



**In re Estate of Pauline Nyakerario Orina (Succession Cause
228 of 2010) [2024] KEHC 14502 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 14502 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION CAUSE 228 OF 2010
TA ODERA, J
OCTOBER 30, 2024**

IN THE MATTER OF THE ESTATE OF PAULINE NYAKERARIO ORINA

BETWEEN

CLARA KWAMBOKA OMANGA 1ST APPLICANT

ROSEMARY MORAA 2ND APPLICANT

AND

THOMAS ROBERT ORINA RESPONDENT

AND

JOHN MOCHERE OMBUI INTERESTED PARTY

WILLIAM MONAD MONDA INTERESTED PARTY

DAVID MOIBI BIRONGO INTERESTED PARTY

THOMAS MOKUA ASIAGO INTERESTED PARTY

RULING

Introduction

1. The applicant herein filed an application dated 24th July, 2017 under section 47 and 76 of the [Succession Act](#), Cap 160 laws of Kenya seeking the following orders that;
 - a. Spent
 - b. The interested parties who are owners of land parcels land parcels, Matutu/Settlement Scheme No. 1385, 1386, 1387, 1388 and 1389 be joined to the succession the proceedings for purposes of determining this Application;



- c. The grant of letters of administration issued jointly to the Applicants and Respondent herein in respect of the estate of the late Pauline Nyakerario Orina on 17th November 2016 be revoked and be reissued in the joint names of the applicants alone;
 - d. The titles for land parcels, Matutu/Settlement Scheme No. 1385, 1386, 1387, 1388 and 1389 that emanated from the subdivision of land parcel Matutu/Settlement Scheme No. 222 and registered in the names of the interested parties herein be cancelled and the register be rectified reinstating the said land in the name of the late Pauline Nyakerario Orina; and
 - e. The cost of the Application be provided for.
2. The applications were supported by affidavits sworn by both Applicants. The Applicants averred that the late Pauline Nyakerario Orina who was their mother died on 6th June, 1984 and this court on 10th March, 2011 issued granted letter of administration to the three of them, that is the Applicants and the Respondent. On 17th November 2016 the grants were confirmed wherein they were all to be registered as joint beneficiaries of all parcels of lands registered in the name of their deceased mother which included land parcel Matutu/Settlement Scheme No. 222 which was approximately 8.00 Ha.
 3. However, they claimed that on 7th September, 2016, the Respondent fraudulently, wrongfully caused the said parcel of land to be subdivided into parcels Matutu/Settlement Scheme No. 1385, 1386, 1387, 1388 and 1389 and caused the same to be registered in his name and those of the interested parties herein. They averred that they got to discover the fraud upon conducting a search at Nyamira Land Registrar's office. They averred too that there were no mutations showing how the subdivisions had been conducted nor was any evidence to show that the consent of the land control board had been sought. They therefore sought for an order to revoke the grant issued on 17th November, 2016 and that the same be re-issued to them jointly.
 4. From the record of the court before, I note that it was only the 1st and 4th interested parties who responded to the Application. The Respondent and the rest of the interested parties did not file any response to the Application despite being served and being part of the proceedings touching on this Application. The 1st and 4th interested parties in their responses contained in their replying affidavits filed on diverse dates basically averred that they bought the parcels from the beneficiaries of the late Pauline Nyakerario Orina and thus were entitled to benefit from the interests of such beneficiaries upon the completion of the succession process. They contended that the portions which they bought were later transferred to them by the Respondent upon the succession being concluded.
 5. This court in the interest of justice for a period of 5 years gave the parties latitude to pursue court annexed mediation but the process did not yield any fruit and thus the Applicant moved this court to have their Application disposed of. The Parties elected to have the Application disposed of by way of written submissions. However, I note that the parties did not file their written submissions and thus this court will have to determine the Application based on the affidavits of the Parties.
 6. From the facts of this Application it is clear that the court on 17th November, 2016, this court confirmed the grant and ordered that the property was to be shared by the Applicants and the Respondent in equal shares. However, the Applicants are aggrieved by the actions of the respondent who unilaterally and fraudulently subdivided parcel of land No. Matutu Settlement Scheme/222 to 5 portions and transferred the same portions to himself and the interested parties. According to the applicants, the actions of the respondent amounted to intermeddling with the estate of the deceased and therefore they want this court to review the confirmed grant by removing him as the administrator and direct that the land be reverted back to the estate of the deceased for the benefit of all the beneficiaries.



7. As I have noted herein above, the Respondent whose actions are the subject of this Application did not file any response to this Application. The interested parties only claimed that they deserved to get titles from the respondent given that they are purchasers of value of portions of the property having purchased the same from the beneficiaries of the estate. They did not controvert the applicant's averments that the actions of the respondent went against the confirmed grant by unilaterally causing the suit property to be subdivided for their benefit and in exclusion of the Applicants. The respondent fraudulently had the land parcel no. Matutu settlement scheme /222 subdivided into 5 portions i.e 1385, 1386, 1387, 1388 and 1389 and transferred to himself land parcel Matutu settlement scheme /1385 and 1386 and parcels 1388 1389 & 1387 to interested parties without the knowledge of his co-administrators.
8. The said alleged sale to the interested parties having been made by respondent who had no capacity to dispose of the estate without the consent of his co-administrators and the beneficiaries is illegal and same amounts to intermeddling with the estate of the deceased. The said resultant titles are thus null and void.
9. On whether the grant should be revoked, the applicants sought for revocation or annulment of grant. Section 76 of the [law of succession Act](#) provides for circumstances under which a grant can be revoked: –
76. Revocation or annulment of grant
- A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—
- (a) that the proceedings to obtain the grant were defective in substance;
 - (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
 - (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
 - (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - (e) that the grant has become useless and inoperative through subsequent circumstances.
10. I have already found that the alleged sale was done fraudulently and without the knowledge or consent of the co-administrator and the beneficiaries. The right of a survivor of a deceased to inheritance is a birth right and cannot be derogated unless by a lawful process. Therefore, arguments of the interested parties cannot stand against the estate but against the seller in his personal capacity in a land court.



11. It is clear that this case falls within the provisions of Section 76(d) (ii) of the *Law of succession Act* as the respondent acted carelessly without considering the interest of the estate and beneficiaries whom he was to hold the land in trust for by fraudulently selling the land. He misused the grant and disinherited the beneficiaries. The beneficiaries will not be safe with the respondent as their trustee and a co-administrator of the estate.

In the upshot I allow the application dated 24.7.17 and I proceed to make the following orders in the interest of justice:

- a. I proceed to revoke the grant of letters of administration issued herein dated 10.3.11 and the confirmed grant dated 17.11.16.
- b. The title deeds no. Matutu settlement scheme / 1385, 1386, 1387, 1388 and 1389 issued pursuant to the said grant are hereby declared to be null and void.
- c. Kisii County Land Registrar is directed to revert back land parcel no. Matutu settlement Scheme /222 to the name of deceased herein i.e Pauline Nyakerario Orina.
- d. Clara Kwamboka Omanga & Rosemary Moraa are appointed as joint administrators of the estate of deceased.
- e. Fresh letters of administration to issue in terms of order (e) above.
- f. A fresh mode of distribution indicating shares of each beneficiary be filed within 30 days from today.
- g. Mention on 20.2.25 for compliance.

12. It is so ordered.

T.A ODERA

JUDGE

30.10.24

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:

Thomas Orina

Court Assistant: Oigo

