



**In re Estate of Joshua Ongaro Mirimo (Deceased) (Succession Cause
54 of 2010) [2023] KEHC 22830 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22830 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 54 OF 2010
WM MUSYOKA, J
SEPTEMBER 28, 2023**

RULING

1. The deceased herein died on 4th November 1997. There is a letter from the Chief of Agenga Location, dated 31st August 2009, which indicates that the deceased was proprietor of Samia/Budongo/267. The letter does not state who survived the deceased, instead it lists persons, who it is said the deceased had transferred land to, being Humphrey J. Ongaro, Thomas O. Mirimo, Lawrence O. Ongaro and Josephat Achwada.
2. Representation to the intestate estate was sought by Humphrey Juma Ongaro, in his capacity as a son of the deceased, through a petition filed herein, on 19th February 2010. The petitioner listed himself, Thomas Ongaro Mirimo, Lawrence Opiyo Ongaro and Josephat Achwada, as sons of the deceased, and his survivors; and Samia/Budongo/267, as the asset that the deceased died possessed of. Letters of administration intestate were made to him on 15th July 2010, and a grant was duly issued, on even date. I shall refer to him as the administrator. The grant has not been confirmed, but there are pending summonses for confirmation of grant, dated 21st July 2010 and 19th May 2022.
3. I am called upon to determine a summons for revocation of grant, dated 6th December 2013, brought at the instance of Vincent Ouma Khahubi. I shall refer to him as the applicant. He avers that Samia/Budongo/267 did not belong to the deceased herein, and, therefore, it does not vest in his estate, as it was owned and occupied by his own father, the late Khahubi Ochwila. He asserts that the deceased was a next door neighbour, who was the owner of an adjoining parcel of land. He states that there was a land dispute between the family of the deceased and his own father, in Case No 7 of 1967, which was resolved in favour of his family. He states that his father owned Samia/Budongo/316, and cultivated on Samia/Budongo/267. He further states that the matter went before the Funyu District Land Disputes Tribunal, where it was ordered that his family be given 5 acres. His family was not satisfied, hence it filed judicial review proceedings, where that order was quashed. He argues that following the quashing of the Tribunal order, the issue of the ownership of Samia/Budongo/267 remained unresolved, and the estate herein ought not be distributed before ownership is determined. He has attached a limited grant ad litem in respect of the estate of the late Khahubi Ochwila, dated 4th November 2013, appointing him interim administrator; an adjudication record, in



- respect of Samia/Budongo/267, dated 18th February 1971, depicting Ongaro Mirimu as landowner; and court proceedings in a matter that was filed on 12th February 1968.
4. The administrator replied to the application, vide an affidavit that he swore on 13th March 2014. He avers to be a son of the deceased. He states the deceased had 8 sons, and Samia/Budongo/267 was meant to be inherited by the 4 sons named in the petition, as the other 4 were not entitled to a share in it. He asserts that neither he nor the deceased was related to the applicant or his father, nor was the applicant or his father entitled to Samia/Budongo/267. He states that the deceased herein inherited Samia/Budongo/267 from his own father. He refers to land adjudication proceedings in 1970, which awarded Samia/Budongo/267 to the deceased herein, as against the father of the applicant. He states that the Funyula land disputes tribunal lacked jurisdiction over the matter. He asserts that the issue of ownership of the land was resolved by the Land Adjudication Arbitration Board in its decision of 14th July 1970, a copy of which is annexed to his affidavit.
 5. The applicant filed a further affidavit, sworn on 31st January 2023, deposing the same facts as appear in his affidavit of 6th December 2013. He swore and filed another affidavit on 15th March 2023, to state that the Busia court in Busia CMCCC No 6 of 2009, had ordered him and the administrator, to initiate joint succession proceedings, out of which he was to get 5 acres out of Samia/Budongo/267. He attaches an order made in Busia PMC LC No 6 of 2009, given on 12th March 2009, and issued on 2nd March 2023.
 6. The administrator swore a further affidavit, principally to attach a copy of a judgment delivered in Busia ELC No 123 of 2014. He asserts that the said judgment affirmed that Samia/Budongo/267 belonged to the deceased. He asserts that he followed due process to obtain the grant, and that the applicant had not demonstrated that he was an heir or dependant or liability of the deceased. He further asserts that the applicant had not demonstrated that the grant was obtained through a fraudulent nor defective process.
 7. Although directions had not been given on how the revocation application was to be disposed of, it would appear that the parties opted for written submissions. Both sides did file, and I have read through their respective written submissions.
 8. The discretion to revoke grants is given under section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya. A grant would be revoked on account of 3 general grounds: problems or difficulties at the point of obtaining the grant, challenges with administration, and where circumstances change rendering the grant inoperative. In the instant case, the grant is sought to be revoked on the first general ground.
 9. I understand the applicant to be saying that the estate property does not vest in the estate of the deceased herein, but that of his father, and for that reason the grant ought not to have been made. Would that be justification for revocation of the grant? I do not think it is. The applicant does not claim to be a child of the deceased, nor a dependant nor a creditor of the estate. What he claims is some right or interest in the land sought to be distributed. The administrator is a child of the deceased. He has a right, under Part V and section 66 of the *Law of Succession Act*, to representation in the estate of his late father. There is no evidence that he practiced any form of fraud or misrepresentation to obtain the grant. I note that he omitted 4 of his 8 brothers from this process, by his own admission, but that does not affect the applicant herein, and it is an issue that can be redressed at confirmation. The applicant is not entitled, in any shade or colour, to representation in the instant estate, to justify the grant made herein being revoked.
 10. As indicated above, the applicant asserts that the estate asset accrued to his father and not the deceased. Well, the title documents exhibited demonstrate that the same was registered in the name of the



deceased, after the adjudication process. There was litigation over the property, going way back to 1970, during the land demarcation and adjudication process, which was resolved in favour of the deceased herein, and registration was done in his favour. Subsequent litigation was completely unnecessary or needless or pointless. What should have been done was to challenge the decision of the Land Adjudication Arbitration Board of 14th July 1970. There has to be an end to litigation. The omission to challenge that 1970 decision, by way of judicial review, at the High Court, was fatal. The applicant's family lost out finally and completely in 1970, and all the litigation thereafter amounted to nothing more than flogging a dead horse. The final nail to the coffin was hammered in the judgment of 20th January 2022, in Busia ELC No 123 of 2014. The order made in Busia PMC LC No 6 of 2009 is of no consequence, for the reasons given above, and, in any case, it makes no reference to Samia/Budongo/267. The applicant has no claim to the estate, which can be agitated in these proceedings. He cannot possibly make out a case for revocation of the grant herein, on the grounds cited.

11. In the end, I find and hold that the revocation application, dated 6th December 2013, is unmerited, and I hereby dismiss the same with costs. I hereby grant leave to the applicant to appeal, should he be aggrieved. As a way forward, let the administrator move to have his grant confirmed, on the basis of the 2 pending summonses for confirmation of grant. I shall give the matter a date for mention, for directions, on the said applications for confirmation of grant. It is so ordered.

DELIVERED DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 28TH DAY OF SEPTEMBER 2023

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Odhiambo, instructed by Wasuna & Company, Advocates for the applicant.

Mr. Were, instructed by Gabriel Fwaya, Advocate for the administrator.

