



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of John Orimba Misula (Deceased) (Succession Cause
122 of 1997) [2023] KEHC 3463 (KLR) (25 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3463 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 122 OF 1997
RE ABURILI, J
APRIL 25, 2023**

BETWEEN

DINA OWUOR MISULA PETITIONER

AND

ANNA ATIENO ORIMBA APPLICANT

RULING

1. This is a very old matter filed on 28th April 1997, 16 years ago. It relates to the administration of the estate of the deceased John Orimba Misula who died on 23rd March 1990.
2. The Petitioner Dina Owuor Misula who sought for grant of letters of administration intestate to administer the estate of the deceased John Orimba Misula was issued with a grant on 26th July 2000 following gazette on 26th May 2000 vide Gazette Notice No. 3214.
3. Regrettably, that grant has never been confirmed, 23 years later and from the documents filed on 19th September 2022, Annexure ROK (4) is a death certificate of death for the Petitioner Dinah Owour Misula who died on 16th August 2017 nearly six (6) years ago. What that means is that the grant issued on 26th July 2000 has been inoperational from its inception since the estate of the deceased has never been distributed.
4. Nonetheless, the now deceased Petitioner/Administratrix disclosed in P&A 5 Affidavit in support of her Petition that she was the only surviving beneficiary of the estate of the deceased and that the estate assets comprised Land Parcel No. East Kisumu/Nyahera/56 only.
5. Vide Chamber Summons dated 20th September 2022 and filed on 19th September 2022 as per the documents filed in court, the application Anna Atieno Orimba now seeks from this court orders that the grant issued on 26th July 2000 to Dina Owuor Misula be revoked and that she be issued with letters of administration ad litem for purposes of pursuing litigation in a court of law to protect the estate of the deceased.



6. She also prays that she be substituted as a Petitioner and a fresh gazettelement of the estate be made or in the alternative, the applicant to proceed and file a proper succession cause in the subordinate court.
7. In her supporting affidavit sworn on 20th September 2022 and grounds in support, she deposes and asserts that she is the rightful and only heir apparent/dependant of the deceased John Orimba Misula and that the Petitioner is a total stranger to the said estate as she was not a wife or widow of the deceased.
8. Further, that the rightful widow was Suslia Odemba Orimba, her mother who is also now deceased. She has annexed the letter for North Kisumu Location Chief Mr. Peter A. Omala dated 17th June 2022 introducing her as the only child of the deceased, that she is aged 50 years and Suslia Odemba Orimba was the deceased's wife and is also deceased.
9. The applicant claims that the Petitioner concealed material facts from the family of the deceased and that on her obtaining the grant on 26th July 2000, she intermeddled with the said estate without the knowledge of the family members. That the applicant only became aware of this succession cause when she confronted third parties who were intermeddling with the property of the estate which she now seeks to collect and protect.
10. That following the death of the Petitioner on 16th August 2017, she left behind 3rd parties who have intermeddled with the deceased's estate and are determined to disinherit the applicant herein.
11. The applicant deposes that at the time that her father died, she was a minor and lived with her mother Suslia Odemba Orimba who also died in 1996 upon which there was nobody to care for her so she got married then she went to live in Tororo, Uganda with her spouse to date.
12. She further deposes that Dina Owuor Misula was a wife to her paternal uncle Barbanas Owuor Misula and not her father's wife, the deceased John Orimba Misula.
13. That the grant was never confirmed yet the land in question, Kisumu/Nyahera/56 is now transferred and registered in the names of third parties, from her later father's names.
14. She prays for degazettelement of the Gazette Notice No. 3214 of 23rd November 1997 published on 26th May 2000.
15. As the petitioner/administrator is dead, according to the death certificate annexed to the applicant's affidavit in support, the applicant's counsel only served her children with a view to alerting them of the proceedings herein but they did not attend court.
16. The application was canvassed orally on 19th April 2023 with Mr. Ariho advocate reiterating the prayers, grounds and depositions in the affidavit sworn by the objector and urging this court to grant the orders sought.

Determination

17. I have considered the application dated 20th September 2022 and purportedly filed on 19th September 2022 although the court fees payment receipt shows that the application was paid for on 20th September 2022. I shall therefore take it that the application dated 20th September 2022 was filed on the even date although it was assessed and invoiced for payment on 19th September 2022 hence the court date stamp for 19th September 2022.
18. The facts of this case are clearly set out in the affidavit sworn by the Objector Anna Atieno Orimba on 20th September 2022, which I have exposed above.



19. It is not in dispute that the Petitioner Dina Orimba Misula petitioned for a grant which was issued on 26th July 2000 and in that petition, she claimed by an affidavit P&A 5 in support of the petition for grant that she was the widow and sole beneficiary of the estate of the deceased John Orimba Misula. There is no Chief's letter introducing her as a widow or beneficiary of the said estate. The Objector has sworn an affidavit which is not controverted that the Petitioner was never a widow to the deceased and that instead, she was the wife to the brother of the deceased intestate.
20. Further, the applicant has deposed that the Petitioner took advantage of the gap left behind by the intestate who, upon his demise in 1990, his widow Suslia Odemba Orima also died in 1996, leaving behind the applicant herein who thereafter got married and migrated with her spouse to Tororo, Uganda where they reside todate.
21. The applicant also deposes and there is no contrary view that she is the sole surviving child of the deceased John Orimba Misula and that the Petitioner who has since died in 2017 did not even cause the grant which she fraudulently obtained on 26th July 2000 confirmed yet she allowed the land and sole asset of the deceased John Orimba Misula namely LR Kisumu/Nyahera/56 to be transferred to third parties who have intermeddled with the said estate hence her intervention herein. She has annexed copy of the death certificate for the Petitioner, copy of title deed for the land parcel Kisumu/Nyahera/56 and Green Card for the said parcel showing that the land was on 1st August 1980 registered in the name of John Orimba Misula and on 26th May 2011, a title deed was issued in his name.
22. However, from the Green Card dated 16th July 2021, the same parcel of land was on 12th April 2021 registered or transferred to the names of George Owuor Okoth through succession Cause No. 110 of 2019 at the Senior Principal Magistrate's Court at Winam and that it was reported that the land certificate was lost and the loss gazetted on 5th February 2021.
23. Subsequently, on 4th May 2021, the said land was transferred to Benard Odhiambo Ondiek and Claris K. Kavulani Onamu and title deed issued in their joint names. Again on 27th May 2021, a restriction was placed on the said title by Benard Odhiambo Ondiga claiming to be a co-proprietor.
24. The land measures 0.42 hectares. What is emerging from the certified copy of the land Register for the estate asset Kisumu/Nyahera/56 is that besides Dina Owuor Misula, other persons namely George Owuor Okoth petitioned for grant over the same estate before Winam court, in 2019 after the death of Dina Owuor Misula in 2017 but not in respect of her estate, and obtained some other grant which he used to become the registered owner then he transferred the said land title to two people namely Benard Odhiambo Ondiek and Claris K. Kavulani Onamu. The question is, who is George Owuor Okoth?
25. Without delving into what appears to be a chain of fraudulent activities on the estate of the deceased John Orimba Misula, as the Applicant herein has legal avenues by which she can have the fraudsters face justice, it is clear in the instant case, that the grant issued on 26th July 2000 to Dina owuor was prior to the succession cause No. 101 of 2019 at Winam which later proceeding was initiated after the death of Dina Owuor Misula who claimed that she was the deceased's widow and sole beneficiary of the estate of John Orimba Misula.
26. This court cannot tell whether in the Winam Succession Cause, the estate was the same but what is apparent is that the title never moved from John Orimba Misula to Dina Owuor Misula following the grant issued by this court in her favour on 26th July 2000. If that had been the case, then the certified copy of register would reveal the chain of ownership to include the now deceased Petitioner Dina Owuor Misula.



27. It is not in dispute that the Petitioner Dina Owuor Misula is dead and that upon obtaining grant on 26th July 2000, she never applied for its confirmation by this court until her death in 2017 when someone else in the name of George Owuor Okoth went to Winam Law Courts which is a court subordinate to this court and obtained another grant vide Succession Cause No. 101 of 2029 to administer the same estate and caused the land to be transferred to himself before he transferred it to two other people Benard Odhiambo Ondieki and Claris Kavulani Onamu on 4th May 2021.
28. Under Section 76 of the Law of Succession Act, which is on 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.
29. Among the grounds for revocation of grant are:
- a. That the proceedings to obtain the grant were defective in substance;
 - b. That the grant was obtained fraudulently by 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 the Section 83 or has produced any such inventory or account which is false in any material. Particular; or
 - a. That the grant has become useless and inoperative through subsequent circumstances.
30. The above provisions were explicitly interpreted in re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR.
31. I have already given the history of this matter and it is clear that there are serious irregularities regarding the administration of the estate of the deceased John Orimba Misula There can be no two separate grants in respect of the same estate, obtained by two different administrators in different court proceedings as is evident in this case that after the demise of Dina Owuor Misula, some other person took advantage of the non completion of the administration process and without approaching this court, in these proceeding, they by passed the process and went before another court subordinate to the High Court and obtained a second grant to administer the same estate as that which the now deceased petitioner had obtained before this court. The persons then transferred the deceased's parcel of land to two other individuals.
32. This court having issued a grant on 26th July 2000, only that grant could have been confirmed and used to confer any rights to the bonafide beneficiaries of the estate of the deceased. In the alternative, the



person interested in the deceased's estate should have sought for revocation of the grant issued on 26th July 2000 and a fresh grant or fresh proceedings commenced and not to go before another court to obtain a similar grant. That in itself is unacceptable and fraudulent.

33. Furthermore, Section 82 of the Law of Succession Act prohibits the sale or transfer of the immovable property of the deceased before confirmation of the grant. It is not clear whether the grant, if any, irregularly obtained before Winam Court vide Succession Cause No. 101 of 2019 was confirmed before the land was transferred from the deceased to George Owuor Okoth on 12th April 2021 and subsequently, a month later to Benard Odhiambo Ondiek and Claris K. Kavulani Onamu on 5th May 2021 before Benard Odhiambo Ondiga placed a restriction on 27th May 2021 as a co-proprietor.
34. Moreover, even if that grant was confirmed, it is clear that the same was irregularly and or fraudulently obtained as there were other proceedings and grant issued vide this Succession Cause on 26th July 2000 which had not been confirmed.
35. In view of the above findings, this court invokes its supervisory jurisdiction under Article 165 (6) and (7) of the Constitution and calls into this court the proceedings in Winam Senior Principal Magistrate's Court Succession Cause No. 101 of 2019 and proceeds to quash and set aside the said proceedings and revokes the irregular grant issued in the said proceedings.
36. Having done so, I further find that as the grant issued in this case on 26th July 2000 was never confirmed, the same because useless and inoperational. It is hereby annulled and revoked.
37. Having revoked the said grant issued on 26th July 2000 in this case and the grant purportedly issued by Winam SPM's court in Succession Cause No. 101 of 2019 which grant led to the transfer of the land parcel No. Kisumu/Nyahera/56 from the deceased John Orimba Misula to George Owuor Okoth irregularly, I further find that the subsequent transfer of the said parcel of land in favour of Benard Odhiambo Ondiek and Claris K. Kavulani Onamu was illegal and contrary to Sections 82 and 45 of the Law of Succession Act as it amounted to intermeddling with the estate of the deceased John Orimba Misula.
38. Accordingly, the illegal transfers thereof are hereby revoked and nullified and the title to land parcel No. Kisumu/Nyahera/56 shall forthwith and upon this order being served upon the Land Registrar, Kisumu, revert to John Orimba Misula until proper Succession proceedings are commenced by bonafide beneficiaries and the property is properly transmitted to the administrators and or beneficiaries as by law established.
39. This court having revoked the grant issued on 26th July 2000, all proceedings leading to the issuance of that grant are hereby nullified including the Gazette Notice No. 3414 of 26th May 2000 issued in favour of Dina Owuor Misula.
40. Accordingly, any person interested in the estate of the deceased John Orimba Misula can only petition for a fresh grant of representation to administer his estate.
41. This file is accordingly closed.
42. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 25TH DAY OF APRIL, 2023

R. E. ABURILI

JUDGE

