



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Aloice Ojuki Opiyo (Deceased) (Succession Cause
349 of 2013) [2023] KEHC 159 (KLR) (23 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 159 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 349 OF 2013
FA OCHIENG, J
JANUARY 23, 2023**

BETWEEN

WILSON OCHANDA ONDUTO APPLICANT

AND

DAVID OTIENO OJUKI OBJECTOR

RULING

1. Before me is a summons for Revocation of Grant dated October 15, 2019. It was lodged by David Otiemo Ojuki, in his capacity as an Objector.
2. It was the objector's case that the respondent, Wilson Ochanda Oduto had obtained the grant fraudulently.
3. The objector told the court that the petitioner/respondent was not a beneficiary of the Estate of the late Aloice Ojuki Opiyo. Indeed, the petitioner/respondent was not at all related to the deceased.
4. Therefore, as the said petitioner was in the process of disposing of some parcels of land which constitute the estate of the objector's father, this court was requested to issue an injunction to stop the said process.
5. In support of the application, the objector has exhibited a "Certificate of Death", serial number XXXX. The particulars of the said certificate are as follows:
6.
 - (i) Name of the deceased – Aloice Ojuki Opiyo
 - (ii) Age - 73 Years
 - (iii) Date of Death - December 21, 2006



- (iv) Cause of Death - Ulcer
- (v) Informant - Pete Omondi Ojuki (son)

The Objector also exhibited a letter dated August 23, 2019, from Mr. Kilion Silas Adeka, the Chief of Kogweno Oriang Location. In his said letter, the Chief listed the following dependants of the deceased:

7.

- (a) Calara Newa Ojuki – Widow
- (b) David Otieno Ojuki – Son
- (c) Peter Omondi Ojuki – Son
- (d) Rolex Okoth Ojuki – Son
- (e) Agnes Auma – daughter
- (f) Elsa Adoyo – daughter
- (g) Ivone Akinyi – daughter

- 8. In answer to the application, the petitioner filed a replying affidavit, reiterating the information he had given to the court when he first filed the petition herein.
- 9. In contrast to the father of the objector, who died at 73 years of age, the petitioner deponed that Aloice Ojuki Opiyo (whose estate he has a connection to), had died at the age of 22. His cause of death was Malaria, and he died on September 30, 2005.
- 10. According to the petitioner, Aloice Ojuki Opiyo was mentally challenged, and did not have any children, as he was not even married.
- 11. As the father of the objector was not suffering from any mental challenges; and because he had a wife and 6 children, he cannot have been the same person who the petitioner had cited as the deceased in the petition herein.
- 12. The petitioner followed the correct procedure when he filed the petition for grant of Letters of Administration. The objector has not satisfied me that the petitioner had the intention of fraudulently seeking to administer the estate of his late father.
- 13. I appreciate that there was an uncanny resemblance in the names of the two deceased persons, but that, of itself, does not connote the intention of the petitioner to be the administrator of the estate of a person who he was a stranger to.
- 14. If the petitioner sought to benefit from the estate of the objector's father, that would be outright fraud. The grant issued to the petitioner only entitled him to deal with estate of the person who died at the age of 22, and who had been a resident of Kamswa South, in Muhoroni Constituency.
- 15. In the circumstances, if the respondent obtained a certificate of confirmation of grant which, inter alia, cited properties belonging to the father of the applicant, that would be highly irregular.
- 16. I note that when the petition for Letters of Administration was filed herein, the respondent also filed a certificate of official search for LR No Kisumu/wangaya/2151.
- 17. The said property was indicated as belonging to Alois Ojuki Opiyo.



18. As the deceased in this case is Aloice Ojuki Opiyo, this court cannot state with certainty that the property L.R. No. Kisumu/wangaya/2151 belonged to him.
19. Meanwhile, the Registrar of Births and Deaths, Rachuonyo District, clearly stated that the deceased was Alois Ojuki Opiyo: the said information is contained in the form which was signed when Pete Omondi Ojuki surrendered to the registrar, the National Identity Card for his late father Alois Ojuki Opiyo.
20. In the circumstances, I find that although it has not been specifically, proved that the petitioner/respondent had obtained the grant fraudulently, he appears to be using the grant to deal with the property of a different person.
21. In the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, Succession Cause No 158 of 2000, the court held as follows;

“Power to revoke a grant is a discretionary power that must be exercised judiciously, and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing, for the court to invoke section 76 and issue an order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”
22. I am therefore, fully alive to the need to exercise great caution when the court is called upon to revoke or annul a grant.
23. In this case, I find that the petitioners/respondent appears to be utilising the grant for the purposes of dealing with the property which probably belongs to a person whose estate the petitioner had no interest in.
24. At this stage, it is not the function of this court to make a determination on the question of ownership of the two properties;
 - (a) Kisumu/Wangaya/2151, and
 - (b) Kisumu/Wangaya/4463.
25. It is sufficient to find, as I have done, that there is a possibility that the 2 properties do not belong to Aloice Ojuki Opiyo.
26. Accordingly, justice demands that this court should revoke the grant, as it is the instrument which gives authority to the petitioner/respondent, to have dealings with the properties in question.
27. I do therefore revoke the said grant forthwith, and direct that the 2 properties should be transferred back to the name of Alois Ojuki Opiyo.
28. In my considered opinion, the restoration of the properties to the name of Alois Ojuki Opiyo is the most efficacious way of ensuring their preservation. And once the properties are secured, in the manner I have directed, the parties will have an equal opportunity to canvass their respective cases, with a view to persuading the court about their legal entitlement to the same.
29. In respect of costs, I find no reason to depart from the rule which stipulates that costs shall follow the event.



30. I therefore, order that the respondent will pay to applicant, the costs of the summons for revocation of the grant.

DATED, SIGNED AND DELIVERED THIS 23RD DAY OF JANUARY, 2023.

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FRED A. OCHIENG

JUDGE

