



In re Estate of Richard Otieno Odongo (Deceased) (Succession Cause 143 of 2015) [2023] KEHC 22675 (KLR) (29 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22675 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 143 OF 2015
RE ABURILI, J
SEPTEMBER 29, 2023**

BETWEEN

MAURICE OTIENO ODONGO APPLICANT

AND

MONICA OBADO ODONGO RESPONDENT

RULING

1. This Ruling determines the Summons for rectification of grant dated 24th February 2023 supported by the affidavit sworn by Maurice Otieno Odongo on 24th February 2023.
2. The applicant asserts and deposes that the grant letters of administration intestate was issued and confirmed on 30th April 2018 but that the Petitioner who is his mother, has refused, in cohorts with the Applicant's elder brother, to surrender the half share to the applicant.
3. The rectification sought is that the Petitioner, Monica Obado should get ½ share of Kisumu/ Nyalunya/2550 while the remainder share should go to the applicant herein Maurice Otieno Odongo.
4. The applicant asserts that the grant as confirmed leaves the applicant at the mercy of the petitioner and that despite the applicant's efforts to have the land registered in his name including inviting a land surveyor to have the issue dispensed with, his efforts have failed to bear fruits because of lack of co-operation from the petitioner.
5. The applicant claims that he is fearful of suffering damage and loss if the applicant is denied his ½ share of LR Kisumu/Nyalunya/2550, which he is lawfully entitled to.
6. The application was argued orally on 26th June 2003 but I observed that the Petitioner though not very old, was a sickly lady and whenever she attended court, she was always assisted by her elder son William Onyango Odongo who even appeared as her intermediary on 26th June 2023.



7. On behalf of the Petitioner, William Onyango Odongo, her son submitted that their mother shared out the land to them and he has his own portion where he has constructed. He maintained that each one of them have their portions of their late brother's estate. He submitted that the applicant caused the land to be registered in his name fraudulently.
8. In a rejoinder, the applicant submitted that all that he wanted was his ½ share of land as he has nowhere to plough and that William had refused to move out of the applicant's land. He wanted each of them to live their separate lives. He urged the court to give him his land.

Determination

9. I have considered the application for rectification of the grant. The issue is whether the application has merit as filed and argued by the applicant, even assuming there was no response or opposition thereto.
10. I take cognizance and appreciate that self-representation by lay a person is a big challenge in this country which often times denies people access to justice.
11. However, in the circumstances of this case, I shall endeavour to ensure that justice is done and seen to be done. This is by giving the parties hereto a short history where this matter has come from this far.
12. The estate is that of Richard Otieno Odongo who is the son to the Petitioner Monica Obado Odongo and is also a brother to the applicant herein Maurice Otieno Odongo. The deceased left behind an estate intestate, comprising land parcel No. Kisumu/Nyalunya/2550 measuring 0.31 Hectares registered in his name. He died unmarried and left no child alive. His father also predeceased him.
13. Vide this succession cause, his mother petition for letters of administration intestate to administer his estate and on 23rd April 2015, a grant was issued to her. Soon thereafter the applicant herein filed objection to making of grant which was belated because such objection under section 68(1) of the *Law of Succession Act* and rule 7(4) and 17(1) of the *Probate and Administration Rules* could only have been made before grant was issued, whether before or after gazettelement.
14. The applicant off course should have filed a protest to the confirmation or summons for revocation of the grant issued. His reasons were that the deceased's land was his vide an arrangement in the family where part of his land that he succeeded from his father, had been surrendered to his step brother on the understanding that the deceased Richard Otieno Odongo would also surrender a portion of his land now in issue, to the applicant.
15. That aside, the objection proceedings were heard and determined on merit upon which the petitioner/respondent herein filed Summons for confirmation of grant and the court confirmed the grant and issued the certificate of confirmation of grant on 30th April 2018.
16. That certificate and the orders of confirmation of grant still stand. In the distribution schedule, land parcel Kisumu/Nyalunya was ordered to be registered in the name of the Petitioner Monica Obado Odongo in trust for herself and in trust for Maurice Otieno Odongo in equal shares.
17. On 19th September 2018, the applicant herein applied for rectification of that certificate of confirmation of grant to correct his name to read Maurice Odongo Odongo instead of Maurice Otieno Odongo and vide a ruling of November 19, 2018, the name was corrected.
18. It later transpired and this was brought to the attention of the court on 28th October 2019 that despite the certificate of confirmation of grant reading registration of the land in issue to be in the name of the petitioner to hold it in trust for herself and the applicant herein, in equal shares, the applicant had caused the said land to be registered in his name exclusively.



19. The court questioned the applicant how he became the sole registered proprietor of the land contrary to the order of confirmation of the grant and the applicant admitted that he knew it was a fraud on his part to have caused the whole land to be registered in his name.
20. The court then ordered that “In light of the express admission of the applicant that he was involved in a fraudulent transfer of the land to his name, the court directed that the applicant herein be arrested and it also proceeded to order for the revocation of the registration of the applicant herein as proprietor of LR Kisumu/Nyalunya/2550, as it was acquired without lawful order of the court.
21. The applicant was arrested and the court directed him to cause the land to revert to the Petitioner’s names.
22. Later on 26th April 2021, the Petitioner informed the court that the land was now registered in her name as shown by the certificate of official search.
23. On 21st March 2022, this court issued an order to safeguard the subject matter by ordering that there shall be no dealings of whatever nature of land parcel Kisumu/Nyalunya/2550.
24. The applicant also filed a notice of motion on 3rd November 2022 to restrain his brother William Onyango Odongo from trespassing on the suit land.
25. I further observe that vide notice of motion dated 19th September 2019, the petitioner had applied for removal from the Land Register, the applicant’s name in respect of the suit land and for the register to reflect her names as per the certificate of confirmation of grant.
26. Vide a Judgment delivered on 13th December 2022, this court observed that vide an order of 28th October 2019, F. A. Ochieng J. had already nullified that fraudulent registration on account of admitted fraud by the applicant.
27. I therefore directed that the order thereof to be served on the Land Registrar together with the Ruling thereof to effect the correct registration.
28. The applicant is now back in this court seeking for rectification of grant to have his name be registered as the owner of ½ of the suit land.
29. This is how cases go round the court and stay there forever, creating backlog that is uncalled for.
30. This is one of the case files that ought to have been closed long ago but because of ignorance whether deliberately or otherwise, the applicant keeps returning to this court in a matter that he was responsible for fraud and wants this court to cleanse or sanitise his fraudulent dealings contrary to the orders of the court.
31. The applicant has never challenged the confirmed grant which also gave him ½ share of the deceased’s estate on condition that his mother, the petitioner herein holds the whole land in trust for herself and the applicant, noting that the whole land never belonged to him in the first instance, as correctly stated by Majanja J in the ruling of 19th March 2018, save the this ½ portion which was to compensate him for the land which was given away from him to his step brother. The court further ordered that as Monica the Petitioner had sold part of the land and that she resided on the said land, she retained the life interest on the part that Maurice would be entitled to meaning, until Monica leaves this universe, Maurice cannot claim to be the absolute owner of the ½ portion of land which Monica is holding in trust for him.
32. This order in my view was intended to protect the right and interests of widows so that they are not displaced from their abode.



33. It is for that reason that I find and hold that the application herein by the applicant seeking for rectification of the confirmed grant is misplaced and not merited. I find no error in the said certificate of confirmation of grant, capable of being rectified.
34. In the end, I hereby dismiss the application dated 24th February 2023. I hasten to add that in matters trust in land, this court's jurisdiction was ousted. The summons for rectification of grant dated 24th February 2023 is dismissed with an order that the parties being close family members, they each bear their own costs of the summons and this file is closed.
35. No further applications shall be entertained as parties have the opportunity to seek appropriate remedies before the Environment and Land Court should need arise.
36. File closed.
37. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 29TH DAY OF SEPTEMBER, 2023

R. E. ABURILI

JUDGE

