



**In re Estate of George Kulati Lilechi (Deceased) (Succession Cause  
903 of 2015) [2023] KEHC 23451 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 23451 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 903 OF 2015  
PJO OTIENO, J  
SEPTEMBER 29, 2023**

**BETWEEN**

**TAPHROZA IDAYA NANGAME (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF STEVENS NANGAME OBEDE) ..... 1<sup>ST</sup> OBJECTOR**

**SHEM KAISHA ..... 2<sup>ND</sup> OBJECTOR**

**AND**

**OSBORN SHIMOLI KULATI ..... PETITIONER**

**RULING**

1. Before me is the applicant's summons for revocation of grant application dated November 30, 2022 brought under section 76 of the [Law of Succession Act](#) and rule 44(1) of the [Probate and Administration Rules](#) seeking the following orders: -

- a) That the grant of letters of administration intestate issued to Osborn Shimoli Kulati on November 9, 2017 and the certificate of confirmation of grant issued by this Honourable Court to Osborn Shimoli Kulati on October 15, 2020 together with the consequential orders pursuant thereto be annulled, revoked and/or set aside.
- b) That the subsequent registration of land parcel nos. Kakamega/Lugari/883 and Kakamega/Lugari/880 in the names of Osborn Shimoli Lugati and Hannginton Pambala Kulati respectively be revoked and/or cancelled and the title reverts to the deceased's names George Kulati Lilechi.
- c) That upon the grant of prayer 2, this Honourable Court be pleased to compel the petitioner herein to transfer Kakamega/Lugari/883 and Kakamega/Lugari/880 to the Estate of Stevens Nangame Obede and Shem Kaisha respectively.



- d) Costs of this application be provided for.”
2. The application is supported by the affidavits of Tafrosa Idaya Mangama and Shem Kaisha both sworn on November 30, 2022. In the affidavit sworn by Tafrosa Idaya Mangama, she avers that her late husband, Stevens Nangame Obede, purchased a portion of 2 acres from the deceased herein which was excised from land parcel no. Kakamega/Lugari/49 with her sister in law by the name of Evelyne Kenyolwa purchasing 5 acres from the said land. She asserts that the purchase price was paid in full using one single cheque for the two parcels. The property was subsequently subdivided by the deceased into two and the 2 acres her late husband had purchased formed was registered as Kakamega/Lugari/883 but not transferred.
  3. It is her further assertion that the deceased filed Bungoma CMCC No. 525 of 1998 attempting to evict her from Kakamega/Lugari/883 on allegations that her late husband had not paid the full purchase price. On her part, she filed Kakamega CMCC No. 849 to compel the deceased to transfer the land in her late husband’s name which suit was withdrawn on the understanding that the dispute had been settled out of court though an intended transfer but same was never effectuated as the deceased refused to attend the land control board. No consent is exhibited on the terms of settlement. As she swore the it was revealed that Kakamega MCELC No. 108 of 2022 had been filed seeking that she be evicted from the land.
  4. She then contends that the grant was obtained fraudulently by failure to disclose her husband’s claim to the land.
  5. Having laid her claim on the purchase, she then asserts that the grant herein was obtained fraudulently by way of concealment of material facts relating to the deceased’s estate since she was in occupation of the two acres of Kakamega/Lugari/883 and that this succession cause was filed secretly.
  6. In the second affidavit of Shem Kaisha sworn on November 30, 2022, he avers that he is a beneficial owner of Kakamega/Lugari/880 having purchased the same from the deceased, paid the purchase price leaving a balance of Kshs to be paid upon transfer. He claims that the petitioner herein obtained the grant and a certificate of confirmation of grant by concealing that material fact.

### **Response to The Application**

7. In the affidavit of Osborn Simoli Kulati sworn on 18<sup>th</sup> January, 2023, he responds to the application by stating that the orders sought by the objectors are in the nature of a claim over land and that this court lacks the jurisdiction to entertain land matters as envisaged under article 162(2)(b) of the [Constitution of Kenya](#), 2010. He further claims that there exists a land case that is, Kakamega MCL & E No. 179 of 2022 and 180 of 2022 touching on the parcels in dispute and that Kakamega CMCC No. 849 of 1998 initiated by the 1<sup>st</sup> objector was dismissed for want of prosecution, and prays that the objection be dismissed.
8. On the directions by the court, parties have filed respective submissions in support and opposition to the application.

### **Objectors’/Applicants’ Submissions**

9. It is their joint submission, both take the position that since money was paid for the purchase of part of the deceased’s estate, they became creditors within the meaning of section 76 of the [Law of Succession Act](#) and they thus have the right to apply for revocation of a grant. They further claim that the section 79 of the [Law of Succession Act](#) places an obligation on the petitioner as a personal representative to fulfill those obligations that the deceased had during his lifetime including completing sale transactions. They



rely on the case of *In re Estate of Estate of Daudi Owino Olak (Deceased)* [2022] eKLR where it was observed, of while citing *In re Estate of David Kyuli Kaindi (Deceased)* [2015] on the administrators duty to render accounts: -

“The obligation to account is tied up with the fact that personal representatives are also trustees. They are defined as such in the *Trustee Act*, cap 167, Laws of Kenya, at Section 2. This is so as property belonging to another vests in them in their capacity as personal representatives, and they hold the same for the benefit of others – beneficiaries, heirs, dependants, survivors, creditors, among others. They stand in a fiduciary position in relation to the property and the beneficiaries. As they hold the property for the benefit of others or on behalf of others – they stand to account to the persons for whose benefit or on whose behalf they hold the property. It is an equitable duty and a statutory obligation.”

### **Petitioner/Respondent’s Submissions**

10. It is submitted on behalf of the petitioner that this court does not have the jurisdiction to resolve proprietary interest on the alleged contracts on land and place reliance on two authorities. One being Nakuru HC Succession Cause No. 488/2020 In the matter of the estate of the late Jonathan Kinyua Waititu where the court held as follows: -

“...The mandate of the probate court under the *Law of Succession Act* is limited. It does not extend to determining issues of ownership of property and declaration of trusts. A party who wishes to have such matters resolved ought to file a substantive suit to be determined by the Environment and Land Court.”

11. The decision in *Elijah Gachoki & another v Stanley Mugo Kariuki HC SUCC No. 90/2013* is also cited for the holding that: -

“It is also important to note that the *Law of Succession Act* cap. 160 Laws of Kenya really deals with intestate and testamentary succession and administration of estates of deceased persons. The architectural design of the Act is not meant to deal with disputes related to land and in this regard I agree with the 2<sup>nd</sup> Respondent that such disputes whether based on trust or contractual obligations should be left to the Environment and Land Court which by law is seized with the jurisdiction and constitutionally mandated to deal with such disputes under article 162 (2) of the *Constitution*.”

### **Issue, Analysis and Determination**

12. The gravamen of the applicants’ claim is that they both purchased portions of the deceased’s estate which they claim they are entitled to and for that reason they claim that the confirmed grant issued by this court on October 15, 2020 ought to be revoked. For my determination is whether the application is merited and whether this court sitting as a probate court can determine the applicants’ entitlement to the claimed asset?
13. Section 76 of The *Law of Succession Act* sets the confines within which a grant may be revoked. Here the applicants rely on the alleged concealment of material facts it being alleged that the petitioner/respondent failed to disclose to the court that the deceased had sold part of the estate to the applicants. From the documents in the file, I have noted the existence of a dispute between the applicants and the deceased during his lifetime on whether sale took effect or not. The 1<sup>st</sup> applicant asserts that the deceased claimed that he did not receive the full purchase price for the property they purchased and the petitioner in this case equally disputes the sale. The question that arises in this case is the legality



of the sale agreements between the applicants and the deceased, and whether it was ever perfected. Determination of disputes relating to the use occupation and or title to land is a preserve of the Environment and Land Court as set out in section 13 of the [Environment and Land Court Act](#), No. 19 of 2011.

14. The court with the jurisdiction to determine the applicants' entitlement to properties forming part of the deceased's estate is the Environment and Land Court. This should now be well settled but if there be any doubt then one needs to cite [In re Estate of Prisca Ong'ayo Nande \(Deceased\)](#) [2020] eKLR where it was observed:

“Was the applicant a bona fide purchaser of property from the deceased to warrant being treated as a creditor of the estate, who ought to be catered for from the estate? Documents were placed on record, to demonstrate that there were agreements of sale and that money changed hands. However, I have no jurisdiction to make a finding one way or the other, with regard to whether the alleged sales were valid and resulted in the applicant acquiring a stake in the estate. That is a matter which revolves around title to land. Under articles 162(2) and 165(5) of the [Constitution](#), I have no jurisdiction over that question. The parties are better of placing the issue before another forum for determination of the question. I shall not pronounce as to whether the applicant was a bona fide creditor of the estate, entitled to be allocated shares in the estate, he shall have to prove his entitlement to the property he claims he bought from the deceased by commencing suits against the estate at the appropriate forum.”

15. The position of this court on its mandate, and therefore jurisdiction, as a succession Court, is that the same is limited to ascertainment of the property of the estate, the beneficiaries and those beneficially entitle and how the net estate may be shared among the determined beneficiaries. In this matter the Protestors are not asserting the rights of a beneficiary or a beneficial interest but rather seeking to enforce an alleged contract of sale.
16. The court entertains no doubt that, the two cannot fit in the category of those entitled to inherit. The [Succession Act](#) identifies those entitled to share in the estate in Part V sections 26, 28, 36 & 39 to include; spouse(s), children, parents and siblings of the deceased and other relatives of the deceased up to the 6<sup>th</sup> degree. Here the protestors have excluded selves from the meaning of persons beneficially entitled to share in the estate by asserting the rights of buyers.
17. Their claim is not one for inheritance but rather a right to enforce a contract for the sale of land. As presented, the claim in the nature of use, occupation of and title to land must be directed to the court to which the constitution assigns it.
18. For this court, since jurisdiction is everything, wherever it comes to the realization and conclusion that it lacks jurisdiction, it has nothing else but to down its tools. Here the Court finds that the claim by the Protestors may be pursued before the appropriate Court mandated to resolve disputes about use and occupation of and title to land because this Court has no jurisdiction over the matter.
19. In conclusion therefore, the Court lacks jurisdiction to entertain the claim which is therefore dismissed with costs to the Respondents.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2023**

**PATRICK J. O. OTIENO**

**JUDGE**



**In the presence of:-**

**Miss Ogendi for the Objectors/Applicants**

**Ms. Shimoli for the Petitioner/Respondent**

**Court Assistant: Polycap**

