



REPUBLIC OF KENYA



KENYA LAW
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**Adienge v Duya (Civil Appeal E003 of 2020)
[2022] KEHC 15797 (KLR) (30 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15797 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E003 OF 2020**

KW KIARIE, J

NOVEMBER 30, 2022

BETWEEN

GEORGE ODHIAMBO ADIENGE APPELLANT

AND

PAMELA ADHIAMBO DUYA RESPONDENT

(Being an Appeal from the ruling in Homa Bay Chief Magistrate's Succession Cause No. 126 of 2016 by Hon. T. Obutu –Senior Principal Magistrate)

JUDGMENT

1. The respondent herein filed an application by way of summons for revocation of grant dated July 19, 2019. The application was premised on ground that the letters of administration were obtained in reliance of nondisclosure and concealment of material facts. The grant was revoked after hearing both parties.
2. The appellant was aggrieved by the said ruling and filed this appeal. He was represented by the firm of Nyauke & Company Advocates. He raised the following grounds of appeal:
 - a. That the court below erred in law by failing to appreciate the provisions of section 45 of the [Law of Succession Act](#) in that an alleged agreement was thus entered into between the appellant herein and the respondent at the assistant county commissioner's office in flagrant violation of the law.
 - b. The honourable subordinate court failed to appreciate the evidence of the appellant that the alleged agreement before the assistant county commissioner was done through compulsion by way of summons directing the appellant to appear before the said assistant county commissioner without failure.



- c. That the subordinate court failed to appreciate the statutory provisions regarding the limitation of period within which a claim of land can be made. The honourable subordinate court did not appreciate the provisions of section 7 of the law of *Limitation of Actions Act*.
 - d. That the honorable court revoked the grant issued to the appellant but failed to pronounce itself as to who should take out such grant as by procedure required.
 - e. That the agreement that the subordinate court opted to validate was invalid in terms of what the parties agreed upon during their lifetimes.
3. On June 15, 2022, directions were given that the appeal be canvassed by way of written submissions. Each party was given 30 days to do so. By November 8, 2022, the respondent had not filed their submissions. The matter was therefore fixed for judgment.
 4. The respondent was represented by the firm of Mauwa & Company Advocates.
 5. This court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of *Selle v Associated Motor Boat Co Ltd [1965] EA 123*, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.
 6. This appeal is in respect of the estate of Peter Ngere Omol who died on July 10, 2009.
 7. In the summons for revocation of the letters of administration, the respondent contended that she had together with her husband, purchased land parcel number Gem/ Kanyanjwa/1040 from the deceased herein. It was therefore incumbent upon the trial court to establish the veracity of this purported purchase.
 8. It was erroneous for the court to revoke the grant. The respondent's claim could have been adequately addressed through objection proceedings.
 9. I therefore set aside the ruling of October 7, 2020 and any consequential orders flowing therefrom quashed.
 10. Costs to the appellant.

DELIVERED AND SIGNED AT HOMA BAY THIS 30TH DAY OF NOVEMBER, 2022

KIARIE WAWERU KIARIE

JUDGE

