**Ombogo v Standard Chartered Bank of Kenya Ltd**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of judgment:** 31 July 2000

**Case Number:** 162/99

**Before:** Akiwumi, Bosire and Owuor JJA

**Sourced by:** LawAfrica

**Summarised by:** M Kibanga

*[1] Advocate – Advocate dying intestate – Client account – Who should manage client account.*

*[2] Succession – Legal Notice Number 279 of 1995 made under the Advocates Act to provide for the*

*management of deceased advocate’s law firm – Whether Legal Notice Number 279 of 1995 was*

*inconsistent with the Law of Succession Act – Section 45(1) – Law of Succession Act.*

**Editor’s Summary** This matter concerned two bank accounts, “office” and “client”, maintained by a deceased advocate. The deceased died on 5 July 1995. Sometime after the death of the deceased, the Law Society of Kenya (“LSK”) sent a letter to the deceased’s bank advising the bank not to deal with the two accounts until the LSK chairman appointed two advocates to manage the said accounts while winding up the deceased’s law firm under Legal Notice Number 279 of 1995. Thereafter, the bank received another letter from the advocates of the administrators of the estate of the deceased, informing the bank that it was the administrators and not the LSK who had the right to manage the accounts under the Law of Succession Act (Chapter 160). The bank filed interpleader proceedings under Order 33, Rule 1 of the Civil Procedure Rules for determination of who between the LSK and the administrators should manage the accounts. The LSK argued that under Legal Notice Number 279 of 1995 the LSK Chairman was entitled to nominate two advocates and oversee the winding up of the firm. The administrators contended that the Legal Notice was inconsistent with the Law of Succession Act and in any event, it could not apply retrospectively, having come into force before the death of the advocate. The High Court decided that the Legal Notice was not inconsistent with the Law of Succession Act and the administrators appealed.

**Held** – The Advocates Act (Chapter 16) and the Law Society Act (Chapter 18) are geared to ensuring proper conduct of practising advocates and could not be extended to cover the legal practice itself after the advocate has died. The estate of a deceased advocate included money held in trust for his clients, hence the client account was within the scope of the Law of Succession Act (section 46 of the Act). The Law of Succession Act did not distinguish between different categories of persons to whom it applied. Free property connoted not only the personal property of the deceased, but also all the property which was in his possession or control or under his power, and the disposal of which would legally have required his authority, but for his death. That included money held in a “client account”. Legal Notice Number 279 of 1995 was therefore in conflict with the Law of Succession Act. Appeal allowed. The issue whether Legal Notice 279 of 1995 was retrospective or not was not considered because the court found it unnecessary to do so in view of its main finding.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Patel v Republic* [1968] EA 97

***United Kingdom***

*Carson and another* [1964] All ER 681

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