



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Petro Oloo Onono (Deceased) (Succession Cause
478 of 2010) [2023] KEHC 18587 (KLR) (24 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 18587 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 478 OF 2010
MS SHARIFF, J
APRIL 24, 2023**

BETWEEN

DAVID OTIENO AYIEKO OBJECTOR

AND

LUCAS ROMBO OLOO PETITIONER

RULING

1. The Respondent has raised a Preliminary Objection to the Applicant's application dated September 23, 2022 on the following grounds:
 - i. The applicant's cause and instant application are incompetent and fatally defective for failure to take out a grant of representation as required by Section 82 of the *Laws of Succession Act*.
 - ii. The objection herein is misconceived and belated as the procedure for challenging the confirmation of grant is not by way of objection but by means of affidavit pursuant to Rule 40(6) of the *Probate and Administration Rules*.
 - iii. That under Section 29 of the *Laws of Succession Act*, the Applicant herein is not entitled to inherit land parcel Kisumu/Nyahera/1722 and no nexus to the estate of the deceased previous registered owner has been established according to the consanguinity table.
 - iv. That as demonstrated by the attached title deed for Kisumu/Nyahera/1722 the current registered owner is Millionaire Real Estates, having acquired title on 21st day of June 2012 and as such Millionaire Real Estate is the indefeasible title holder by virtue of the provisions of Section 25(1) of the *Land Registration Act* No 3 of 2012.



- v. That the summons as filed herein is time barred and does not lie in law by virtue of Section 30 and 68(1) of the Law of Succession Act Cap 160 Laws of Kenya and Rule 40 (6) of the Probate and Administration Rules.

2. Whereas directions were taken for the filing of written submissions both parties opted not to do so.

Analysis and determination

3. The Respondent/Petitioner has cited Section 82 of the Law of Succession Act Cap 160 Laws of Kenya instead of Section 51 of the said Act for the argument that the Applicant's application herein is bad in law for want of petitioning by the Applicant for grant of representation in respect of the estate of the deceased Daudi Kose Ayieko, Joseph Olingo Ayieko and Helekia Ong'ondo Ayieko. Indeed, no such grants of representation in respect of the aforesaid relatives of the Applicant have been annexed in his affidavit in support of his summons for revocation of grant wherefore he lacks the locus standi to litigate on behalf of the estate of the said deceased persons. The Applicant cannot agitate a cause of action which survived his deceased relatives without first obtaining limited grants in respect of the said deceased persons.
4. The supposed proprietary interest of the Applicant's intestate relatives can only be transmissible to their personal representatives of which the applicant is not. In the case of *Troustik Union International & Another v Jane Mbeyu & Another* Nairobi Civil Appeal No 269 of 1997, the Court of Appeal quoted with approval the holding in *Otieno v Ougo* that:-
- “The administrator is not entitled to bring an action as an administrator before he has taken letters of administration if he does the action is incompetent at the date of its inception.”
5. The applicant has not disclosed the existence of any consanguine relation with the deceased save to agitate over fraudulent registration of parcel No Kisumu/Nyahera/1722. This court has no jurisdiction over cases that fall within the purview of the Environment and Land Court by dint of section 13(2) of the Environment and Land Court Act and article 162(2)(b) of the Constitution of Kenya 2010. The applicant is better suited to approach that court.
6. In any event the applicant has confirmed through his own annexures that land parcel No Kisumu/Nyahera/1722 no longer exists as the same was transferred to Millionaire Real Estate on June 21, 2012 and subsequently subdivided into land parcel Nos Kisumu/Nyahera/3177 to 3214. Pursuant to the provisions of Section 25(1) of the Land Registration Act No 3 of 2012, Ms Millionaire Real Estate is the indefeasible title holder of the aforesaid subdivisions.
7. Given that the Applicant has invoked the jurisdiction of this court under Section 76 of the Law of Succession Act, Sections 1A, 1B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya and Rule 44(1) of the Probate and Administration Rules and this court finds that his application is not time barred. In any event this court has a wide jurisdiction conferred upon it under Section 47 of the Law of Succession Act.
8. On the balance the Respondent's/Applicant's Preliminary Objection as premised on grounds Nos. 1, 3 and 4 is upheld and the Applicant's Summons for revocation of grant dated September 23, 2022 is hereby struck out with costs to the Respondent.
9. It is hereby so ordered.

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

MWANAISHA S. SHARIFF



JUDGE

In the presence of

Mr. David Otieno Ayieko – Objector/Applicant

Ms. Nyamodo holding brief for Mr. Kwaro for the Petitioner/Respondent.

