



In re Estate of Millicent Phoebe Obonyo alias Millicent Obonyo (Deceased) (Family Cause E002 of 2024) [2024] KEHC 16472 (KLR) (30 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16472 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
FAMILY CAUSE E002 OF 2024
RE ABURILI & RE ABURILI, JJ
DECEMBER 30, 2024**

IN THE MATTER OF THE HIGH COURT OF JUSTICE OF ENGLAND AND WALES QUEEN ELIZABETH II LAW COURTS LIVERPOOL DISTRICT PROBATE REGISTRY, CASE REFERENCE NO. 1577112311192805

AND

IN THE MATTER OF THE ESTATE OF MILLICENT PHOEBE OBONYO ALIAS MILLICENT OBONYO(DECEASED)

IN THE MATTER OF

SAMUEL KING ORANGA 1ST PETITIONER

SAMUEL KING ORANGA 2ND PETITIONER

RULING

1. The deceased herein Millicent Phoebe Obonyo died testate on the 25th March, 2019 while domiciled at Garden Neurological Centre, High Wych Road, Sawbridgeworth in England and Wales.
2. On 19th Day of June, 2019, a grant of probate of Will was issued to the petitioner herein Samuel King Oranga, the sole executor of the deceased's Will dated 3rd February, 2004, by the High Court of Justice of England and Wales, Queen Elizabeth II Law Courts at Liverpool District Probate Registry.
3. The deceased was survived by one daughter Carolyne Obonyo, a sister and a nephew. In her last will, she bequeathed all her estate property in Kenya and in England to her sister Serphine Obonyo and nephew Fredrick Obonyo. However, following protest by her daughter for provision, a settlement was reached in England and she was provided for 20% of the estate, by agreement. The sister and nephew are to get each 40% of the entire estate less any expenses and taxes due. From the documents filed in court and their own appearance, they have already received part of the estate.
4. The Executor has filed a full inventory of assets and liabilities of the estate of the deceased both in Kenya and in England. In Kenya, the deceased had a house on land Reference No. Kisumu/Municipality/LR



- NO. 15983 and funds held at National Bank of Kenya amounting to Kshs 12,000,000. In England, she had a car, a house, cash at bank, dividends and life insurance benefits. The house in Kisumu Kenya is yet to be sold for distribution of the proceeds.
5. This court called for the appearance of the beneficiaries and a full inventory of assets and liabilities in England which inventory was filed.
 6. The the petitioner moved to this court seeking resealing of the grant for purposes of securing authority to administer part of the estate which is situated in Kenya.
 7. The power for this court to seal a grant issued before any commonwealth country or any other country duly gazetted by the Attorney General is anchored under Section 77 of the Law of Succession Act and Rule 42 of the Probate and Administration Rules.
 8. Before a grant is sealed, Rule 42 of the Probate and Administration Rules requires that the applicant must produce an Original of the grant or a duplicate or copy thereof duly sealed by the issuing court, a certificate from the commissioner of estate duty to confirm that there is no outstanding estate duty payable and any other evidence as the registrar may require relating to the death of the deceased.
 9. Upon submission of the aforesaid information, the registrar is supposed to cause the estate gazetted in the official Kenya gazette for the general knowledge of the public. It is after the expiry of 30 days that the grant can be sealed.
 10. In the instant case, the grant for sealing has been gazetted. However, Rule 42 of the Probate and Administration Rules requires that the grant should be an original or duplicate or certified copy. What is before court is a photocopy of the grant dated 10th June, 2020 which is not certified by the issuing court, although it has a seal of the High Court of Justice. A copy should bear the original certificate stamp of the issuing court or any recognized authority on its behalf. In this case, that condition has not been fulfilled. Although the filing of documents in this court is now through the e-Portal, it is expected that the condition for certification is met, or an original grant is availed to court for perusal. The photocopy of the grant which was filed was an extract by advocates for the executor/ petitioner. They should have caused it to be certified by the originating court.
 11. In view of the above finding, I am not satisfied that the applicant/petitioner has met the requisite conditions set out in the law before the grant can be resealed. Accordingly, the application dated 3rd April, 2024 is disallowed. The petitioner to follow the laid down procedure under Rule 42 of the Probate and Administration Rules by availing to this Court the original or copy of the grant duly certified with the original seal of the issuing court before the court can seal the grant and confirm it. That should take the shortest time possible since the gazettelement has already been done.
 12. Accordingly, the petitioner is granted 60 days of today to avail to court an original or certified true copy of the grant issued on 10th June, 2020 by the high Court of Justice of England and Wales, Liverpool District High Court.
 13. Mention on 6/3/2025 to confirm compliance and in default, these proceedings shall lapse and the casefile closed upon which the petitioner shall be required to file fresh proceedings that comply with section 77 of the Law of Succession Act and Rule 42 of the Probate and Administration Rules, for consideration.
 14. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 30TH DAY OF DECEMBER, 2024

(Virtually)



R.E. ABURILI
JUDGE

