



REPUBLIC OF KENYA



In re Estate of Owuor Omollo alias Didacus Owuor Omollo (Deceased) (Succession Cause 1187 of 2013) [2023] KEHC 18590 (KLR) (24 April 2023) (Ruling)

Neutral citation: [2023] KEHC 18590 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 1187 OF 2013**

MS SHARIFF, J

APRIL 24, 2023

**IN THE MATTER OF THE ESTATE OF OWUOR OMOLLO
ALIAS DIDACUS OWUOR OMOLLO (DECEASED)**

BETWEEN

HARUN OMOLLO WACHIRE PETITIONER

AND

BENEDETTE ONDORO OMOLLO 1ST OBJECTOR

SIPROSA AJWANG OKWIRI 2ND OBJECTOR

JUSTINA AGWANDA OMOLLO 3RD OBJECTOR

RULING

1. The Applicants who are biological sisters of the deceased have filed a summons for revocation of grant dated August 27, 2018 wherein they are seeking orders to revoke the grant issued to the Petitioner on July 3, 2014 and confirmed on 10th November 2015 on grounds that the Petitioner obtained the said grant through deceit and concealment of material facts relevant to the case. The application is supported by the affidavit of Benedette Ondoro Omollo sworn on August 27, 2018.
2. The Applicants specifically state that the petitioner had excluded them in the list of beneficiaries yet they are the blood sisters of the deceased and hence have priority over him to inherit the estate of the deceased who died intestate without being survived by a wife, children or parents save for his biological siblings and step siblings.
3. The Petitioner has resisted this application on the grounds that he had obtained the consent of the eldest brother one Jacob Sombe Omollo prior to his petition for the grant. Further that he has not denied the applicants access to the deceased estate which comprises of parcel No. South Nyakach/Dianga/887 presently transmitted to the Petitioner and temporary subsistence farming therein. The



Respondent has not addressed the fact that he concealed the existence of the Applicants in his petition for grant of letters of administration.

4. The petitioner further posits that the Applicants have to prove dependency upon the deceased prior to his death for provision to be made for them under Section 29 of the *Law of Succession Act*.

Analysis and Determination

5. I have perused the Chief's letter dated 8th July 2012 and note that the same excluded the applicants but instead listed all his blood brothers, step sisters and step brothers with the petitioner being a step brother.

6. Upon considering the summons herein, the response by the Petitioner/Respondent and rival submissions filed by the parties the issue that emerge for determination is:

- a. Whether the Applicants have made out a case for the revocation of the grant of letters of administration issued on July 3, 2014 and confirmed on 3rd December 2015.

7. The jurisdiction of court to revoke a grant is donate to it by Section 76 of the *Law of Succession Act* which states:-

“A grant of representation, whether or not confirmed may at any time be revoked or annulled if the court decides either 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.
 - 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) 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.”

8. The grant as confirmed herein on 3rd December 2015 transmitted all that parcel of land known as South Nyakach/Dianga/887 to the Petitioner/Respondent as a whole and not as a trustee as he wants this court to believe.



9. The deceased died intestate. Intestacy is defined under Section 34 of the *Law of Succession Act* as follows:
- “A person is deemed to die intestate in respect of all his free property of which he has not made a will which is capable of taking effect.”
10. The deceased was not survived by any wife, or children wherefore his estate transmits to his next of kin in the priority hierarchy provided for under Section 39 of the *Law of Succession Act* which states that:
- 39: Wherein intestate has left no surviving spouse or children.
- “(1) Where an intestate has left no surviving spouse or children, the not intestate estate shall devolve upon the kindred of the intestate in the following order of priority:-
- a. Father, or if dead
 - b. Mother, or if dead
 - c. Brothers and sisters; and any child or children of deceased’s brothers and sisters in equal shares or if none
 - d. Half-brother and half-sister and any child or children of deceased’s half-brothers and half-sisters; in equal shares or if none
 - e. The relatives who are the nearest degree of consanguinity up to and including the sixth degree in equal shares.”
11. The Applicants who are the sisters of the deceased have priority over the Petitioner who is a step brother and it therefore follows that the deceased estate ought to devolve to his blood siblings namely Siprosa Ajwang Okwiri, Justina Agwanda Omollo, Benedette Ondoro Omollo and Jacob Sombe Omollo, to the exclusion of step siblings pursuant to the provisions of Section 39 of the *Law of Succession Act*.
12. A letter dated 15th June 2018 from Owade Richard Omondi, the Assistant Chief of East Kadianga Sub-location marked as annexure BBO-2 in the supporting affidavit of Benedette Ondoro Omollo lists the brother and sisters of the deceased as follows:
- i. Jacob Sombe Omollo
 - ii. Siprosa Ajwang Okwiri
 - iii. Justina Agwanda Omollo
 - iv. Benedette Ondoro Omollo.
13. I do find that the grant issued to the Petitioner herein was obtained through concealment of material facts and specifically the existence of the Applicants and deceit, as the Petitioner represented to this court that he is a brother of the deceased in the affidavit in support of the petition for grant of letters of administration while knowing that he is a step-brother. I also noted that the Petitioner included his brother namely Elisha Olang’ Omollo and sister Hulda Adhiambo Omollo as beneficiaries of the deceased estate yet they were step brothers and sister respectively to the deceased.
14. The application herein is thus meritorious and the same is allowed. This court therefore makes the following orders:-



- i. The grant issued herein to Harun Omollo Wachire on July 3, 2014 and confirmed on November 10, 2015 be and is hereby revoked and the applicants are hereby appointed as the joint administratrices of the estates of Owuor Omollo alias Didacus Owuor Omollo.
- ii. The registration of Harun Omollo Wachire as the sole proprietor of Parcel No. South Nyakach/Dianga East/887 is hereby revoked forthwith and the ownership of the said parcel of land to revert back to the deceased Owuor Omollo alias Didacus Owuor Omollo.
- iii. The Registrar of Lands in the appropriate land registry to effect the said reversion forthwith and issue the adminstratrices with a new title deed in the name of the deceased.
- iv. The Applicants to file a summons for confirmation of grant within fourteen (14) days from the date hereof.
- v. Each party to bear its own cost.

15. It is hereby so ordered.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 24TH DAY OF APRIL 2023

MWANAISHA S. SHARIFF

JUDGE

