



REPUBLIC OF KENYA



In re Estate of Laban Khaemba Kisiangani (Deceased) (Miscellaneous Application 14 of 2016) [2023] KEHC 20965 (KLR) (28 July 2023) (Judgment)

Neutral citation: [2023] KEHC 20965 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS APPLICATION 14 OF 2016**

DK KEMEL, J

JULY 28, 2023

BETWEEN

ANTHONY WANJALA KHAEMBA 1ST OBJECTOR

DIMINA NEKESA 2ND OBJECTOR

AND

EVERLYNE NEKESA KHAEMBA PETITIONER

AND

BUSURU RICHARD MARK INTERESTED PARTY

JUDGMENT

1. The deceased herein, Laban Khaemba Kisiangani, died on April 18, 1991 in Bungoma County. The brother of the deceased, Joseph Wanyama Wanjala, proceeded to Petition the Court for grant of Letters of Administration intestate and which were issued to him on May 5, 1993.
2. Accordingly, the 2nd widow of the deceased herein, Everlyne Nekesa Khaemba also the Petitioner, Petitioned the Court seeking to be granted the Grant of Letters of Administration and swearing an affidavit that her husband, the deceased herein died and left his estate un-administered and that one of her brother-in-law, Joseph Wanyama Wanjala, decided to administer the deceased's estate but ever since the issuance of the Grant of Letters Administration, on May 5, 1993, he failed to pursue the same and that he had transferred the free property of the deceased into his name.
3. The Petitioner was issued with the Grant of Letters of Administration and that the same was confirmed vide a Certificate of Confirmation of Grant dated May 19, 1994.
4. The Petitioner proceeded to transfer the ownership of title No. E. Bukusu/S. Kanduyi/86 from the name of the deceased to her name on May 19, 1994.



5. Vide an application dated April 14, 2016, pursuant to Section 76 of the Law of Succession Act and Rules 44(1) and Rule 73 of the Probate and Administration Rules, the Objectors herein sought orders inter alia; that the Grant of Letters of Administration issued to the Petitioner herein vide Succession Cause No. 75 of 1992 be revoked and annulled and a fresh grant be issued in the names of the Objectors to facilitate the distribution process; that the registration of LR. No. East Bukusu/South Kanduyi/86 in the name of the Petitioner be cancelled together with all subdivisions thereof and title be restored in the name of the deceased; that the Petitioner be restrained from disposing of any of the two parcels forming part of the estate of the deceased; that the 2nd Objector be added to the list of beneficiaries of the estate of the deceased and that the Petitioner be ordered to pay costs of the application.
6. According to the Objectors, the letters of administration had been irregularly issued to the Petitioner as the Court had been given erroneous material facts. They averred that the Petitioner subdivided L.R. East Bukusus/South Kanduyi/86 into eight parcels all under her name to the exclusion of other beneficiaries and that the Objectors are the son and widow of the deceased respectively and thus their application is well founded.
7. Vide Chamber Summons application dated June 22, 2017, pursuant to Section 47 of the Law of Succession Act and Rule 68 of the Probate and Administration Rules Busuru Richard Mark, sought orders that he be enjoined as the Interested Party in this succession matter and that this Court lists him as a liability to the estate of the deceased herein and that the costs be in the cause.
8. In response, the Petitioner swore a replying affidavit on 1 November 5, 2017 averring that the application is an abuse of Court process and incompetent. According to her, the supposed agreement dated December 31, 1991 was between the Interested Party and one Joseph Wanyama Wanjala and not the deceased., and that it is within her knowledge that Joseph Wanyama Wanjala had no authority to deal with land LR. No. E. Bukusu/South Kanduyi/86.
9. The interested party averred that he holds interest in the land LR. No. E. Bukusu/South Kanduyi/86 which forms part of the estate of the deceased. According to him, prior to the demise of the deceased, the deceased took a loan of Kshs. 200,000 using LR. No. E. Bukusu/South Kanduyi/86 as security (see annexures marked B.R.M.1(a) &(b)). The deceased died before he settled the said loan and discharging the title to LR. No. E. Bukusu/South Kanduyi/86. As a result, the Kenya Commercial Bank-Bungoma Branch advertised LR. No. E. Bukusu/South Kanduyi/86 for sale through public auction on 30th November 1991 (see annexure marked B.R.M.2) and that the Petitioner herein and one Joseph Wanyama Wanjala approached him through the firm of J.S Khakula & Company Advocates with the intention to salvage the subject property from sale. He averred that he was able to salvage LR. No. E. Bukusu/South Kanduyi/86 by paying Kshs. 182, 240.35/= to KCB and settling the auctioneer charges and expenses arising from the sale all totalling to Kshs. 210,000/=. He averred that it was mutually agreed that upon payment of the entire sum and auctioneer fees he was to be given six acres from LR. No. E. Bukusu/South Kanduyi/86 and a land sale agreement was duly executed on 31st December 1991. (see annexures marked B.R.M.3 (a) & (b))
10. He deponed that he duly salvaged LR. No. E. Bukusu/South Kanduyi/86 that now forms part of the estate of the deceased (see annexures marked B.R.M. 4 (a) & (b)) but that he was never listed as a liability and his interests were never catered for thereby necessitating the application.
11. Vide consent by parties dated 21st November 2018, the Interested Party's application vide prayer number (a) was allowed as prayed and he was thus enjoined as an interested party.



12. On 4th June 2019, parties took directions to the effect that the summons for revocation of grant dated 14th April 2016 be canvassed by way of viva voce evidence and that prior to the hearing, the parties were directed to file and exchange their respective witness statements.

Objector's Case

13. OB.PW1. Anthony Wanjala Khaemba, testified that the deceased herein was his father while the 2nd Objector is his mother. He adopted his affidavit in support of his application dated 4th April 2016 and his witness statement dated 24th April 2019 as his evidence in chief. According to him, the letters of administration had been irregularly issued to the Petitioner as the Court had been given erroneous material facts and that the confirmation of the same was contrary to Section 71 of the [Law of Succession Act](#).

On cross-examination by Counsel for the Interested Party, he testified that in 1993 he was 17 years old but that he is currently 48 years old. He confirmed that he knew the Interested Party herein and that he is aware that the deceased took a loan with KCB using LR. No. E. Bukusu/South Kanduyi/86 and that the loan was not cleared at the time of his demise. According to him, it was the Interested Party who cleared the loan and that the family entered into an agreement with him that he would be given a portion of the land once the loan is cleared. He confirmed that as per the Certificate of Confirmation of Grant, the Interested Party was not given anything and that he did not have any objections with regard to the Interested Party being given a portion of the land.

On cross-examination by counsel for the Petitioner, he told the Court that it was Joseph Wanyama who initiated the succession proceedings and that he confirms that his late mother was never catered for as she had her own parcel given to her by Justus Masinde, his step-father and that he never resided on LR. No. E. Bukusu/South Kanduyi/86. He told the Court that he was not a witness to the family agreement with the Interested Party.

On re-examination, he told the Court that the deceased herein was his biological father and that he was not catered for in his estate.

14. OB. PW2, Eliud Simiyu Wanjala, testified that the deceased herein was his elder brother and that he knows the 1st Objector herein as he is the son of the deceased. He told the Court that the Interested Party is the one who cleared the bank loan over the deceased's LR. No. E. Bukusu/South Kanduyi/86 and that he wished this Court to adopt his witness statement dated 24th June 2019 as his evidence in chief.

On cross-examination by Counsel for the Interested Party, he told the Court that it was the Interested Party who salvaged LR. No. E. Bukusu/South Kanduyi/86 by buying it from the bank's auction sale and handing over the title to the Petitioner. He confirmed that the family did enter into an agreement with the Interested Party dated 31st December 1991 and that he signed the same. He told the Court that Joseph Wanyama, his young brother, witnessed the transaction and that the Interested Party was to be given six acres and that he had no objection to the Interested Party's application.

On cross-examination by Counsel for the Petitioner, he told the Court that the 2nd Objector herein was his sister-in-law as she was previously married to one Justus Masinde. He confirmed that her remains were buried on the land belonging to Justus Masinde. He told the Court that the 1st Objector was brought up while on the land belonging to Justus Masinde and that it is true the deceased owned four acres of land within Lukhome area but he eventually sold the same. He confirmed that from the family minutes, the Petitioner was not involved in the family agreement with the Interested Party.



On re-examination, he told the Court that, the 1st Objector is the son of the deceased but he was never catered for in the estate's succession proceedings and that the Petitioner was aware of the family agreement with the Interested Party.

Interested Party's Case

15. INT.PW1, Busuru Richard Mark, told the Court that he is the Interested Party in this matter and that the deceased was well known to him. He testified that upon the demise of the deceased, his family reached out to him to help offset an outstanding loan balance in exchange for possession of six acres in LR. No. E. Bukusu/South Kanduyi/86. He adopted his witness statement dated 13th July 2020 and the list of exhibits 1-12 dated 13th July 2020 as his evidence in chief.

On cross examination by Counsel for the Petitioner, he told the Court that he never personally interacted with the deceased herein and could not tell if the deceased was alive when the LR. No. E. Bukusu/South Kanduyi/86 was put on auction but as per the Petition documents, the deceased died on 18th April 1990 and that he was approached by his family on 31st December 1991. He told the Court that it was Joseph Wanyama Wanjala, Eliud Simiyu Wanjala, Wiliam Masinde Simiyu and Jane Khaemba who approached him. He told the Court that he could not confirm whether the family members had obtained Grant of Letters of Administration. He confirmed that an agreement was executed on 31st December 2019 and that the deceased's widow Jane Khaemba was present during the transaction but did not sign the agreement. He told the Court that he only became aware of the succession proceedings after filing his case in Court in July 2020.

16. He told the Court that he lodged a complaint before the Kanduyi Land Disputes Tribunal where he was awarded eight acres of land from LR. No. E. Bukusu/South Kanduyi/86 but that the Judicial Review proceedings vide JR No. 111 of 2012 at Bungoma quashed the same. He proceeded to file an appeal to the Court of Appeal but withdrew the same but he had registered a restriction on LR. No. E. Bukusu/South Kanduyi/86 on 3rd September 1993 which he withdrew on 10th June 1994 after he was promised by the Petitioner to be given the said six acres.

17. He told the Court that on his visit to the lands office, he established that LR. No. E. Bukusu/South Kanduyi/86 was sub-divided with new mutations giving new numbers 15025-15031 and that parcels 15031 and 15028 were issued to third parties. He confirmed that up to date he is yet to take possession of the six acres and that he has seen developments on the land by those third parties. He confirmed that he has filed a suit in the Environment and Land Court against the Petitioner.

18. On re-examination, he told the Court that he was requested to step in and bail out the family of the deceased as their land was about to be auctioned. He confirmed that all of the new mutations in exception of two are in the name of the deceased.

19. INT.PW2, Julius Arlene Busuru, adopted his witness statement dated 13th July 2020 as his evidence in chief. He told the Court that he did not meet the deceased during his lifetime and that the Interested Party herein is his elder brother.

20. On cross-examination by Counsel for the Objectors, he told the Court that the Interested Party has not been given the six acres as agreed up to date.

21. On cross examination by the Counsel for the Petitioner, he told the Court that he was not a witness to the sale agreement but he is aware that at the time of sale the deceased was dead.

22. On re-examination, he told the Court that he has seen the sale agreement dated 31st December 1991 and confirmed that his brother cleared the bank loan.



Petitioner's Case

23. PET.PW1, Everlyne Nekesa Khaemba, testified that the 2nd Objector is a wife to her brother-in-law, Justus Masinde (deceased) and who left her matrimonial home and got children elsewhere and that the 1st Objector was a son to one John Murutu from Mayanja and that she is not aware of the Interested Party's claim on the estate.
24. On cross examination by the Counsel for the Objectors, she told the Court that she was the 3rd wife of the deceased and that the 2nd Objector was the wife of her brother-in-law. She told the Court that it is not true that her deceased husband had inherited the 2nd Objector herein following the death of her husband, Justus Murutu. According to her, her husband bought for her LR. No. E. Bukusu/South Kanduyi/86.
25. On cross-examination by Counsel for the Interested Party, she told the Court that she is the wife of the deceased herein and that land parcel LR. No. E. Bukusu/South Kanduyi/86 belonged to her husband. She confirmed that she was not involved in the bank transactions and that she is not literate. She told the Court that the Interested party approached her with a claim she did not know and that deliberations were made but no agreement was attained. She told the Court that she knows Joseph Wanjala who is her brother-in-law and that he did file successions proceedings on behalf of the estate of the deceased prior but that she objected to the same.
26. PET. PW2 Fred Ayiga Mutokiza, adopted his witness statement dated 26th July 2021. He told the Court that he was a neighbour to the deceased and that he found him already in occupation of LR. No. E. Bukusu/South Kanduyi/86 when he came there in 1983. According to him, he only got to know the deceased's two wives and that the deceased informed him that he had another wife from Uganda. He told the Court that he learnt from the deceased that he had a brother by the name Justus Masinde but he never saw him. The deceased informed him of his death and that he left behind a family for whom he was a guardian to. He told the Court that he is not aware of the exact date the brother, Justus Masinde, died and that he only got to know about the 1st Objector through the deceased. He testified that he did not get to know about the 2nd Objector herein but he is aware that she was the wife to Justus Masinde.
27. On Cross-examination by the Counsel for the Objectors, he told the Court that he never mentioned the Interested Party in his witness statement and that his evidence is based on his statement. He told the Court that he did not know Joseph Wanjala.
28. On re-examination, he told the Court that the deceased told him about a certain child who approached him for fees and whom he referred him to his father one Murutu in Mayanja.
29. At the close of the Petitioner's case, parties were directed to file and exchange their submissions. Only the Objector and the Interested Party duly complied.
30. I have carefully considered both the applications by the Objectors and Interested Party, the rival affidavits as well as their submissions and judicial precedents. I find the following issues necessary for determination namely:
 - a. Whether or not the Objectors/Applicants have the locus standi to institute these proceedings.
 - b. Whether or not the Objector/Applicant are entitled to the relief sought.
 - c. Whether or not the Interested Party should be made as a liability in the estate of the deceased and whether he acquired an indefeasible title to property.



31. The first point for determination is whether or not the Objectors herein have locus standi to bring this application dated 14th April 2016. It was the Objector's case that they are son and wife of the deceased herein respectively and that prior to the revocation of the Grant of Letters of Administration issued to Joseph Wanyama Wanjala on 5th May 1993, they were duly included in the Petition process as beneficiaries to the estate of the deceased herein before the Petitioner excluded them from the process. It was averred that the evidence of PET.PW2 confirmed that the deceased had informed the 1st objector that he was a guardian to the family of his late brother, Justus Masinde who died prior to the birth of the 1st Objector. OB.PW2 on the other hand gave evidence that the 2nd Objector was previously married to the late Justus Masinde and upon his demise, the 2nd Objector got married to the deceased herein and that they had a son who is the 1st Objector herein. On cross examination, she established that although the 1st Objector was brought up at the late Justus Masinde's place, he was sired by the deceased herein. The Petitioner on the other hand claims that the 2nd Objector was married to her brother-in-law, Justus Masinde, and that the father of the 1st Objector herein is one John Murutu from Mayanja and not the deceased.
32. This Court finds that the standard and burden of proof provided by the *Evidence Act* cap 80 ought to be discharged since he who alleges must prove.
- Section 107 of the *Evidence Act* cap 80 of the Laws of Kenya places the burden of proof upon the party that alleges.
33. The 1st Objector relied on the evidence of PET. PW2 who stated that the deceased informed him of the death of Justus Masinde and that Justus Masinde left behind a family to whom he was a guardian. Also it was the evidence of OB.PW2 that the deceased married the 2nd Objector upon the demise of Justus Masinde and that the 1st Objector was sired by the deceased herein. As per the Objectors submissions, it was contended that the evidence before the Court clearly pointed out that the Objectors herein were dependants of the deceased as per section 29 of the *Law of Succession Act* and that the evidence of PET.PW2 is that the deceased confirmed to him that he was a guardian to the family of his late brother, Justus Masinde, who died before the 1st Objector was born, meaning that they fall within the wording of Section 29 of the Succession Act and are beneficiaries.
34. Section 3 (2) of *Law of Succession Act* Cap 160 of the Laws of Kenya provides:
- “References in this Act to “child” or “children” shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, any child born of her out of wedlock and in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility”.
35. I am therefore of the view that, based on the evidence of OB. PW2 and PET. PW2, the 1st Objector was indeed the son of the deceased herein. I further take cognizance of the involvement of the 1st Objector and 2nd Objector by Joseph Wanyama Wanjala in the initial Petition for Grants of Letters of Administration even though it excluded the Petitioner from the list of beneficiaries as proof that both Eliud Simiyu Wanjala and Joseph Wanyama Wanjala, brothers of the deceased, were aware that the 1st Objector was the son of the deceased and that the 2nd Objector was also his wife.
36. My understanding of the matter at hand is that the 1st Objector/Applicant herein brought this suit before Court as a beneficiary of the estate of his late father Laban Khaemba Kisiangani. The exclusion of the 1st Objector and 2nd Objector in the Petition for Grant of Letters of Administration exercise and in the distribution schedule by the Petitioner herein led to the filing of this application.



37. Locus standi is basically the right to appear or be heard in Court or other proceedings. That means if one alleges the lack of the same in certain Court proceedings, he means that the party cannot be heard, despite whether or not he has a case worth listening to. The issue herein is whether the Objector/Applicants lack the requisite locus standi to seek relief from the Court to revoke the grant in question issued to the Petitioner. In my view, issues as regards locus standi are critical preliminary issues which must be dealt with and settled before delving into other substantive issues.
38. The position in law as regards locus standi in succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession. In *Otieno v Ougo* [1986-1989] EALR 468, the Court rendered itself thus:
- “... An administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception.”
39. Under Section 76 of the *Law of Succession Act*, any party interested in the estate of the deceased may bring the application contemplated under that section and/or Rule 2 as read with rule 17(1) of the *Probate & Administration Rules*. Rule 17(1) of the Probate & Administration Rules provides that:-
- “Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has already applied for by another person may do so.”
40. The evidence on record suggests that the 1st Objector/Applicant herein brought these proceedings on behalf of himself as the beneficiary to his father’s estate. The Objector/Applicant’s interest emanates from the fact that he is a beneficiary to the suit property, thus the 1st Objector/Applicant being dependent to his father’s estate within the provisions of Section 29 of the *Law of Succession Act*, he acquires an interest in his father’s estate; the suit property by virtue of his share. Therefore, in the Court’s view, the instant Application is properly before this Court.
41. On whether the Grant of Letters of Administration issued to the Petitioner and confirmed on 19th May 1994, are valid instruments capable of being revoked, the 1st Objector/Applicant resorted to Section 76 of the *Law of Succession Act* Rule 44 of the probate and Administration Rules, which provides that:
- “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.”

42. On the other hand, Rule 44 provides:

44. Revocation or annulment of grant

- (1) Where any person interested in the estate of the deceased seeks pursuant to the provisions of section 76 of the Act to have a grant revoked or annulled he shall, save where the court otherwise directs, apply to the High Court for such relief by summons in Form 107 and, where the grant was issued through the High Court, such application shall be made through the registry to which and in the cause in which the grant was issued or, where the grant was issued by a resident magistrate, through the High Court registry situated nearest to that resident magistrate’s registry.
 - (2) There shall be filed with the summons an affidavit of the applicant in Form 14 for revocation or annulment identifying the cause and the grant and containing the following particulars so far as they are known to him—
 - (a) whether the applicant seeks to have the grant revoked or annulled and the grounds and facts upon which the application is based; and
 - (b) the extent to which the estate of the deceased has been or is believed to have been administered or to remain un-administered, together with any other material information.
 - (3) The summons and affidavit shall without delay be placed by the registrar before the High Court on notice in Form 70 to the applicant for the giving of directions as to what persons (if any) shall be served by the applicant with a copy of the summons and affidavit and as to the manner of effecting service; and the applicant, upon the giving of directions, shall serve each of the persons so directed to be served with a notice in Form 68, and every person so served may file an affidavit stating whether he supports or opposes the application and his grounds therefor.
 - (4) When the persons (if any) so directed to be served (or such of them as the applicant has been able to serve) have been served with a copy of the proceedings, the matter shall be placed before the High Court on notice by the court to the applicant and to every person so served, and the court may either proceed to determine the application or make such other order as it sees fit.
 - (5) Where the High Court requires that notice shall be given to any person of its intention of its own motion to revoke or annual a grant on any of the grounds set out in section 76 of the Act the notice shall be in Form 69 and shall be served on such persons as the court may direct.
43. Under Section 76, a Court may revoke a grant based on the grounds listed above. The revocation may be on courts own motion or on the application of a party. Generally, there are three grounds upon which a grant may be revoked:
- A. Where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some



survivors are not disclosed or the applicant lies that he or she is a survivor when he/she is not, among other reasons. The above ground has been used by Courts to revoke grant in a litany of cases including *Mwathi v Mwathi & Another* 1 EA 229, In the Matter of the Estate of Mwaura Mutungu alias Mwaura Gichingo Mbura alias Mwaura Mbura Nairobi High Court Succession Cause Number 935 of 2003 and *Musa v Musa*, 2002 1 EA 182.

- B. Where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he or she fails to apply for confirmation of grant within the time allowed, or he or she fails to proceed diligently with administration, or fails to render accounts as and when required. For example, In the Matter of the Estate of Mohamed Musa, Mombasa High Court Succession Cause No.9 of 1997, the court revoked grant because the administrators had not kept any records of account of their administration.
- C. Where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his or her duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.
- D. A Court therefore faced with an application for revocation of grant may make such orders as it deems fit and just, given the circumstances of the case. In the Matter of the Estate of Esther Wanjiru Mucheru (deceased), Nairobi High Court Succession Cause No.1996 of 1999, the court noted that section 76 of the [Law of Succession Act](#) is discretionary in that it gives the court discretion whether to revoke or annul a grant.
- E. Moreover, it is the duty of the applicant to prove that any of the grounds set out under Section 76 has been committed before the Court can revoke a grant already issued. This position was adopted by the court in *Kennedy Opiche Olela v William Ogida Ochuodho & another* [2014] eKLR.
44. In the instant case, the application dated 14th April 2016 for revocation is predicated on the grounds that: the Petitioner fraudulently concealed from Court material facts and that the Petitioner failed to diligently administer the estate of the deceased.
45. A perusal of the Court record indicates that the 2nd objector did file the application wishing to be substituted as the Administrator of the estate of the deceased in place of Joseph Wanjala Wanyama and that the same request was granted by the subordinate Court on 4th April 1994. The procedures leading to the confirmation of the Grant of Letters of Administration to the Petitioner was followed. This was within the law as the initial Petition process began with Joseph Wanyama Wanjala in 1992 and by the time the Petitioner was getting substituted as an Administrator, the sixty day statutory period before confirmation of the grant had lapsed.
46. I take issue with the fact that despite taking on the administration role of the estate of the deceased, the Petitioner did not conduct her duty diligently as expected of her. The Petitioner chose to disregard the Objectors who were clearly the family of the deceased and proceeded to exclude them in the apportionment of estate of the deceased. From her evidence as PET. PW1, she referred to the 2nd Objector as the wife of Justus Masinde and the 1st Objector as the son of another man named Murutu. The evidence of OB. PW1 clearly showed that his brother married the 2nd Objector prior to marrying the Petitioner and it was true that he sired the 1st Objector with the 2nd Objector. From the Petition documents on record which brought about the grant of Letters of Administration dated 5th May 1994,



the brother of the deceased listed the Objectors as beneficiaries to the estate of the deceased and that during her substitution, she was aware of the same but later elbowed them from distribution.

47. I am therefore persuaded by the Objectors/Applicants arguments that the Petitioner failed to proceed diligently with the administration of the estate by her conduct towards the Objectors/Applicants, beneficiaries, of the estate of the deceased herein. I find that pursuant to section 76 of the [Law of Succession Act](#), the Objectors/Applicants have satisfied the Court or made a case to warrant the revocation of the grant. In this regard, the application dated 14th April 2016 must succeed. Even though the objectors seek for revocation of grant, i find that the same will take the parties back in view of the age of the matter. The appropriate approach should be to cancel the certificate of confirmation of grant and have the property revert back to the deceased for distribution to the beneficiaries.
48. On the second limb, the Interested Party herein filed an application dated 22nd June 2017 seeking to be listed as a liability to the estate of the deceased. The Interested Party duly established that vide the sale agreement executed on 31st December 1991, together with Joseph Wanyama Wanjala, the first Administrator of the estate of the deceased agreed that he will sell to him six acres from LR. No. E. Bukusu/S. Kanduyi/86 registered in the name of the deceased for Kshs. 210,000/= . It was agreed that after execution of the same, the Interested Party pays the outstanding loan with KCB-Bungoma Branch on behalf of Joseph Wanyama Wanjala, the administrator of the estate. OB. PW2 witnessed the agreement together with William Masinde Simiyu.
49. The Petitioner on the other hand claimed that the Interested Party entered into an agreement with Joseph Waanyama Wanjala and not the deceased herein and that Joseph Waanyama Wanjala had no authority to deal in LR. No. E. Bukusu/S. Kanduyi/86.
50. A perusal of the Court record indicates that Joseph Wanjala Wanyama did Petition the subordinate Court for the Grant of Letters of Administration on 10th September 1992. This was after the execution of the sale agreement on 31st December 1991.
51. It is clear that the alleged agreement was not executed during the deceased's lifetime and did not involve the deceased, but after his death, involving one of his brother, Joseph Wanjala Wanyama, before he had obtained the Confirmed Grant of Letters of Administration to enable him salvage LR. No. E. Bukusu/S. Kanduyi/86 which formed part of the estate of the deceased. That would mean, by dint of Section 79 of the [Law of Succession Act](#), the assets of the estate had vested in the estate of the deceased. He therefore did not have power by dint of Section 82 of the [Law of Succession Act](#), to sell the property. He could not enter into a binding contract with the Interested Party over any of the assets that made up the estate of the deceased.
52. By dint of section 45 of the [Law of Succession Act](#), any transaction between the deceased's elder brother, Joseph Wanjala Wanyama and any other person amounted to intermeddling with the estate of the deceased. The sale agreement contravened sections 45 and section 82 of the [Law of Succession Act](#). He had nothing to sell as he did not have capacity to do so.. The Interested Party did produce the notification of sale of LR. NO. E.Bukusu/S. Kanduyi/86 and that KCB Bungoma had the statutory power of sale to recover the extended charge. Upon the recovery of the title deed and handing it over to the estate of the deceased, the then proposed Administrator Joseph Wanjala Wanyama, lacked the power to deal with the assets of the deceased or execute a sale agreement with the Interested Party for purchase of six acres on LR. NO. E.Bukusu/S. Kanduyi/86. The property in question, therefore, had not yet vested in him as Administrator by virtue of section 79 of the [Law of Succession Act](#), and therefore he could not exercise the powers of sale over that property given by section 82 of the [Law of Succession Act](#). He had no title to the property and had no power to sell it. Consequently, this simply means that the Interested Party was not a bonafide purchaser for this Court to cater to his interest. Had the



interested party dealt with the ban directly as a purchaser of the property that had been put up on sale through the bank's statutory power of sale, then he would have had himself registered as owner thereof and could have avoided this imbroglio in that he has now found himself in. It is instructive that the said brother of the deceased had not obtained the requisite confirmed grant to enable him to enter into a deal with the interested party. Therefore, his application dated 22nd June 2017 must fail.

53. The only remedy available to the Interested Party, with regard to the transactions, is to pursue this issue in the relevant Court. The Interested Party does not fall within the category of creditors or liabilities. He had no role nor place in the succession cause, to warrant him being enjoined to the cause as an Interested Party, or in any other capacity for that matter. His remedy lay in suing the deceased's estate to either recover the land that he purchased at the auction sale or for a refund of the purchase money. Disputes on ownership of or title to land were not suitable for determination within a succession cause but in the Environment and Land Court.
54. The High Court has no jurisdiction to make determinations relating to the claimed six acres of land from LR. NO. E.Bukusu/S. Kanduyi/86. The jurisdiction lays with the Environment and Land Court by virtue of Articles 162(2) and 165(5) of *the Constitution*, the *Environment and Land Court Act* (No. 19 of 2011), Sections 2 and 101 of the *Land Registration Act* (No. 3 of 2012) and Sections 2 and 150 of the *Land Act* (No. 6 of 2012). The Interested Party should agitate his claims through the channels established under those statutes. It is noted that the said interested party confirmed on cross-examination that he has already lodged a suit in the Environment and Land Court. He should thus proceed in that forum.
55. In view of the foregoing observations, the following orders are hereby made:
- i. The Objectors summons for revocation of grant dated 14/4/2016 is allowed with no order as to costs.
 - ii. The interested party's application dated 22/6/2017 is dismissed with no order as to costs.
 - iii. The certificate of confirmation of grant issued to the Petitioner on 19/5/1994 is hereby cancelled.
 - iv. The registration of parcel number L.r East Bukusu/south Kanduyi/86 in the names of the Petitioner herein and any subsequent transfer to third parties are hereby cancelled and that the same do revert in the name of the deceased Laban Khaemba Kisiangani forthwith and be available for distribution to the beneficiaries.
 - v. The petitioner is directed to file fresh summons for confirmation of the grant and serve it upon all the beneficiaries within thirty (30) days from the date of this ruling.
 - vi. Matter shall be mentioned on the 25/9/2023 to confirm compliance and for further directions,

Orders accordingly.

DATED AND DELIVERED AT BUNGOMA THIS 28TH DAY OF JULY 2023.

D. KEMEI

JUDGE

In the presence of:

No appearance Paul Juma for Objectors/ Applicants

Mwangi for Petitioner/ Respondent



Wamalwa R for Otsyula for Interested party

Kizito Court Assistant

