. She did not however disclose the amount payable as rent from the said Kileleshwa property save that the house has not had a tenant since December, 2020.
27. Having considered the parties rival positions on the issue, my finding is that the Kileleshwa property is an estate property and according to the certificate of confirmation of grant issued by this court on 14th February, 2022, the property is to be shared equally amongst all the beneficiaries and although the 1st applicant herein Fred Ougo will only get his equivalent equal share, in view of the proposed joint venture on the proposed property, which venture the 1st applicant herein is not interested in, the property remains the state property.
28. I however note that there is no evidence that the 1st applicant or the 1st respondent have been receiving any rental income from the said property. Nonetheless, there is evidence adduced by the 1st respondent, which is uncontroverted that it is the 1st interested party, also a co-administrator and widow to the deceased, who by a memorandum to the directors of Swedish Dental Clinic advised on 11/9/2014 that the rent due be paid to her personal account temporarily pending the issuance of letters of administration.
29. There is no clarity on the money so far received by the said 1st interested party on account of rent from the said property and neither was this asset of rental income disclosed in the schedule of distribution of the estate. there is also no evidence by way of a notice of termination of tenancy of the tenant whom the 1st respondent claims vacated the property in the year 2020.
30. Curiously, the 1st interested party who is a co administrator has also neither filed an affidavit to counter the allegations by the 1st applicant or even the contentions by the 1st respondent such that as matters therefore stand, the court is not properly appraised of the amount so far collected and or whether there is a tenant in the said property and paying rent into the personal account of the 1st interested party herein. It is also not clear whether the 1st respondent is a signatory to the account held by the 1st interested party and therefore whether she is involved in the management of the rental income received from the said property. Only the 1st Interested party could have shed light on this issue as she is duty bound as an administrator, to disclose all information regarding the estate of the deceased.
31. I reiterate that the 1st interested party being a co-administrator is bound by the provisions of Section 83 of the *Law of Succession Act* to render a proper and up to date accurate accounts of the monies collected from the Kileleshwa property-house in issue for purposes of distribution to the beneficiaries before the transmission is effected and finally, before the joint venture is activated.
32. Failure to disclose material facts can lead to revocation of the grant or the administrator being removed from being such administrator.
33. In the circumstances, I find it appropriate to order that the 1st interested party who is a co administrator of the estate of the deceased and who from the evidence presented before this court is the person in direct control of the property and rental income from the Kileleshwa property, shall, pursuant to the provisions of section 83 of the *Law of Succession Act*, furnish this Court with an up to date accurate account of the money so far collected from the Kileleshwa property in the form of rent from the time the deceased died, on 19/8/2014. It is only upon the 1st respondent co administrator a rendering such accurate up to date accounts as required by law that the issue of outstanding rent and rates shall be addressed and settled.



34. Another prayer sought is the release of ksh 462, 212.65/= currently held by the public trustee Kisumu. The evidence tendered before this Court shows that the money in question was moved from the deceased's bank account held with Kenya Commercial Bank Bondo *vide* banker's a cheque issued on 09/12/2014 on the strength of orders issued in Kisumu Administration Cause no 315 of 2014.
35. It is clear from the certificate of confirmation of grant that this sum of money was not mentioned to be accounted to the beneficiaries and therefore this Court presumes that the said money is still held by the Public Trustee for and on behalf of the deceased's estate since the money has not been distributed to any party.
36. However, since the money was moved from the deceased's bank account, then that money and account should have been included in the list of assets of the deceased and available for distribution to all the beneficiaries of the estate.
37. Regrettably, despite the Public Trustee being a named party to these proceedings, the office did not file any response to the application. That inclusion of the asset in itself calls for amendment of the certificate of confirmation of the grant.
38. The applicant submitted that the Public Trustee acted beyond scope as provided for under Section 8(1) of the *Public Trustees Act*, since the value of the Estate exceeded ksh 3, 000,000/=. I have perused the pleadings in this matter and none of the parties has annexed any pleadings either conveniently or inadvertently filed in the Cause leading to the transfer of the said funds from the KCB Bondo Branch Bank to the Public Trustee. It is also not disclosed whether the said Bank account was closed or not.
39. I however note that there is request by the 1st interested party to the Public Trustee by letter dated 15/1/2015 to access the sum of ksh 300,000/- to repair her house at mosque estate. The letter is annexed to the 1st respondent's replying affidavit sworn on 21st November, 2022. There is, however, no mention of whether the money was really advanced to her or not and or whether she repaired the said house or not. Obviously, the Public Trustee is in the know as to whether the money was released to the 1st interested party but has remained silent. The question is, was there an administrator to receive such monies on behalf of the estate of the deceased as at 2015?
40. In my view, whereas the Public Trustee could receive such monies as a temporary administrator of the estate of the deceased as there was no evidence that the value of the entire estate which exceeds 3 million was disclosed to the Public Trustee, it was the duty of the public Trustee to inquire into the beneficiaries of the estate of the deceased and therefore all those who were beneficially entitled to a share of that money before releasing it or any part thereof to the 1st interested party. This is so because there is no evidence that the 1st interested party was a joint account holder with the deceased in that account or that she had the exclusive right to the use of the said monies without involving the other beneficiaries and before a grant was obtained to administer the estate of the deceased Jonah Hezekiah Ougo.
41. The P & A 5, an affidavit sworn by the petitioners for grant never mentioned this account or sums of money being held by the Public Trustee and neither does the certificate of confirmation of grant dated 14th December, 2021, which sums of money I find, to forms part of the deceased's estate. I therefore find that this sum of money ksh 300,000 must be brought back to the estate for distribution to all the beneficiaries plus any other monies held by the Public Trustee or in any Bank account which is or was in the name of the deceased Jonah Hezekiah Ougo.
42. Another issue raised on this KCB account is that the 1st respondent herein Lucy Adhiambo Ougo withdrew the sum of ksh 400,000/= shortly before and after the deceased's death. The 1st applicant annexed various correspondences with the bank on the status of the account as well as a bank



statement covering the period. The statement shows various Automatic Teller Machine (ATM) withdrawals totalling ksh 400,000/= between 17/6/2014 and 14/9/2014 before closure of the account on 9/12/2014 upon issue of the aforesaid cheque in favour of the public trustee.

43. The 1st respondent distanced herself from such withdrawals stating that she did not have the deceased's ATM Personal Identification Number (PIN). She asserted that the money could have gone into settling the deceased's medical bill.
44. It is common ground that the deceased died on 9/8/2014 and activity in his account continued to be carried out. The question then is; who withdrew the money even after the deceased's death. It is obvious that the person who withdrew the money had access to the deceased's ATM card and knew the PIN for the said account.
45. Upon review of the evidence on record, it is a requirement of the law that he who alleges bears the burden of proving the allegations, as enacted by Section 107 of the *Evidence Act* so that in the circumstances of the matter herein, the 1st applicant bore the duty of proving on a balance of probabilities that indeed, it was the 1st respondent who withdrew the money from the deceased's bank account as alleged.
46. In this case, although there is no evidence that a fraudster accessed the subject bank account and withdrew the monies from therein without authority as that would have attracted the attention of the family members herein especially the widow to report the matter to the police for investigations and it would not have taken long before the thief was identified as the money was withdrawn through ATM and since Banks have CCTV facilities, the investigations would have revealed who and where and at what time the monies in question were withdrawn .
47. I however find no satisfactory evidence linking the 1st Respondent or even the 1st interested party widow to the said withdrawal of monies from the subject account. In the circumstances I do not find evidence that it is the 1st respondent who participated in pilferage of the funds from the deceased's Bank at Bondo Branch.
48. Another prayer sought is the removal of the 1st respondent Lucy Adhiambo from being one of the administrators of the estate of the deceased for dereliction of duty as administrator.
49. It is common ground that the grant was issued to Alice Athieno Ougo, Lucy Adhiambo Ougo and Fred Ougo as joint administrators of the deceased's estate as defined by Section 2 of Cap 160. Their functions are provided for by the said law under sections 79, 82 and 83 of the said *Law of Succession Act*. The sections provide as follows:

“79. The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.

82. Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;



- (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best: Provided that—
 - (i) any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and
 - (ii) no immovable property shall be sold before confirmation of the grant;
 - (c) to assent, at any time after confirmation of the grant, to the vesting of a specific legacy in the legatee thereof;
 - (d) to appropriate, at any time after confirmation of the grant, any of the assets vested in them in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased or any other interest or share in his estate, whether or not the subject of a continuing trust, as to them may seem just and reasonable to them according to the respective rights of the persons interested in the estate of the deceased, and for that purpose to ascertain and fix (with the assistance of a duly qualified valuer, where necessary) the value of the respective assets and liabilities of such estate, and to make any transfer which may be requisite for giving effect to such appropriation: Provided that except so far as otherwise expressly provided by any will—
 - (i) no appropriation shall be made so as to affect adversely any specific legacy;
 - (ii) no appropriation shall be made for the benefit of a person absolutely and beneficially entitled in possession without his consent, nor for the purpose of a continuing trust without the consent of either the trustees thereof (not being the personal representatives themselves) or the person for the time being entitled to the income thereof, unless the person whose consent is so required is a minor or of unsound mind, in which case consent on his behalf by his parent or guardian (if any) or by the manager of his estate (if any) or by the court shall be required.
83. 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.”

50. From the above legal provisions, it is therefore clear that the duty of an administrator of the deceased’s estate is a statutory one and the administrator is strictly bound to comply with that duty. Judicial pronouncements have interpreted this duty and stated that an administrator occupies a very special position in the estate of a deceased person. While commenting on this status and statutory duty of an administrator, Musyoka J in *In re Estate of Julius Mwimano (Deceased)* [2019] eKLR stated thus:

“ 58. The personal representative of a deceased person holds a unique position in law. The property of the dead person is vested in them by virtue of section 79 of the *Law of Succession Act*. The effect of section 79, read together with section 82 of the Act, is that the same puts the personal representative on the same footing with an owner of the property, in the sense that he exercises the powers that the legal owner of the property would have exercised were they alive, and suffered the same burden of duties and obligations over the property as the legal owner would have been under were they to be alive. Yet, the property, although vested in them by law, would not be theirs. Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They



only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the Trustee Act, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.”

51. In Albert Kigera Karume & 2 others v George Ngugi Waireri & 3 others (sued as Trustees of the Njenga Karume Trust & another; Grace Njoki Njenga Karume & 7 others (Interested Parties) [2020] eKLR this very Court had the privilege of discussing in detail the role and duties of trustees. Administrators as well as beneficiaries in this matter need to read that judgment in full to appreciate their role as administrators of the estate of a deceased person. I will quote just a few paragraphs from that judgment while appreciating that I am not dealing with a trust declaration but an intestate estate of a deceased person. This is what this court stated *inter alia*:

“285. The Trustees herein had an obligation under the Trust instrument to exercise diligence in execution of their duties under the Trust and which diligence was expected to be that which a man of ordinary prudence would exercise in the management of his own private affairs.

286. The Trustees were no doubt persons entrusted with discretion but were in a fiduciary relationship. In my humble view, the Trustees did not run the Trust diligently. For example, they were unable to explain how the balance of monies being proceeds of sale of the “Kenyatta University Land” was utilized despite admitting that the founder left quite a substantial amount of the said money in his Bank account. They were also unable to demonstrate that they kept a Register of Assets of the Trust which is a key accountable instrument of tracking the assets of the Trust. The Trustees were also unable to tell to whom they paid ksh 40,366,474 as professional and legal fees. Neither could they tell who was paid ksh 1.2 million as audit fees. Hiding under what they called “absolute and unchallengeable discretion,” they could not keep the founder’s wishes of building Teresia a house worth 15 million and neither could they show that they gave her an apartment as promised to her. In addition, the Trustees could not account for the proceeds of sale of the South C House where some of the children beneficiaries who were orphaned grandchildren of the Founder lived for many years.”

In *Armitage v Nurse* [1997] 3 WLR 1046. Millett LJ made the following observations:

‘I accept the submission ... that there is an irreducible core of obligations owed by the Trustees to the beneficiaries and enforceable by them which is fundamental to the concept of a Trust. If the beneficiaries have no rights enforceable against the Trustees, there are no Trusts. But I do not accept the



further submission that these core obligations include the duties of skill and care, prudence and diligence. The duty of the Trustees to perform the Trusts honestly and in good faith for the benefit of the beneficiaries is the minimum necessary to give substance to the Trusts, but in my opinion it is sufficient. It is, of course, far too late to suggest that the exclusion in a contract of liability for ordinary negligence or want of care is contrary to public policy. What is true of a contract must be equally true of a settlement. The Trustees are further not entitled to show favour to a beneficiary or group of beneficiaries, but are required to act impartially and in the best interests of all the beneficiaries. [emphasis added].

245. Owing to the nature of the fiduciary relationship of Trustees, a duty is imposed on them to keep proper accounts for the Trust. The beneficiaries are entitled to inspect the accounts. As Lord Wrenbury held in *O'Rourke v Darbishire* [1920] AC 581:

“the beneficiary is entitled to see all Trust documents because they are Trust documents and because he is a beneficiary. They are in this sense his own. Action or no action, he is entitled to access to them. This has nothing to do with discovery. The right to discovery is a right to see someone else’s documents. The proprietary right is a right to access to documents which are your own.”

52. The grant herein was issued to the three administrators jointly. It is therefore their duty to ensure that they diligently administer the estate in line with the law and for the benefit of other beneficiaries who are ordinarily entitled to the estate and not to wrangle over who should do what. In this case, the 1st applicant herein is accusing the 1st respondent while the 1st respondent is counter accusing the 1st applicant for non-cooperation in the administration of the estate especially the transmission part which is very key a step in the administration process.

53. It is important to note that none of these two administrators are superior to their other siblings who gave them the mandate to represent them in the administration of the estate and if any of the two are removed as administrators, there are other beneficiaries who are qualified to take over that role of administration. It therefore follows that the two administrators must take the roles assigned to them very seriously and stop the sibling rivalry and focus on how they can co administer the state for the benefit of all in the family of one father and one mother, the 1st interested party herein.

54. On the question that the 1st respondent ought to be removed from being one of the co administrators of the estate, while urging the prayer, the 1st applicant invited this court to invoke its powers under Section 47 of Cap 160 and Rule 73 of the *Probate and administration Rules*. The Rule provide that:

“Nothing in this rule shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court.”

55. The dispute as I understand from the applicant’s point of view is that the 1st respondent has mismanaged the estate and excluded the other administrators from participating in the administration of the estate particularly with regard to the income generating properties and that she had withheld vital documents from the other administrators and delayed the process of administration or distribution of the state to the beneficiaries.



56. I must emphasize that the deceased's estate is one and the administrators are three in number. It therefore behoves them to cooperate in the duty thus assigned. This was the holding in *In re Estate of Makokba Idris Khasabuli (Deceased)* [2019] eKLR where the administrators were four and the court cautioned that:

“(8) It must be stated that even though there are four administrators in places in law there is only one administration or representation to the estate of the deceased. The four administrators hold one grant, which appoints all four of them as administrators. None of them holds a grant which makes them the sole administrators of the estate. Since there is only one administration, and not four, it behoves the four administrators to act as one with regard to managing the estate of the deceased. Responsibilities and duties must be shared. They must agree on the management of the assets. They must take a common stand on the expenses of administration and on the settlement of liabilities and debts and other outgoings. It should not be the business of one or a section of the administrators to make decisions on behalf of the estate, that falls upon all four of them.”

57. The circumstances of the matter herein are in pari material with the scenario presented in the above cited case. Had there been harmony in the administration of the estate, there would be no need of filing the instant applications.

58. Another factor that should be taken into account is, and I reiterate the fact that the 1st applicant and the 1st respondent are siblings who rank both in equality of priorities in the estate, with all their other siblings. None ranks above the other. Be that as it may, I find that the applicant has not advanced sufficient reason to have the 1st respondent removed from the office of administrator. This is not to say that the 1st respondent or any of the administrators cannot be removed from being an administrator should there be proof that any of them is misappropriating the assets in the estate of the deceased or is not willing to have the distribution of the estate concluded within the timelines provided for by law or is not willing to have accounts rendered to court as required by section 83 of the *Law of Succession Act*. But before that drastic decision is made by this court, it must first do what it has to do and demand for accountability and only when such accountability is resisted or ignored can the court make appropriate orders as to save the estate from pilferage.

59. Back to the review application and the orders sought by the 2nd applicant Jackson Ochieng, the grounds for the application has been stated over and over. The law governing the grant of review orders are provided for under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the *Civil Procedure Rules* which provide that:

“Section 80. Review

Any person who considers himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

Order 45, rule 1. Application for review of decree or order.



1.

- (1) Any person considering himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review”

60. Order 45 of the *Civil Procedure Rules*, 2010 which is the procedural law implementing section 80 of the *Civil Procedure Act* is explicit that a court can only review its orders if the following grounds exist:

- (a) There must be discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the applicant at the time the decree was passed or the order was made; or
- (b) There was a mistake or error apparent on the face of the record; or
- (c) There were other sufficient reasons; and
- (d) The application must have been made without undue delay.

61. The Court of Appeal in *Asset Recovery v Charity Wangui Getbi and 3 Others* [2020] eKLR had this to on an application for review of the court’s own orders:

“In an application for review, as envisaged under Order 45 of the *Civil Procedure Rules*, the grounds which ought to be established are conclusive. An applicant must establish: that there has been a discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or made; that there has been a mistake or error apparent on the face of the record or: any “other sufficient reason”. The ground “other sufficient reason” has been held to be consonant with the first two grounds: See *Kuria v Shah* [1990] KLR 316. Additionally, the applicant must exhibit that he acted expeditiously.”



62. Having considered the application, the main ground advanced by the applicant Jackson Ochieng in support of his application is that he was only involved in the tail end of the process of succession herein for purposes of executing the consent. However, that whereas he had an opportunity to register his dissatisfaction with the mode of distribution, he opted not to do so, so as not to stall the process. He takes issue with the fact that he was allocated only a single property whereas others including his aunt Sophie Ougo were provided for with more properties.
63. The application is vehemently opposed on the grounds that the 2nd applicant herein was present in court during the confirmation of grant hearing and the matter even had to be adjourned as he did not carry with him his identity card.
64. Without going into much details, I have perused the record to satisfy myself that the applicant indeed executed the consent on the mode of distribution of the estate and or attended court during the hearing of the summons for confirmation of the grant. The court record shows that the said Jackson Ochieng and other beneficiaries of the estate subject of this ruling appeared before me on 25/1/2022 for confirmation of grant and upon the said Jackson lacking his identity card, I adjourned the matter to 14/2/2022 for a ruling on the summons for the confirmation of grant, and I directed that he appears before the Deputy Registrar of this Court which he did appear on 31/1/2022 for purposes of verification of his identity and as soon as that verification was done and recorded by the Deputy Registrar, the file was brought back to me for writing of the ruling which I religiously rendered on 14/2/2022.
65. I have also perused the consent filed on the mode of distribution of the estate and I note that Jackson Ochieng signed agreeing to the proposed mode of distribution on 14/12/2021 way before he appeared before the Court for the confirmation of grant hearing. He has not disowned his signature and neither has he claimed that he was compelled to sign the consent.
66. In addition, a consent once signed and filed in court and accepted by the court is like a contract executed by parties thereto. To vitiate that contract, a party must demonstrate that it was entered into by mistake, through coercion, misrepresentation or fraud, unless there is a consent recorded. The 2nd applicant has not invoked any of the grounds that can lead to vacation of a consent. he has not demonstrated that he was an underdog in all these matters of his late father's estate as him and his sister June Akinyi, the children of Emily Ougo are only entitled to the share of their late mother and not to claim part of the estate as if they are children of the deceased Jonah Hezekiah Ougo. Already, June Akinyi has sworn an affidavit indicating that they were all satisfied with the distribution and that Jackson has no basis upon for complaining.
67. The grounds for seeking review of orders confirming the grant are closed and in the instant case, the 2nd applicant has not moved court under any of the 4 grounds stated in the preceding paragraphs. He does not state that he has found new and compelling evidence, that there is an error apparent on the face of the record or that he has sufficient reasons for the grant of the orders sought. Neither has he invoked the grounds for vitiating a consent as stated above. Nonetheless, this does not bar the administrators, for good and sufficient reasons, from returning to court and seeking to review the orders issued by the court with a view to facilitating smooth distribution and administration of the estate of the deceased.
68. In fact, the court record bears that Jackson Ochieng had been involved in the process all through and had the opportunity to raise any protestations if any at the opportune time during the hearings since this matter did not just spring up from nowhere to where it is today.
69. On the change of mind that he is no longer interested in the joint venture, the 2nd applicant is at liberty to negotiate with the other beneficiaries to buy him out if he is not interested in the same.



70. For the above reasons, I find the application dated 3rd October, 2022 seeking review of the ruling delivered on 14/2/2022 to redistribute the property in the estate of the deceased to be without merit and is hereby dismissed.
71. Before I conclude I must mention that the claim that one, Benard Ogwenko the purchaser of one of the parcels of land Kosewe/ Kabondo/81 from the deceased be given his portion of the estate and the counter thereof that he only paid half of the purchase price is not a matter for this court to determine as there was no disclosure of any liability of the estate by the administrators and the 1st applicant being one of them, ought to have raised this at the onset so that not just assets but also liabilities of the estate are listed. In addition, a creditor who is aggrieved has his own cause of action which can be articulated better by him at the right time and in the correct forum.
72. I find no merit in that claim by the 2nd applicant. I decline it.
73. In the end, I find and hold that the prayers sought by the 2nd applicant for review of the ruling of 14/2/2022 and or redistribution of the estate of the deceased is not merited. It is declined and dismissed. I however find that the prayer for inclusion of the asset namely- money held in the KCB Bank Account Bondo Branch and subsequently transferred to Public Trustee, Kisumu, as one of the assets of the estate and being available for distribution to the beneficiaries is merited. I allow the prayer for inclusion and for an accurate account to be rendered as concluded below.
74. Regarding the other prayers seeking *inter alia* preservation of the estate of the deceased, having reviewed the material placed before this Court, and to ensure accountability of the administrators in the administration of the estate of the deceased Hezekiah Ougo, the following orders commend themselves:
- a. The 1st Interested Party administratrix Alice Athieno Ougo is hereby ordered by this Court to furnish this Court with an up to date statement and give an accurate account for all the rental income received from the Kileleshwa property LR 209/6899 from the date of death of the deceased on 19/8/2014 within 30 days of this ruling today.
 - b. Pending the rendering of an up to date statements and giving of the accurate accounts in respect of the rental income from the Kileleshwa property, and henceforth, until the said accurate accounts are rendered to court, all rental income from the said property, if any, shall be deposited in the deceased's KCB Bondo Branch account and in the event that the said account was closed, then the administrators hereto shall open a joint interest earning account where such monies shall be deposited until such accurate accounts are rendered into court.
 - c. The 2nd respondent, the Public Trustee Kisumu is hereby ordered by this Court to file into court an up to date statement and give an accurate account of all the monies received from the deceased' bank account with KCB Bondo Branch, account no xxxx within 30 days of the date of service upon the said Public Trustee of this order.
 - d. Any monies held in the deceased's Bank Account no xxxx or by the Public Trustee from the said account shall form part of the estate of the deceased Jonah Hezekiah Ougo and shall be available for distribution to all the beneficiaries of the estate of the deceased Jonah Hezekiah Ougo.
 - e. All the rental income to be accounted for from the Kileleshwa property LR 209/6899 shall also be available for distribution among all the estate beneficiaries.



- f. The monies stated in order d and e above once accounted for shall as a matter of priority be applied towards settlement of outstanding rates, rents and penalties accrued on the properties that are rateable especially the Kileleshwa property,LR 209/6899 subject to production of credible evidence of such rates, rents or penalties due and owing.
 - g. The certificate of confirmation of grant shall be amended forthwith to include the assets of the estate of the deceased which were left out namely, the rental income from the Kileleshwa property LR 209/6899 and the monies held in the KCB Bondo Branch Account no xxxx as transmitted to the Public Trustee, Kisumu, and the mode of distribution thereof shall first and foremost, be for settlement of the unpaid rates and rents due on the rateable properties. Any residue shall be available for redistribution among all the beneficiaries equally (with the share for Emily Ougo-deceased being shared to her two children Jackson Ochieng and June Akinyi as one unit), as there is no agreement reached on the mode of distribution thereof yet any part of the estate of the deceased Jonah Hezekiah Ougo cannot remain undistributed.
 - h. All the administrators are hereby directed to ensure that each one of them adheres to their statutory duty and mandate and cooperates with the rest of the administrators in the transmission of all the assets of the deceased to be done in accordance with the certificate of confirmation of grant as issued and amended by this ruling and to administer the estate of the deceased in accordance with the law and to render accurate accounts as stipulated under section 83 of the *Law of Succession Act*.
 - i. Any other issue surrounding the estate properties including the joint venture plan on the Kileleshwa property LR 209/6899 are hereby stayed pending the rendering into court the statements and accurate accounts by the Public Trustee and the 1st interested party Alice Athieno Ougo the widow.
 - j. This matter shall be mentioned before the presiding Judge on 8th May, 2023 to confirm compliance with these orders and for further orders as the Court may direct.
 - k. The ruling and order to be served on the tenant (s) if any, occupying the Kileleshwa property and the Public Trustee for compliance.
75. The dispute being one among close family members, I order that each party shall bear their own costs of the twin applications.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 5TH DAY OF APRIL, 2023

R.E. ABURILI

JUDGE

