

Matter of Agu (Okum)
2016 NY Slip Op 32029(U)
September 19, 2016
Surrogate's Court, Nassau County
Docket Number: 358753/A
Judge: Margaret C. Reilly
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**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**In the Matter of the Application of Maureen Agu,
as Administrator of the Goods, Chattels and Credits
which were of**

**DECISION
File No. 358753/A
Dec. No. 31730**

**RAYMOND OKUM,
a/k/a RAYMOND OGBOZOR OKUM,**

Deceased,

**for Leave to Compromise and Settle a Certain Cause of
Action for Wrongful Death of the Decedent to Render and
Have Judicially Settled an Account of the Proceedings as
Such Administrator.**

PRESENT: HON. MARGARET C. REILLY

The following papers were considered in the preparation of this decision:

Petition with Exhibits	1
Attorney Affirmations (4).....	2
Notice of Appearance and Objection.	3
Notice of Consent and Withdrawal of Objection.	4
Account.....	5
Contingent Retainer Agreement.	6
Letter from GEICO Insurance Company.	7
Proposed Decree.....	8

In this proceeding for leave to compromise a cause of action for wrongful death and conscious pain and suffering, the petitioner, Maureen Agu, asks the court to: (1) authorize settlement of the causes of action against the defendant for the sum of \$150,000.00 and to allocate the entire recovery to the cause of action for wrongful death and discontinue the cause of action for conscious pain and suffering; (2) modify the letters of administration previously

issued to the administrator to permit the compromise; (3) dispense with the filing of a bond; (4) judicially settle the account of the administrator; (5) fix and allow fees for the administrator's attorney in the amount of 33 1/3%, or \$48,939.00, plus disbursements of \$3,183.00; (6) allow the administrator a commission of \$939.00; (7) direct the distribution of the balance of the settlement, \$97,878.00, to those having sustained a pecuniary loss, as follows: \$48,939.00, to the decedent's surviving spouse, Josephine Okum; and \$48,000.00, to be divided among the decedent's eight adult children in equal shares of \$6,000.00 each; and (8) reject the claim of the Department of Social Services as a non-distributee; (9) direct the execution and delivery of releases to the defendant or the defendant's insurance company, upon payment of the settlement amount.

Raymond Okum (the decedent) was a resident of Nigeria. While visiting his daughter in Elmont, New York, on November 20, 2009, he crossed the road and was hit by a motor vehicle driven by Leopold Cablayan (the defendant). The decedent was taken to a nearby hospital where he was pronounced dead without ever having regained consciousness. He was 79 years of age.

The decedent was survived by his wife, Josephine Okum, and by eight adult children: (1) Maureen Agu (the petitioner); (2) Leticia Obute; (3) Edwin Okum; (4) Lilian Aniuche; (5) Anthony Okum; (6) Gertrude Ochu; (7) Daniel Okum; and (8) Susan Okum. On February 18, 2010, limited letters of administration issued to the petitioner, who commenced a combined action for wrongful death and conscious pain and suffering against the defendant in Supreme

Court, Nassau County. Thereafter, negotiations were entered into with a representative of GEICO Insurance Company (GEICO), the insurer of the defendant. Petitioner advises the court that GEICO made a final offer of \$150,000.00, out of maximum insurance coverage of \$300,000.00. On September 14, 2015, GEICO sent a letter to this court advising the court that this matter was settled by the parties and their respective counsel in the Nassau County Supreme Court before Judge George R. Peck, on or about July 23, 2015, for \$150,000.00.

The petitioner believes that it would be in the best interests of the interested parties to accept the settlement offer because the defendant claims that the accident was the fault of the decedent, who stepped into the moving vehicle, and the eye witnesses to the scene of the accident did not appear for the trial, despite having been served with subpoenas.

At the time of his death, the decedent was self-employed as a general contractor in Nigeria. Petitioner advises the court that while the proceeds of an action for wrongful death are typically allocated according to the pecuniary losses of the surviving spouse and infant children, the decedent, in addition to supporting his wife, provided voluntary support of his eight adult children.

The decedent's funeral bill, in the amount of \$6,009.00, was paid under no-fault benefits and by family members and no reimbursement is sought. There are no medical or hospital bills outstanding. The petitioner has waived her right to a statutory commission and has agreed to accept a commission in the amount of \$939.00.

The New York State Department of Taxation and Finance filed a Notice of Appearance

and Objection on January 20, 2016, followed by the filing of a Notice of Consent and Withdrawal of Objection on February 1, 2016. A supplemental citation was served upon the decedent's spouse and children as well as on the Department of Social Services, returnable on May 4, 2016, completing jurisdiction. None of the parties appeared. No claim against the estate was filed by the Department of Social Services. Therefore, there are no other persons entitled to notice or whose consents are required.

Accordingly, the petition is **GRANTED** in its entirety. The distribution of the proceeds of settlement for the claim of wrongful death, in the total sum of \$150,000.00, shall be as follows: \$48,939.00 to Josephine Okum, the surviving spouse of the decedent; and \$6,000.00 to each of the decedent's eight adult children: (1) Maureen Agu; (2) Leticia Obute; (3) Edwin Okum; (4) Lilian Aniuche; (5) Anthony Okum; (6) Gertrude Ochu; (7) Daniel Okum; and (8) Susan Okum. An administrator's commission of \$939.00 is approved, as are legal fees of \$48,939.00 plus disbursements of \$3,183.00.

If the decree submitted with the petition is found to be in proper form, it will be signed.

This is the decision and order of the court.

Dated: September 19, 2016
Mineola, New York

E N T E R :

HON. MARGARET C. REILLY
Judge of the Surrogate's Court

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