



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Charles Nakitare alias Charles Nasongo (Succession Cause
24 of 2002) [2024] KEHC 16284 (KLR) (28 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 16284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 24 OF 2002
REA OUGO, J
OCTOBER 28, 2024**

BETWEEN

PRITTY DAKATARI SANYANDA PETITIONER

AND

GAUNT SANYANDA NASONG'O 1ST OBJECTOR

GLAIRON MAINAH NASONG'O 2ND OBJECTOR

NELSON SANYANDA KHISA 3RD OBJECTOR

RULING

1. On June 19, 2021, Gaunt Sanyanda Nasongo, 1st Objector/applicant, Glairon Mainah Nasongo, 2nd Objector/2nd applicant, and Nelson Sanyanda Khisa, 3rd Objector/ applicant, jointly applied for a Summons to revoke, annul, or alter the grant, and a certificate of confirmation dated 5th February 2013. The petitioner/ respondent is Pritty Daktari Sanyata. The application was opposed.
2. The application is brought under section 76 of the [Law of Succession Act](#) (LSA) Chapter 160 of the Laws of Kenya. The prayers sought by the applicants are as follows;
 - i. That the grant of letters of administration issued to the petitioner and confirmed on the 5th February 2013 be revoked annulled and/or rectified.
 - ii. That the proceedings to obtain the grant and certificate of confirmation were defective in substance.
 - iii. That the grant was obtained fraudulently by making of false statements and by concealment from the court of material facts to this case.
 - iv. That the petitioner be removed as the administrator and be replaced with the 1st objector as the administrator of the estate of the deceased herein.



- v. That the petitioner has used the grant to disinherit the applicants who have an interest in the said property comprised in plot No. East Bukusu/ S. Kanduyi/862
- vi. That the Land Registrar Bungoma be ordered to cancel all the new titles that were created after the subdivision of land parcel No. East Bukusu/ S. Kanduyi /862 and the same revert in the name of the deceased herein.

Pleadings – Affidavits and Statements

3. The application is supported by grounds on the face of the application, plus a supporting affidavit sworn by the 1st objector Gaunt Sanyanda Nasong'o dated 27th June 2021, detailing the objectors/ applicant case. He depones as follows; he is the last born of the deceased Charles Nkitare alias Charles Nasongo. The petitioner/ respondent is the last born in the 1st house. The deceased had 2 wives Marian (deceased) and Ephania (deceased). The deceased died on the 4th of December 1998 leaving behind the following beneficiaries;
 - i. Enock Wasilwa Nasongo
 - ii. Alfred Khisa (Deceased)
 - iii. PrItty Khisa Sanyanda
 - iv. Sifuna Nasongo
 - v. Gaunt Sanyanda Nasongo
 - vi. Nickson Musambwa Nasongo
 - vii. Sussan Keile
 - viii. Everlyne Nabwile (Deceased)
 - ix. Jane Nasimiyu (Deceased)
 - x. Jane Nasambu (Deceased)
 - xi. Julia Nasongo
4. He further depones that the deceased left behind Land Parcel No. East Bukusu/ South Kanduyi/ 862 measuring 15.98 Ha (hereinafter referred to as parcel no. 862). All his brothers and sisters were brought up in the said land. His brother Pritty Daktari Sanyanda began the succession cause in 2002, but he learned of it in 2006. One of his brothers went to the tribunal seeking equal division of the deceased's estate. The petitioner moved to confirm the grant secretly without his input and knowledge. On 3/8/2020 he managed to get the confirmed grant from the surveyor which showed how the land was shared. On getting the certificate of grant he discovered that several purchasers were included (see J-P) as children of the deceased. Yet, they did not purchase from the deceased but from the sons of the deceased thus interfering with equal sharing of the deceased's estate. Despite the confirmed grant having only 16 beneficiaries, the mutation form contained 47 beneficiaries. The deceased's land measures 40 acres but only 30.61 acres were distributed leaving 9.14 acres to the administrator. The administrator has used fraudulent means to defraud the estate of the deceased by hiding the truth on the issue of the land acreage and sharing mode of the deceased's estate thus disinheriting the beneficiaries. The grant that was issued and confirmed on 5.2.2013 be revoked to enable the proper sharing of the deceased's estate.



5. Glairon Maina Nasong'o filed an affidavit dated 2.6.2021. In it he depones as follows; he is the 2nd objector and son of Alfred Kkhisa Nasongo who was the son of the deceased. His grandfather had six (6) sons and five (5) daughters. His grandfather was the registered owner of East Bukusu/ South Kanduyi/861 measuring 15.98 Ha. His father had ten children seven (7) daughters and three (3) sons. He was surprised that his uncle Pritty Daktary Sanyanda did succession and he was awarded 1.33 acres which he does have to date. The administrator only shared 30 acres out of the 39 acres. He seeks a revocation of the grant and a fresh distribution of the estate. In his statement dated 9.5.2022, he states further that he was surprised that part of his land was given to a purchaser called Johnson Wangamati whom he does not know. He sold his land to Calistus Kuloba Wambu, Julius Malaba, and Job Rombosia who were to get titles from him. The whole land was to be in his name. The petitioner left out and allocated to himself 10.3 acres in the confirmed grant. The land he sold measures 0.3 Ha. He has no other land left and he has not received any title deed to-date.
6. Nelson Sanyanda Khisa filed an affidavit dated 2.6.2021. He depones as follows; he is the son of the late Alfred Khisa Nasong'o the son of the deceased. He was surprised that his uncle Pritty Daktary Sanyanda did succession secretly and he was awarded 3.12 acres which land he does not have. The administrator shared 30 acres out of the 39 acres. Nelson filed a written statement dated 9.5.2022. He depones further in the said statement his late father and mother were buried in parcel number 862. By the time his father died, he had not shared the land before he died. When his father died he went to stay with his aunty and returned in 2006. He returned and went to stay with the 1st objector who is his grandfather's last-born son. In 2013 he was arrested for stealing and imprisoned in the year 2013 for two years. He never signed any document concerning this cause he only discovered its existence in 2020. He does not have the 3.12 acres allegedly given to him nor does it exist. He has never sold any land to date. He has never stayed in his land for when he returned from Kakamega he found his deceased parents' houses demolished which made him stay with the 1st objector. He signs documents by appending a signature by way of writing his name and not appending his thumb. He applied for an identity card and got it in December 2008. He did not sell any land the signature on the agreement is a forgery. He was not present and he did not consent to the confirmation of the grant nor was informed of this cause by the petitioner. The petitioner left out a huge land undistributed which land has to be distributed to all the beneficiaries.
7. Pritty Daktari Sanyanda, (Pritty) depones as follows in his affidavit dated 25.3.2022; he is the petitioner and the deceased was his father. The deceased had 2 wives who were deceased at the time of his demise on 4.12.1998. At the time of the demise of the deceased, he had already shared his land amongst the six (6) sons, only the sons. Everybody is staying on demarcated land fenced-off land in Land Parcel E. Bukusu/ S. Kanduyi/ 862 (parcel number 862). To his knowledge, the Clan Elders have confirmed how the deceased shared his land during the Lufu ceremony. His stepbrother Nickson Nasang'o complained to the Kanduyi Land Disputes Tribunal and the Tribunal upon hearing the parties ruled that parcel number 862 be shared equally amongst the claimants and Objectors. Aggrieved by the decision he filed an appeal at the Provincial Land Dispute Appeals Committee vide Appeal Case No.76 of 1990. The appeal was heard by the committee and it declared that the award by the Kanduyi Land Disputes Tribunal null and void and ordered that he (Pritty) retain the land as it is. This Award was read and adopted as a judgment of the court on 19.12. 2002. Nickson withdrew his objection to the grant and the grant was confirmed as per the mode of sharing done by the deceased. Upon confirmation of the grant parcel number 862 was closed on subdivision and new numbers were created to wit Land Parcels No. E. Bukusu/ S. Kanduyi/17331-17369 and to his knowledge the land was distributed to the beneficiaries according to the boundaries on the ground and allocated by the deceased and there is no excess land which was left unallocated. He is aware that some portions of the land were utilized by the access road as shown in the mutation form. He knows that some of the beneficiaries have already



sold their portions of land/ shares to other third parties before the partition of parcel number 862 and that they agreed with the purchasers that they get their number directly during the subdivision of the land. His later brother Alfred Khisa Nasong'o the father of the 2nd and 3rd objectors exchanged part of his share measuring 50ft x130ft in exchange with one acre with one Harun Wamalwa Wanjilo on 20th December 2000. Upon subdivision and or partition of the land parcel number 862 Alfred's portion was compromised in parcel number 17344. All objectors executed the mutation form. He knows that the 3rd objector's father Nelson Sanyanda Khisa sold his parcel of land number 17359 to one Maurice Wanyama Wekesa. The said Nelson Sanyanda Khisa duly instructed him through his advocate Khakula & Company Advocates to transfer parcel no. 17359 to one Maurice Wanyama Wekesa. He knows that the said Nelson Sayanda Khisa sold his share to third parties. Concerning the 1st objector/Gaunt Sayanda his share was 2.9 acres as per the confirmation of the grant. Upon the subdivision of parcel number 862, the 1st objector's portion was comprised of parcel numbers E. Bukusu/ S. Kanduyi/17336 and 17368 measuring approximately 0.71Ha and 0.07Ha respectively. He is aware that the Gaunt/1st objector has sold off his share to third parties and subsequently given titles to the purchasers. It is therefore preposterous for the objectors to allege that they were allocated land and that he has sold off the same when in fact it's the objectors who have been selling their land to third parties. He has never as an administrator sold land belonging to the objectors to third parties.

8. The petitioner avers further the 2nd objector Glairon had a share of 1.33 acres and upon subdivision, his land was comprised in parcel number 17338 measuring 0.93 acres. The 2nd objector has also sold a substantial portion of his share to third parties. The objectors are fully aware of the shares they were allocated by the deceased and the shares they subsequently got upon confirmation of the grant. The objectors have fully participated in the partition of parcel number 862 and disposed off their shares to third parties and are now feigning ignorance that the grant was obtained fraudulently. The 1st objector is being economical with the truth because he has not mentioned that the proceedings at the tribunal were filed by his brother. The Objectors were allocated land which can be ascertained from the ground though they have now sold to third parties.
9. In a supplementary affidavit dated 13.5.2022 in response to the replying affidavit of Pritty ,the 1st objector reiterates the contents of his supporting and deposing further that in the petitioner's application for partition, it has a total of 18.47 acres but the total in respect of parcel number 862 is 15.980Ha which is 39.95acres. As the partition form only 18.47 acres were distributed so where did the remaining 21.48 acres go? The confirmed grant has only 30.51 acres which were distributed as follows; Patrick K Wangamati was given 0.04ha but on the ground, he has about 0.5Ha, Gichinga Kennedy Njoroge was given 0.05 Ha, Voice of Salvation and Healing Church International was given 0.05Ha, Naftali Omondi Oketch was given 0.02Ha, Sudi Daudi was given 0.04Ha, Benedict Barasa was given 0.04Ha, Paul Ong'ango Odunga was given 0.09Ha, Christ Testimony Church was given 0.09Ha, Edwin Etale Marende as given 0.10Ha, Godfrey Simiyu Munjuma was given 0.05Ha and Johnston Wangamati was given 0.93Ha. The deceased did not share his land as alleged, the deceased had 11 children entitled to a share of his land. The deceased died without any demarcation of his land. There are no minutes of the Lufu ceremony the petitioner alleges took place. He is aware that the deceased's property cannot be dealt with in any other forum apart from full succession cause or at a limited level of securing the estate through a limited grant. He is surprised that the Provincial Land Dispute Appeals Committee vide Appeal case No. 76 of 1990 awarded land to the petitioner. The deceased died in 1998 which means he was alive and one wonders why the deceased was never sued or made a party to the proceedings for the land in dispute which action is nothing but falsehood on the part of the petitioner. The award was adopted in court three (3) years after the demise of the deceased this begs the question of why wait until the demise of the deceased to adopt something the deceased was not a party to. The petitioner confirmed the grant as per his mode of distribution. From the application for



partition and mutation form it is evident that 49 parcels were created in the partition application form and 47 parcels in the mutation form which act shows fraud. It is not true that there was any agreement for the unknown purchasers to get shares from the deceased's land in disregard of the confirmed grant. He is aware that the 3rd objector did not sell his land as alleged by the petitioner nor has he signed any document with advocate Khakula to transfer any land as the 3rd Objector was on 3/9/2014 in prison and served his imprisonment term till 26.09.2024. The 3rd objector does not sign using his thumb but by appending his signature by writing his name. On 30/10/2007 the 3rd objector was a minor and could not sell or buy land in his name and it is not true that he had an Identity card bearing number 46884613 as he was a minor. The 3rd objector's alleged signature is a forgery. From the letter PD5 to be purportedly signed on 3.09.2021 PD6 a copy of the search shows that land parcel No. 17359 was created on the title had already been issued and the said Maurice Wanyama Wekesa registered as the proprietor of the said land which letter when signed by 2nd objector was already in jail. The 2.9 acres given on the grant is not the same share the petitioner gave him on the ground. He was given 0.95 acres which only the petitioner knows where it is. Though he was given his share in parcel number 17368 measuring 0.07Ha and a title issued in his name the same is in occupation of another person who claims that the land was sold to him by Nickson Nasong'o vide agreement dated 22.7.2002. The petitioner should account for the uncalculated land measuring 21.48 acres which was not distributed. The petitioner has used the grant to hide other shares for unknown reasons and disinherit other beneficiaries. The 2nd objector was given land measuring 1.33 acres on the confirmed grant but in the petitioner's replying affidavit (see paragraph 3) he was given 0.93 acres. All the annexures marked 10 a,b,c,d,e,f & g are all forgeries for he is aware that Glairon Mainah Nasong'o has never sold his land to Fred Wamalwa Wekesa and in the year 2008 in July one Nelson Sanyanda Khisa had no identity. No one participated when the titles were being issued as the petitioner did everything alone. He is also aware that the 2nd objector never sold his land to Johnstone Wangamati, annexure 10g is a forgery.

Evidence

10. At the hearing the 3 objectors testified Gaunt (Pw1) adopted his affidavits and statement. He produced the following documents a copy of the grant, a copy of the confirmed grant, a copy of searches, a copy of the mutation form, a letter dated 12.9.2012 on a consent order between the objector Nickson Musambwa Nasong'o and Pritty withdrawing the objection filed by Nickson dated 13.5.2002 and mode of distribution of parcel number 862, the letter was signed by J.O Makali Advocates for the petitioner and Otsiula Kweyu Advocates for the Objector, Copy of the Tribunal proceedings and award and a certificate of death. During cross-examination, he testified that the parties agreed that a surveyor visit the parcel of land to establish the acreage. The surveyor did and a report was filed on 19.12.22 showing that the total acreage is 28.48 acres yet the grant has 30.51 acres. He was given 2.9 acres but he has only 1.9 acres and he has sold land to 3 people namely Hadya Ali, and Mike Wangamati, he could not recall the name of the 3rd person he sold to. He has parcel numbers 17336, 17368 (0.07Ha) 19086 where he lives, parcel "B" is occupied by Mike and 19088 by Imelda. He reported the forgery to CID. He admitted that number 16 in the minutes of the Lufu is his name but it is all lies. Glairon too adopted his affidavit and statement. During cross-examination, he testified that the land acreage is 28.43 acres after the surveyor was done. He sold land to two people Clasita Kuloba a plot of 70 by 130ft and Julius Malaka a plot of 30 by 130ft. he denied affidavits dated 9.5.2022 and denied the signature on it. He denied knowing John Wanyonyi Rombosia. He was given 0.93 but he has not seen the land. He sold to the purchasers the small portions he got. He denied entering into an agreement with Fredrick Wamalwa Nekesa and Julius Malaba. He was chased in 2012 he has no shamba on the ground now. He knows of the surveyor's report but he does not know the measurements of his father's portion.



11. Nelson Sayanda too adopted his affidavit and written statement. He denied getting a title from Pritty. He knows of the Surveyor's visit to parcel number 862. It is 28.43 acres. He does not know the exact acreage of his father's portion. As per the report, it is 5.9 acres. None of his brothers stay on the 5.91 acres. He does not know Fred Wamalwa Wekesa nor Noor Ali Shaban. Wilson Murambi Khisa is his brother and he is deceased. He denied selling a shamba of 50ft by 168ft. He has never sold any shamba and he has no title. He was shown the grant by Gaunt he does not know where the 3.12 acres are. He was in jail when the form was filled.
12. Nickson Musamba Nasong'o adopted his two affidavits. In an affidavit dated 12.7.2011, he depones as follows; he is the deceased's son. Before his death, the deceased had parcel number 862 measuring 15.98 Ha, 39.51 acres. The deceased had two wives and to the best of his knowledge, the said parcel of land was shared equally amongst the houses. The petitioner has poorly administered the estate by giving one of his sons Titus Sanyanda a share of the estate when he was not a direct beneficiary of the estate. The deceased had six sons three from each house. In the year 2001 on 26.5.2001, the clan under the clan chairman passed a resolution that the entire be surveyed to ascertain acreage for purposes of subdivision. In the year 2002 they appeared before the Kandunyi Land Disputes Tribunal for arbitration and the award was adopted as a court order. The grant was issued to the petitioner on 12.3.2013. That court should divide the estate among the two houses equally. During cross-examination, he said that was happy to learn that the parcel of land is 28.43 acres. He admitted filing an objection and a complaint at the Tribunal. He was aware that Pritty appealed and they were ordered to stay in the portions they were occupying. He did not appeal against that decision and the grant was confirmed as per the acreages. In re-examination, he told the court that the shamba was divided in his absence and he was aware that the clan was there.
13. Sifuna Nasong'o adopted his affidavit dated 10.6.202. he deponed that the deceased is his father and the petitioner and Nixon M. Nasong'o are his siblings. That he is aware that when his father died in 1998 he had already subdivided his parcel of land parcel number 862. The subdivision was done in July 1997 and everyone was allocated his portion Nixon too. His two sister Jane Nasambu and Julia Nafula were already married and settled in their homes and their father did not give them any share. Nixon sold his portion to different persons and moved away. Nixon cannot therefore claim a portion from his brothers. The Objection is misplaced and should be dismissed.
14. Pritty adopted his affidavit dated 25.5.2022 as his evidence. (All sale agreements attached to his affidavit were marked for identification). During cross-examination, he admitted that the surveyor revealed that the land was 28.43 acres but that no one missed a shamba. The surveyor looked at each individual share but not the whole shamba. The titles were more than the shareholders and were beyond 30 acres. He divided the land as per the grant. He went to the tribunal long after the death of his father as an administrator. Each person occupying their share on the ground. He does not know if Nelson was in jail. He lives in the said shamba. He was not in jail when he subdivided the land. He got 10 acres. He admitted that the lufu minutes were not signed and that his sisters did not get a share of the shamba as they were married. Their father divided the shamba and it cannot be subdivided. He did not put purchasers in the confirmed grant. They were put by the owners of the shambas. Nelson has a shamba on the ground. There is no mutation for 40 acres. It was on 30 acres. Nelson and Glarion have their shambas.
15. Maurice Wanyama Wekesa referred to an agreement dated 23.2007 between Nelson Khisa, Wilson Khisa Nasongo Maina Irene Nandala Beatrice Nkisa and Pastor Maurice Wanyama. He testified that he is Pastor Maurice and he bought 122ft by 148ft and paid Kshs.225000/-. He resides at the said shamba. During cross-examination, he admitted that Irene was a minor at the time the agreement was signed but



- she signed it after she got an agreement on 23.1.2007. His name is not in the grant that was confirmed on 19.3.2013. He has a title deed. Nelson Sanyanda sold the land to him, and gave him a title deed.
16. Fred Wamalwa Wekesa testified he bought land from Nelson S, Khisa, Guant Nasongo, and Wilson Khisa. He bought 0.07 for Kshs. 310,000/-. During cross-examination, he told the court that he bought the land from the deceased's children. The land had been distributed by then. There were 3 sellers. He learned later that he got the part that was from Nelson Sanyanda. His name is not in the confirmed grant. He got his share as per the mutation form. He got his share from parcel number 6862. Wilson died when he was in the land. He took the portion of one person.
 17. Johnson Wangamati testified that he recognizes the agreement dated 13.6.2005, he bought 3 plots from Wilson Maina, Clara Maina Nasong'o each plot for kshs.180.000/-. During cross-examination, he told the court that he did not have the ID card of the person he bought land from and that the CID has never questioned him about the agreement. He did not attend the confirmation of the grant. He was given his share and he has his title deed. He also bought land from Nelson Khisa. He did not buy land from the deceased. It is not true that he did not buy the 3 plots from Glairon and that he grabbed the land through Pritty.
 18. Job Wanyonyi Robinson testified he prepared the agreement dated 28.3.2003. He produced the agreements dated 2.6.2003, 8.1.2004, and 18.5.2006. During cross-examination he told the court that he bought the land from Glairon of a plot 40 by 10 ft and paid Kshs. 140000/-. He did not buy a plot of 100 by 120ft from Glairon.
 19. Parties filed written submissions I have carefully read the written submissions. A summary of the said submissions is as follows; the objectors submitted that the deceased died on 4.12.1998 leaving behind parcel number 862 measuring 15.98 as per the search produced by the objectors- exhibit 3. The grant that was confirmed on 19.3.2013 had sixteen (16) beneficiaries getting a total of 30.61 acres against of 42.61 acres as per the copy of search -exhibit 3. The petitioner included his son Titus Sanyanda Nasong'o as a son of the deceased knowing that Titus was his son and allocated him 1.6 acres thus disinheriting the true beneficiaries of their land, thus he concealed material information from the court. The 2nd and 3rd objectors did not participate in the cause from the beginning till the end and as such the petitioner lied to the court of their consent and involvement. The petitioner after confirmation of the grant moved and engaged his own surveyor who moved and partitioned parcel number 862 into several parcels of land and had the same allocated to 47 beneficiaries as against 16 beneficiaries as per the confirmation of the grant and as such the petitioner failed to adhere to law which requires the petitioner to proceed with diligently with the administration of the estate thus breaching section 76 (d) (ii) of Cap 160. The witnesses called by the petitioner confirmed that they bought land from the deceased's estate before confirmation of the grant as shown in the agreements exhibits 4,5,6,& 10. The agreements are a violation of sections 82 and 45 of the *Law of Succession Act*. The surveyor's report dated 19.12.2022 indicates that parcel number 862 is 28.43 acres and is occupied by six people who occupy land measuring 24.78 acres. The 1st and 2nd objectors were not provided for nor are they on the ground. The petitioner has failed to show that he diligently administered the deceased's estate. Reliance was made on section 76 of the *Law of Succession Act* as expounded in the court in In re Estate of Prisca Ong'ayo Nande (Deceased) 2020 eKLR, plus sections 45,79 and 82 of the *Law of Succession Act*, cap 160 Laws of Kenya.
 20. The petitioner submitted as follows; the applicants have failed to satisfy the threshold to warrant the grant of the orders sought. It is clear from the record that none of the daughters either raised an objection during the distribution by the deceased in 1997 nor during the entirety of these proceedings. None of the parties objected when the deceased distributed his estate and that the wishes of the deceased should be retained and the grant confirmed as drawn. Reliance was placed in the following



cases; *The Registered Trustees Anglican Church of Kenya Mbeere Diocese vs The Rev David Waweru Njoroge- Civil Appeal No. 108 of 2002* and *In Re Estate of Gideon Kitivo Ndambuki (Deceased) [2014] eKLR*.

Analysis and Determination

21. I have considered the affidavits filed by the parties, the evidence adduced in court, and the written submissions, including the law as provided under the *Law of Succession Act* Cap 160 (the Act). In my view the issues for determination are as follows;
- i. Was the grant issued on 5.2.2013 obtained by way of making false statements and were the proceedings to obtain the grant and the certificate of confirmation of the grant defective in substance?
 - ii. If the answer to the above question is in the affirmative should the court revoke the grant issued on 5.2.2013.
 - iii. Should the court remove the petitioner as the administrator and replace him with the 1st objector
 - iv. Should the court order the land registrar to cancel all the news titles created after the subdivision of land parcel No. East Bukusu/ South Kandunyi/ 862 and the same to revert to the name of the deceased.
22. The issues not in dispute are as follows; the deceased died on 4.12.98, the parties filed a consent in court through their advocates and none of them appeared in court. There is surveyors report filed dated 19.12 .2022 that indicates that the land measures 28.43 acres and not 15.98, which is 39.95 acres. According to the report which was accepted by the petitioner and the objectors parcel number 862 has subsequent partitions of East Bukusu / South Kandunyi/ 17331-17377. Nixon Musamba has a total acreage of 0.98Ha/ 2.43 acres, Gaunt Sanyanda has a total of 0.83/2.05 acres, Dishon Sifuna has a total of 0.7 Ha/1.75 acres, Enock Wasilwa Nasongo has a total of 1.75Ha/ 4.34acres, Alfred Khisa (Deceased) has a total of 2.39Ha/ 4.34 acres, Titus Sayanda Murunga has a total of 0.59Ha/1.47 acres and Pritty Daktari Sanyanda has 2.77Ha/6.83 acres.
23. Under section 76 (a) & (b) of the *Law of Succession Act* a grant can be revoked whether or not confirmed at any time if the court finds that the proceedings to obtain the grant were defective in substance or that the grant was obtained fraudulently by making a false statement or by concealment from the court something material to the case. These are some grounds in section 76 of Cap 160 that the objectors have raised in this matter.
24. After considering all the evidence and the history of this matter. The petitioner at the time of filing the petition for letters of administration intestate indicated to this court that the deceased left behind the following beneficiaries; Pritty Daktari, Enock Khisa Nasongo, Alfred Khisa Nasongo, Dishon Sifuna Nasongo, Nickson Musabwa Nasongo Gaunt Sayanda Nasongo and Titus Pritty Murunga Sanyanda. Titus is not a son of the deceased and is said to be a son of the petitioner. This fact has not be denied by the petitioner. By including his name in the petition for letters of administration intestate, the petitioner not only concealed material facts to the court but included his son and his household got a bigger share. I note that the surveyor's report does confirm that he is on the ground and occupies 1.47 acres. The objectors' claim that the beneficiaries were denied some land is therefore true.
25. The 2nd issue raised is that the petitioner misrepresented the acreage of parcel number 862 by stating that it was 15.98 Ha yet the acreage on the ground is 29.42 acres and that as a result of the acreage declared by the petitioner, he went ahead and partitioned the parcel of land into 49 partitions. The



petitioner agrees that the acreage is 28.43 acres, so where did he get the extra acreage to give to other persons? He has not fully explained this. The acreage of any parcel of land at the time of distribution of an estate of the deceased must not only be confirmed on its acreage but also on who is in occupation on the ground. This was not done by the petitioner at the time the consent was filed. The consent filed in court led to a subdivision of parcel number 862 without actual confirmation of who was on the ground. The objectors have again demonstrated this material fact was not brought to the court's attention, it was concealed and yet it was something material to the case.

26. The objectors have also raised the issue that they were not involved in some of the agreements attached to the petitioner's affidavit that they did not sell to the persons indicated and they are not in the portion of the portions the petitioner alleges were distributed to them as their portions. Some of the said purchasers were taken to task on who signed the agreements some were even entered into in 2007 before the grant was confirmed. In *re Estate of Jamin Inyanda Kadambi (Deceased)* [2021] eKLR the court stated that;

“A valid sale of estate property can only be by those to whom the assets vest by virtue of section 79, and who have the power to sell the property by virtue of section 82. Even then, immovable assets, like land, such as Kakamega/Kegoye/30, cannot be disposed of by administrators before their grant has been confirmed, and if land has to be sold before confirmation, then leave or permission of the court must be obtained. That is the purport of section 82(b)(ii) of the *Law of Succession Act*. Clearly, the sale transaction that was carried out by the administrators was contrary to sections 45 and 82(b) (ii) of the *Law of Succession Act*, and was invalid for all purposes. It cannot be asserted at all, and am surprised that persons to whom administration of the estate herein can purport to support a sale transaction that was carried out contrary to the very clear provisions of the law. (emphasis mine)

27. The agreements dated 2007 offend the provisions of section 45 of the Act. Further, the counsel who is said to have drawn some of them was not called to validate that they were genuine agreements. The ones marked for identification were not part of the petitioner's evidence. The ones produced by the buyers were sufficiently challenged during cross-examination. The objectors have persuaded this court that they were not part and parcel of the agreements and also that they are not occupying the portions which the petitioner says they occupy. The petitioner was put to task to substantiate his allegations that the objectors sold the portions and are not entitled to land, in my view he has failed to persuade this court that this happened. The agreement cannot be interrogated by this court. The court with the proper jurisdiction is the Environment and Land Court.
28. The petitioner has raised the issue that the sisters have not raised any objection. That is right however the objectors who are the sons of the deceased have raised pertinent issues which the court cannot ignore. The petitioner cannot hide under this fact alone. His irregular actions have been laid bare by the objectors.
29. An issue was raised by the petitioner that after the death of their father, they had a meeting called 'lufu' and that the clan shared out the land amongst the sons of the deceased. The petitioner did admit that the said 'lufu' minutes were not signed. The author of the said minutes was also not called to substantiate the.
30. From the above the objectors have demonstrated that the petitioner obtained the grant by concealing from the court something material to the case, I could also add that the petitioner did not proceed diligently with the administration of the estate, as he chose to do things his way to the detriment of his siblings. I have been persuaded that the grant has to be revoked. The grant obtained on the 5th February 2013 is hereby revoked forthwith and new titles that were created after the subdivision of land parcel



East Bukusu/ South Kanduyi862 are hereby cancelled and they shall revert in the name of the deceased. This order shall be served on the Land Registrar forthwith for his necessary action.

31. On whether the petitioner should be removed, it is my view that I need not remove him but add an administrator to help in administrating the estate of the deceased. I, therefore, appoint the 1st objector Gaunt Sanyanda Nasongo as the 2nd administrator. A fresh grant shall be issued in the names of Pritty Daktari Sanyanda and Gaunt Sanyanda Nasongo forthwith. The 1st petitioner shall forthwith return the grant and certificate of confirmation for cancellation. Any of the administrators is at liberty to apply to confirm the grant within 35 days from the date of this Ruling.

32. Parties to bear their own cost. A mention date to be given once the ruling is read.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 28TH DAY OF OCTOBER 2024.

R.E.OUGO

JUDGE

In the presence of:

Gaunt Sanyanda / 1st Objector - Present in person

Glairon Mainah Nasongo/ 2nd Objector - Present in person

Mr. S. Wamalwa For Objectors - Absent

Miss Masengeli -For the Petitioner

Wilkister - C/A

