



In re Estate Ounda Okendo alias Ounga Okendo (Deceased) (Succession Cause 281 of 2014) [2023] KEHC 21536 (KLR) (31 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21536 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
SUCCESSION CAUSE 281 OF 2014**

KW KIARIE, J

JULY 31, 2023

**IN THE MATTER OF THE ESTATE OF OUNDA
OKENDO ALIAS OUNGA OKENDO (DECEASED)**

BETWEEN

BERNARD OTIENO OTAYE APPLICANT

AND

JOSEPH OUMA OUNDA RESPONDENT

RULING

1. Bernard Otieno Otaye, the applicant herein, moved the court by summons for revocation of grant dated July 13, 2021 under sections 47 & 76 of the *Law of Succession Act* and rules 36 (3), 44 & 73 of the *Probate and Administration Rules*. He is seeking the following orders:
 - a. That the honorable court be pleased to revoke grant of letters of admonition intestate issued to Joseph Ouma Ounda and the same be issued to one Bernard Ochieng Otaye.
 - b. That all the transactions arising out of the grant issued to Joseph Ouma Ounda with regard to land parcel No Kanyanda/Kanyango/Kalanya/1143, be declared null and void and the title thereto be reverted back to the names of Ounda Okendo for purposes of equitable distribution to all the beneficiaries.
 - c. The costs of this application be provided for.
 - d. Such further and/or other orders be made as the court may deem fit and expedient.
2. The application was premised on the following grounds:
 - a. That the grant of letters of administration was obtained fraudulently by making false statement and by the concealment from court of other beneficiaries.



- b. That after the issuance of the grant and respondent transferred land parcel No Kanyada/Kanyango/Kalanya/1143 into his name.
 - c. That no prejudice will be done to any party if this application is allowed.
 - d. That it is in the interest of justice that this application be allowed.
3. The application was opposed by the respondent on the following grounds:
- a. That after he was issued with a grant of letters of administration on May 7, 2015 and after the same was confirmed, he sold the land to one Diana Hilda Otieno and transferred the same to her on the August 2, 2016.
 - b. That he did not act fraudulently or stealthily since all his brothers and sisters were either dead or those alive consented save that they did not present the same in writing.
 - c. That the applicant is only being influential by a prospective buyer to make the allegations.
4. The interested party filed the following grounds of opposition:
- a. That the vendor is not aware of any opposition to the sale of the said land.
 - b. That the vendor, Joseph Ouma Ounda, obtained a grant of letters of administration intestate of the estate of Ounda Okendo, the registered proprietor of land Parcel No Kanyada/Kanyango-Kalanya/1143, in Succession Cause No281 of 2014 at the High Court of Kenya at Homa Bay on the May 7, 2015 and therefore the sale in 2016 is indefeasible.
5. Though the respondent has claimed that he involved all his siblings and they gave their consents verbally, in form P&A 5 that he filed, it is indicated that he is the only one who survived the deceased. This therefore was a failure on his part to disclose that there were other beneficiaries who survived the deceased.
6. When a grant has been obtained fraudulently, any subsequent purchaser has no better right than the person who sold the land.
7. I therefore allow the application and revoke the grant issued to the respondent and confirmed on November 23, 2015. The Kanyada/Kanyango-Kalanya/1143 shall revert to Ounda Okendo alias Ounga Okendo and be available for distribution to the rightful beneficiaries.

DELIVERED AND SIGNED AT HOMA BAY THIS 31ST DAY OF JULY, 2023.

KIARIE WAWERU KIARIE

JUDGE

