



**In re Estate of Johnstone Habil Olembo (Deceased) (Succession Cause  
1598 of 2012) [2022] KEHC 14778 (KLR) (Family) (28 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14778 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1598 OF 2012  
MA ODERO, J  
OCTOBER 28, 2022**

**BETWEEN**

**DOREEN OWINY OLEMBO ..... APPLICANT**

**AND**

**BEATRICE NABWIRE OLEMBO ..... 1<sup>ST</sup> RESPONDENT**

**ANDREW INGUTIA OLEMBO ..... 2<sup>ND</sup> RESPONDENT**

**NOOR HASSAN SHEIKH ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. Before this court is the summons for Revocation of Grant dated February 1, 2018 filed by Doreen Owiny Olembo the Applicant/Beneficiary seeking the following orders:-
  1. Spent
  2. Spent
  3. That the certificate of confirmation of Grant to the estate of the late Johnstone Habil Olembo issued to Beatrice Nabwire Olembo and Andrew Ingutia Olembo on 12<sup>th</sup> June 2013 be annulled and/or revoked.
  4. That costs of the application be borne by the Respondent.
  5. That the court grants any other remedy that it deems fit in the circumstances.”
2. The summons was premised upon Section 47 and 77 (d) (ii) and (iii) of the *Law of Succession Act* Cap 160 Laws of Kenya and Rule 44 of the Probate and Administration Rules and all other enabling provisions of the law and was supported by the Affidavit of even date sworn by the Applicant.



3. The Application was opposed through the Replying Affidavit dated 23<sup>rd</sup> February 2018 sworn by Beatrice Nabwire Olembo who is one of the Administrators of the estate. Further Affidavits in support of the Reply filed by the Respondent and in opposition to the summons for revocation of Grant were filed by the other beneficiaries to the estate namely - Sarah Jedidah Olembo, Janelyn Amimo Olembo, Ronald Ariba Olembo and Gloria Olembo who all filed Affidavits dated 23<sup>rd</sup> February 2018.
4. The 2<sup>nd</sup> Administrator ANdrew Ingutia Olembo filed a Replying Affidavit dated which was filed in court on 26<sup>th</sup> February 2018.

## **Background**

5. This Succession Cause relates to the estate of the late Johnstone Habil Olembo(hereinafter ‘the Deceased’) who died intestate on 2<sup>nd</sup> February 1996. A copy of the Death Certificate Serial Number 921268 is annexed to the summons for Petition of Grant of letters of Administration Intestate dated 6<sup>th</sup> February 2012.
6. Vide a letter dated 3<sup>rd</sup> March 2011 authored by the Chief of Nairobi West Location it was indicated that the Deceased was survived by the following persons:-
  - (1) Doreen Owiny Olembo – Daughter
  - (2) Beatrice Nabwire Olembo – Daughter
  - (3) Janelyn Amimo Olembo – Daughter
  - (4) Sarah Jedidah Olembo – Daughter
  - (5) Ronald Areba Olembo – son
  - (6) Andrew Ingutia Olembo – son
  - (7) Gloria Andisi Olembo – Daughter
7. From the evidence it transpired that the family of the Deceased was what is now commonly referred to as a ‘blended family’. The Deceased and his wife got married to each other and each came into the union with children from previous relationships. The Deceased was the biological father of Janelyn, Ronald and Andrew whilst his wife came into the marriage with Doreen (the objector herein), Beatrice and Sarah. Following the marriage, the Deceased and his wife together bore one child, a daughter Gloria Andisi Olembo who was the last born in the family. The children however all lived together as one unit with their parents.
8. Following the demise of the Deceased two (2) of his children Beatrice Nabwire Olembo and Andrew Ingutia Olembo applied for and obtained Grant of letters of Administration to his estate. The said Grant was issued on 19<sup>th</sup> November 2012.
9. The Administrators thereafter filed a summons for confirmation of Grant dated 20<sup>th</sup> March 2013, (Annexure D00 1a to Supporting Affidavit). The Grant was duly confirmed and a certificate of confirmed Grant dated 12<sup>th</sup> June 2013 was issued by the court (Annexure ‘D00 1b’ to the Supporting Affidavit).
10. The confirmed Grant set out the mode of Distribution of the estate as follows:-



Name	Description of property	Share of heir
Doreen Owiny Olembo Beatrice Nabwire Olembo Janelyne Amimo Olembo Sarah Jeddidah Olembo Ronald Ariba Olembo Andrew Ingutia Olembo Gloria Andisi Olembo	LR No. 209/10721/14	13.5% 13.5% 13.5% 13.5% 13.5% 13.5% 19%
Ronald Ariba Olembo Andrew Ingutia Olembo	LR No. East Bunyore/ Iboona/1080	50% 50%
Doreen Owiny Olembo Beatrice Nabwire Olembo Janelyne Amimo Olembo Sarah Jeddidah Olembo Ronald Ariba Olembo Andrew Ingutia Olembo Gloria Andisi Olembo	Insurance benefits held by Jubilee Insurance Company	14.3% 14.3% 14.3% 14.3% 14.3% 14.3% 14.3%

11. Thereafter in a bid to distribute the estate as per the confirmed Grant the Administrator entered into an Agreement for sale dated 12<sup>th</sup> October 2017 with one Noor Hassan Sheikh for the sale of an asset of the estate being LR No. 209/10721/14 Halai Estate South C, Nairobi (hereinafter referred to as the ‘South C Property’). The Objector then filed this summons for revocation of Grant dated 1<sup>st</sup> February 2018 objecting to the sale of the said property. Conservatory orders were issued on 5<sup>th</sup> February 2018 restraining the respondents from completing the sale of LR No. 209/10721/14 Halai Estate, South C, House No. 70 Nairobi.

### The Evidence

12. The hearing commenced before Hon Justice Onyiego who heard the Objector’s case. Following the transfer of the trial Judge to Mombasa High Court, I took over the matter and heard the Respondent’s case.
13. The Objector Doreen Olembo told the court that she was a law student at the University of Nairobi. She relied upon her written statement dated 4<sup>th</sup> July 2019 as well as her Affidavit in support of the summons for revocation of Grant. The Objector told the court that the Deceased Johnstone Habil Olembo was her father and confirms that the Deceased passed away on 2<sup>nd</sup> February 1996. The Objector further confirmed that a confirmed Grant was indeed issued to the two (2) administrators who are her brother and sister respectively.



14. The Objector however claims to have had no knowledge of the plans to sell the South 'C' Property. She claims that she only came to learn about the intended sale when the Administrators informed her that they had received a 10% deposit of the purchase price of Kshs 15 million from the Purchaser.
15. The Objector complains that the Sale Agreement is defective as it does not capture the names of all seven (7) beneficiaries as Vendors of the Property. She further complains that the sale of the South 'C' Property which is the family home would be unfavourable to her and will render her homeless since being a student she has nowhere else to live. She alleges that the intended sale has been shrouded in secrecy. The Objector therefore objects to the sale of the South 'C' property and prays that the Grant issued to the two (2) Administrators be revoked.
16. The Respondents called all the other beneficiaries as witnesses (seven (7) witnesses in all). The two Administrators Andrew Ingutia Olemba and Beatrice Nabwire Olemba testified as DW2 and DW3 respectively. The Administrators deny having discriminated against the objector in any way. They insist that the Objector was kept informed and has been fully involved in the succession process at all stages since the same was initiated. That the Objector signed the consent indicating that she was agreeable to the mode of distribution of the estate as set out in the confirmed Grant. That all the beneficiaries including the Objector appeared in court and gave verbal consent to the confirmation of the Grant.
17. The Administrators informed the court that they held several family meetings in which matters relating to the estate were discussed. That in fact it was the Objector as the eldest child who chaired these family meetings and took notes.
18. The Administrators told the court that the beneficiaries all agreed that the South C House be sold and the proceeds to be shared equally. That in October they all began to market the property. That they eventually got a purchaser who agreed to purchase the house for a price of Kshs 15 million which was agreeable to them all. That the purchaser paid a deposit of Kshs 5.0 million but soon thereafter, before the transaction could be completed, the Objector filed this summons seeking to revoke the Grant.
19. Upon conclusion of the hearing the parties were invited to file their final submissions. The Objector/Applicant did not file any written submissions whilst the Respondent relied upon their submissions dated 30<sup>th</sup> June 2022.
20. The other beneficiaries all support the evidence of the Administrator. They all express their desire to have the South C Property sold and each person given their share of the proceeds to do with as they wish. They all state that this summons filed by the Objector is malicious and is merely intended to delay the final distribution of the estate. The Respondents urge this court to dismiss the summons in its entirety.

### **Analysis and Determination**

21. I have carefully considered the summons filed by the Objector, the Replies filed thereto the evidence on record as well as the written submissions filed by both parties. The only issue for determination is whether the Grant issued to the two (2) Administrators ought to be revoked.
22. The circumstances on grounds upon which a Grant may be revoked are set out in Section 76 of the [Law of Succession Act](#) Cap 160 Laws of Kenya as follows:
  - “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.”
23. In the case of *Matheka & Another – vs – Matheka* [2005] 2 KLR 455 the Court of Appeal laid down the guiding principles upon which a grant may be revoked as follows:-

“...there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.”

24. Likewise in *Re Estate Of Prisca Ong'aya Nande (Deceased)* 2020 eKLR the Court stated thus:-

“A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be 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 is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstance, 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 duties as administrator, or the sole administrator is adjudged bankrupt and, therefore becomes unqualified to hold any office of trust.”

25. The Objector has not in her evidence pointed out with specificity what manner of fraud or false allegation was perpetrated by the Administrators in order to secure the grant. Fraud is a serious allegation. It must be specifically alleged and must be specifically proved. To merely allege ‘fraud’ without any supporting evidence will not suffice.
26. Again this court is left to wonder what was the material fact which the Administrators concealed in obtaining the Grant. The Objector has not given any specifics of this allegation either.
27. I have carefully and anxiously perused the record of the succession proceedings leading up to the issuance of the Grant. The Petition for Grant of letters of Administration is dated 6<sup>th</sup> February 2012. In that petition the Administrators have named all the beneficiaries of the estate including the Objector. Indeed the names listed in the Petition conform with the list of survivors named in the Chiefs letter dated 3<sup>rd</sup> March 2011.
28. Annexed to the Petition for Grant is a consent also dated 6<sup>th</sup> February 2012. This consent is signed by all persons of equal or lesser priority confirming their consent to issuance of Grant of letters of Administration to the Petitioner. This consent bears the name, signature and Identity number of the Objector. The Objector has not denied having signed this consent. It is clear that the Grant was obtained with the full consent and participation of the Objector.
29. I have carefully perused the summons for confirmation of Grant dated 20<sup>th</sup> March 2013. Once again, I note that the Objector is named in the supporting Affidavit as one of the beneficiaries to the estate. The Objector is named and is adequately provided for in the proposed mode of distribution of the estate. She is to get a share equal to all the other beneficiaries. Therefore, the proposed mode of distribution of the estate is fair and does not in any way discriminate against the Objector.
30. Further I note that a consent is annexed to the summons for confirmation of Grant. The consent is duly signed by all the beneficiaries including the Objector whose name, signature and identity number appears thereon. The Objector (together with the other beneficiaries) have also signed the consent to the mode of distribution dated 20<sup>th</sup> March 2013. In her evidence, the Objector repudiated her signature on the consent forms. She insisted that she did not sign the consent forms and claims to have made a report to Capital Police Station. This report was made a week prior to the date when she gave evidence in court. The Objector had been aware of the confirmed Grant since 2013. Why did it take her close to five (5) years to make a report to the police regarding alleged forgery of her signature. It is clear that the Objector only rushed to make a report to the police when the hearing was nigh in attempt in an attempt to bolster her case.
31. In any event a mere allegation of forgery will not suffice. The Objector must tender concrete proof that her signature was forged. No such proof was produced in this court. There was no evidence to prove that the Objectors signature on the consent forms had been forged. I therefore reject the Objectors claim that she did not sign the consent documents.
32. Having signed all these documents, the Objector is obviously being dishonest in telling the court that she was sidelined in the succession process. Her signature is proof of her full involvement in the Succession Cause at all stages.
33. The Objector in her evidence claims that she was harassed, intimidated and/or threatened and that is why she signed the documents. Again, this is a mere allegation with no evidence in support of the same. What was the manner of intimidation or threat used against the Objector? Why did she not report



- these threats and/or intimidation to any authority? Why has she kept silent waiting until almost ten (10) years after the fact to speak up?
34. The Objector is not a child. She is a mature woman aged over 40 years who is a University graduate. I have no doubt that she was fully aware of the implications of the documents which she was signing. If the Objector had reservations concerning any of the documents, then she should have at that point declined to sign until her concerns (if any) had been addressed. It is duplicitous for the Objector to sign a series of consents and then several years after the fact come to court and claim that she signed them due to intimidation. I have no doubt that if she had been truly harassed or intimidated the Objector would have spoken up well before now.
35. The other beneficiaries all testify that they all appeared before the Judge on 12<sup>th</sup> June 2013 and confirmed their consent to the confirmation of Grant. The Objector does not deny that she was also present and equally confirmed her consent. Indeed, under cross-examination the objector confirms that:-
- “.....I was in court on 12.6.2013. That is the day the grant was confirmed. It was before Justice Musyoka. I did not raise any objection. I was not under pressure from my siblings.....” (Own emphasis)
36. Why did the Objector not mention to the Judge that she was acting under duress? I find that these allegations of duress have come too late in the day and are clearly an afterthought. The allegations of duress are not genuine and this court rejects them as pure fabrications by the Objector in her attempts to conjure up excuses to have the Grant revoked.
37. The Objector has alleged that the Administrators have mismanaged the estate. Again, no evidence of such mismanagement has been adduced. The Administrators upon obtaining the confirmed Grant set about distributing the estate. The Administrators proceeded to process the insurance benefits held by Jubilee Insurance Company and all the beneficiaries including the Objector received their share. Annexed to the Supporting Affidavit dated 1<sup>st</sup> March 2018 sworn by Gloria Olembo is a cheque for Kshs 61,888.33 issued to in the name of ‘Doreen Owiny Olembo’, (the Objector). The Objector has not denied having received these funds neither did she reject her share of the insurance proceeds. I am satisfied that the Administrators did embark on the distribution of the estate in accordance with their mandate under the confirmed Grant.
38. It is manifest that the real bone of contention in this matter and the real reason why the Objector filed this summons for revocation of Grant was her objection to the sale of the South ‘C’ property. It is only when this sale became imminent that the Objector began to raise all manner of allegations. The Objector claims that she was kept in the dark and was not informed by the Administrators that a buyer had been found and that a Sale Agreement had been entered into by the Administrators.
39. The allegations by the Objector that she was not informed of the intended sale is vehemently denied by all the other beneficiaries. The Respondents all insist that the sale of the South C property was discussed at family meetings, which were chaired by the Objector herself.
40. That it was agreed that those who were residing in the house vacate the property in order to allow for sale. Thereafter ‘Ronald’ and ‘Andrew’ who were residing in the South ‘C’ house moved out leaving the Objector in the house with Beatrice and Jedidah’. In January 2018 ‘Jedidah’ and ‘Beatrice’ also moved out. The objector later also moved out. The Objectors claim that she was evicted from the property cannot be believed. She made no report to any authority about this alleged illegal eviction. Why would all the other beneficiaries insist that an agreement was reached to sell the South ‘C’ house if no such agreement was ever reached?



41. Annexed to the Affidavit of Gloria Olembo dated 1<sup>st</sup> March 2018 is a letter dated 10<sup>th</sup> January 2013 referring to the distribution of the estate of the Deceased (Annexure 'GO-1'). In that letter which is duly signed by all the beneficiaries including the Objector it is stated that in the event of disposal of the South 'C' property the proceeds would be divided in equal shares with the larger share of 19% going to Gloria Olembo. The Respondents explained that Gloria was to get a larger share of the purchase price because she was the youngest child and was still in school therefore needed funds to pay for her education. It is clear from the letter that as early as 2013 the sale of the South 'C' property had already been contemplated and the Objector was clearly aware of this. She cannot now several years later claim to have been kept in the dark.
42. The Objector has also taken issue with the fact that the Sale Agreement was in the name of the Administrators only and that the other beneficiaries were not named as Vendors. I have looked at the said Sale Agreement (Annexure 'D002' to the Objector Supporting Affidavit). The same clearly indicates that the Vendors are 'The Administrators of the estate of Johnstone Habil Olembo'. Therefore, the Administrators were selling the property not in their personal capacities but as Administrators and on behalf of the estate. There was not need therefore to list the names of all the beneficiaries in the Sale Agreement. The objection is nothing more than a red herring, which the Objector is now raising in an attempt to cloud issues.
43. The Objector also took issue with the fact that the Administrators had been paid 10% of the purchase price. The Administrators concede that the purchasers paid a deposit of Kshs 5.0 million which was divided among the beneficiaries. This is confirmed by the other beneficiaries. However, the Objector declined to take her share of the deposit saying she wanted to be paid a lump sum. The Administrators state that the share of the deposit due to the Objector is intact and will be paid to her as and when she desires.
44. From the evidence adduced in this court, I find that contrary to what she has alleged the Objector was fully informed and was fully aware of the intended sale of the South 'C' property. Indeed, she had consented to said sale. The Objector for some undisclosed reason later changed her mind and decided to try her level best to block said sale. I have perused the annexures to the Replying Affidavit dated 23<sup>rd</sup> February 2018 sworn by Beatrice Nabwire Olembo. The annexures include text messages sent by the objector, which imply that the Objector may have been influenced by her church to oppose the sale. Whatever her reasons are, it is clear to this court that this summons is not genuine, has been filed in bad faith and indeed amounts to a total abuse of the court process.
45. Finally, the Objector finally took issue with the fact that the rural home in ESC Kangui Bunyore had been allocated in equal shares to Ronald Olembo and Andrew Ingutia with no share of rural home having been allocated to herself. One again, I revert to the mode of distribution contained in the confirmed Grant, which the Objector freely consented to. The certificate of confirmed Grant clearly indicated that LR No. East Bunyore/Iboona/1080 was to devolve to Ronald Olembo 50% and Andrew Olembo 50%.
46. I find that this objection is nothing but an afterthought being raised by the Objector in a vain attempt to bolster her case. At no time before this hearing was the issue of the distribution of the rural home raised by the Objector. She did not even raise this issue in the present summons for revocation of Grant. The Objector is merely clutching at straws again in an attempt to cloud issues in this matter.



47. These summons is clearly an afterthought. It is long on allegations but very short on proof. Section 107 (1) of the Evidence Act Cap 80 Laws of Kenya sets out the legal burden of proof as follows:-
- “Whoever desires any court to give judgment as to any legal or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
48. The Objector has woefully failed to discharge this burden of proof. No concrete and/or tangible evidence was produced to support the numerous allegations made by the Objector.
49. This summons has clearly been filed by the Objector in an attempt to delay and/or scuttle the final distribution of the estate of the Deceased. Given the acrimony which has been caused by the Objectors action, it is unlikely that the beneficiaries will be able to retain the South ‘C’ house and jointly utilize the rental income derived therefrom as suggested by Objector. The property does not belong to the Objector and she cannot alone decide what is to be done with said property. Neither can the Objector demand that house left to her to reside in without any consideration of wishes of the other beneficiaries to the estate.
50. The South ‘C’ property belongs to the estate and must be dealt with in accordance with the wishes of the beneficiaries. I find that the beneficiaries did agree long time ago to dispose of the House and divide the proceeds of sale.
51. The Objector can quite easily utilize her share of the purchase price to purchase a property in which she can occupy alone. Indeed all the other beneficiaries have all indicated their wishes to have the property sold and each person given their share to do with as they wish. In my view, this would in the circumstances, be the best solution.
52. This is a very old matter. The Deceased died in the year 1996. To date twenty six (26) years down the line the estate still remains undistributed. Litigation it is said must come to an end. The parties had already agreed on the mode of distribution of the estate and this was endorsed by the court. I have perused the said mode of distribution. In my view, it is fair and is not discriminatory against the Objector or against any of the other beneficiaries. The stumbling block to the final distribution of the estate is the Objector. The parties had earlier been sent for mediation, which did not yield any positive result. The Mediators Report dated 18<sup>th</sup> September 2021 and filed in court on the same date indicates that the parties were unable to reach a settlement “due to the unwillingness of Doreen Owiny Olembo, the applicant herein to participate in any Mediation process”. It is clear that the Objector’s aim is to scuttle the distribution of the estate of the Deceased to the detriment of all the other beneficiaries. The estate cannot be held at ransom due to the intransigence of one beneficiary.
53. Finally, I find no valid grounds upon which to revoke the certificate of confirmed Grant and I decline to do so. The summons dated 1<sup>st</sup> February 2018 is dismissed in its entirety. I direct that the Administrators immediately proceed to conclude the sale of LR No. 209/10721/14, Halai Estate South C Nairobi and the proceeds of sale to be distributed in accordance with the certificate of confirmed Grant dated 12<sup>th</sup> June 2013. Since this a family matter I direct that each side meet its own costs.

**DATED IN NAIROBI THIS 28TH DAY OF OCTOBER, 2022.**

.....  
**MAUREEN A. ODERO**

**JUDGE**

