



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Okong’o Odinga (Deceased) (Succession Cause 1338 of 2011)
[2023] KEHC 3665 (KLR) (Family) (31 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 3665 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1338 OF 2011
MA ODERO, J
MARCH 31, 2023**

BETWEEN

MARGARET AGUTU OKONG’O 1ST PETITIONER

PHILLIP ELLY OLUOCH 2ND PETITIONER

AND

GEORGE ODUOR OKONG’O 1ST PROTESTOR

CHRISTINE ADERO 2ND PROTESTOR

MARY ANYANGO 3RD PROTESTOR

HANNINGTON OWINO 4TH PROTESTOR

PHOEBE AUMA 5TH PROTESTOR

EUNICE ATIENO 6TH PROTESTOR

JUDGMENT

1. Before this Court is the Chamber summons dated 15th November 2021 by which the following six (6) Protestors namely:-
 - i. George Oduor Okong’o
 - ii. Christine Adero
 - iii. Mary Anyango
 - iv. Hannington Owino
 - v. Phoebe Auma



vi. Eunice Atieno

Seek the following orders as follows:-

1. Spent.
 2. Spent
 3. Spent
 4. That this Honourable Court be pleased to revoke or annul Grant of Letter of Administration Intestate issued to the Petitioner on 18th July 2012 and confirmed on 14th February 2014.
 5. That this Honourable Court be pleased to render null and void all the consequential orders and actions done by the Petitioners pursuant to the Grant of Letters of Administration Intestate issued to the Petitioners on 18th July 2012 and confirmed on 14th February 2014.
 6. That the court be pleased to issue any such orders as may be necessary for the ends of justice to be met
2. The summons which was premised upon Sections 74, 75 of the *Laws of Succession Act*, Cap 160 Laws of Kenya and Section 1A, 1B, and 31 of the *Civil Procedure Act* Cap 21, Laws of Kenya and all other enabling provisions of law was supported by the Affidavit of even date sworn by George Oduor Okong'o (1st Protestor)
 3. The Petitioners/Respondents Margaret Agutu Okong'o and Phillip Elly Oluoch opposed the summons through the Grounds of opposition dated 25th June 2022. The Respondents did not however file any Replying Affidavit to the summons despite having been directed by court on 12th July 2022 to file their Reply.
 4. The Court directed that the matter be canvassed by way of vive voce evidence in open court. The hearing date of 15th November 2022 was taken by consent in the presence of both counsel. However on that hearing date neither the Respondents nor their Advocate was in Court. Noting that the hearing date had been taken by consent, the court directed that the hearing proceed notwithstanding the absence of the Respondents.

Background

5. This Succession cause relates to the estate of the late Okong'o Odinga (hereinafter 'the Deceased') who died intestate in Ramunde Sub-location Siaya County on 27th October, 1997. Following the demise of the Deceased, the 1st and 2nd Respondents in their capacity as widow and brother to the Deceased applied for and obtained Grant of letters of Administration Intestate which was issued to them on 18th July 2012.
6. The Gant was duly confirmed on 14th February 2014 and it was indicated that, the estate of the Deceased was to be distributed in the following manner:



	NAME OF THE ADMINISTRATORS	DESCRIPTION OF THE ASSETS	SHARES OF THE HEIRS
1.	Margaret Agutu Okong'o	EAsst Ugenya/Ramunde/298	0.85 Ha
2.	Phillip Elly Oluoch	EAsst Ugenya/Ramunde/298	0.85 Ha

7. The Protestors herein all claim to be the biological children of the Deceased. The 2nd, 3rd, 4th, 5th and 6th Protestors all gave authority to the 1st Protestor to swear all pleadings on their behalf. They signed a consent which is annexed to the summons.
8. The 1st Protestor gave evidence on 15th November 2022. He told the court that contrary to the Chief's letter dated 8th February 2011 which the Respondents relied upon in support of their Petition the Deceased was not survived by only the 1st and 2nd Respondents. That in actual fact the Deceased had four (4) wives and several children as follows:
- “ 1) Margret Osur Okong'o who was blessed with the following children:-
- a. Christine Adero
 - b. Mary Anyango
 - c. Benta Aketch (deceased)
 - d. Hannington Owino
 - e. Phoebe Auma
 - f. Eunice Atieno
- 2) Roselida Achieng who was blessed with two children namely:-
- a) George Oduor Okong'o
 - b) Jeniffer Auma (deceased)
- 3) Juliana Abonyo who was blessed with following children namely:-
- a) Joan Auma
 - b) Sylvester Ochieng'
- 4) Margaret Agutu Okong'o who was not blessed with any child.”
9. The witness further testified that contrary to the averments in the Petition dated 30th June 2011 that the 2nd Respondent was an uncle to the Deceased, the truth was that the 2nd Respondent was in actual fact a nephew to the Deceased being the son of one Washington Oluoch who was an elder brother to the Deceased.
10. The Protestors aver that the letter relied on by the Respondent to obtain the Grant was written by the Chief of North-East Ugenya whilst the Deceased in actual fact hailed from East Ugenya.



11. The Protestors are aggrieved that they were neither consulted nor involved by the Respondents in this Succession Case. That they only became aware of the cause when the Respondents purported to direct them to vacate Plot No East Ugenya/Ramunde/298 claiming that the said parcel of land now belonged to the 2nd Respondent.
12. The Respondents contend that the Grant was obtained fraudulently by non-disclosure of material facts. They urge the court to revoke the Grant issued to the Respondents.
13. As stated earlier the Respondents did not file any Replying Affidavit nor did they despite having Notice of the hearing date appear in court to testify. Therefore the evidence of the 1st Protestor remains uncontroverted.

Analysis and Determination

14. I have carefully considered the summons dated 15th November 2021 the evidence on record as well as the written submissions dated 15th December 2022 filed by the Protestors.
15. The only issue for determination is whether the Grant issued to the Respondents ought to be revoked. The grounds upon which a Grant may be revoked are set out in Section 76 of the [Law of Succession Act](#) Cap 160, Laws of Kenya as follows:-

“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.”

16. In order for an order of revocation of grant to be made an applicant must satisfactorily prove one of the grounds for revocation as set out in Section 76.
17. *In the matter of the Estate of L.A.K (Deceased)* [2014] eKLR, the Court held as follows:-
- “4. Revocation of grants is governed by Section 76 of the *Law of Succession Act*. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.” (own emphasis)
18. The Protestors claims that the Respondents deliberately misled the court by failing to include the names of all the beneficiaries to the estate of the Deceased. This is contrary to Section 51 (2) (g) of the *Law of Succession Act* which provides that:-
19. “51 (2) An application shall include information as to
- (g) in cases of total or partial intestacy the names and addresses of all surviving spouses children, parents brothers and sisters of the Deceased and children or any child of his or hers then deceased” [own emphasis]
20. The Protestors concede that the 1st Respondent is indeed one of the widows of the Deceased however they protest that the other widows and the children of the Deceased were not named in the Petition as required by Section 51 (g).
21. Moreover the Protestors assert that the 2nd Respondent is not an uncle to the Deceased but is rather a nephew to the Deceased and therefore is not a beneficiary to the estate Section 51 (a) of the *Law of Succession Act* makes no mention of nephews. Indeed from the documents in this file it seems that the 2nd respondents themselves were unsure of the relationship of the 2nd Respondent to the Deceased.
22. The original handwritten copy of the Chief’s letter dated 18th February 2011 upon which the Respondents relied to obtain the Grant, made no mention at all of the 2nd Respondent. The letter referred to the 1st Respondent Margaret Agutu Okong’o as the only widow.
23. Nevertheless the 2nd Respondent still managed to insinuate himself into the estate through the Petition where he was indicated to be a ‘Brother’ to the Deceased. If the 2nd Respondent was indeed a brother to the Deceased then why was this omitted in the Chief’s letter.
24. Despite being named in the main Petition as a ‘brother’ to the Deceased in the Forms P&A 80 filed on 5th July 2011 the 2nd Respondent Phillip Elly Oluoch is indicated to be an ‘uncle’ to the Deceased. Which is which - the 2nd Respondent cannot be both the ‘brother’ and an ‘uncle’ to the same Deceased person. It is clear that the 2nd Respondent was merely casting about for a way to insinuate himself into this Succession cause as a beneficiary to the estate.
25. The evidence and averments of the Protestors remain unchallenged and uncontroverted. As such I find that the Grant issued to the Respondents was indeed fraudulently obtained. The Respondents failed to disclose all material facts being the identity of all the widows and children of the Deceased.



26. In the case of *Re Estate of Laurent Ntirampeba (Deceased)* [2017] eKLR. The court held as follows:-

“ 24. On the question of revocation of the grant issued, it is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have a bearing on the adjudication of the issues raised in the case. A duty is owed to the court to bring out all the facts and refrain from suppressing any material facts. If one is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right, but the duty to deny relief to such person....” [own emphasis]

27. From the evidence availed to the court this was a calculated scheme by the Respondents to grab for themselves the entire estate of the Deceased and disinherit the genuine heirs. The court will not countenance such behavior.

28. Finally based on the foregoing I find there is sufficient grounds to allow this summons for revocation and I make the following orders:-

- 1) The Grant issued to the Respondents on 18th July 2012 and confirmed on 14th February 2014 is hereby revoked.
- 2) The court further directs the Land Registrar Siaya to cancel any subdivision and /or transfers of the property known as East Ugenya/Ramunde/298. The said property to revert back to the name of the Deceased.
- 3) The Protestors to appoint amongst themselves an Administrator(s) who are to file a Petition for Grant of letters of Administration Intestate within Sixty (60) days.
- 4) The Respondents will meet the costs of this summons.

DATED IN NAIROBI THIS 31ST DAY OF MARCH, 2023.

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MAUREEN A. ODERO

JUDGE

