



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

SUCCESSION CAUSE NO. 967 OF 2013

IN THE MATTER OF THE ESTATE OF THE

LATE PAULO RAGOT *Alias* RAGOT OBILO (DECEASED)

CHARLES OCHWONYO OBILO.....APPLICANT

AND

WILLIAM OCHIENG AKECH.....PETITIONER/RESPONDENT

SAMUEL OKOTH OLIECH.....INTERESTED PARTY

RULING

The application dated 11th October 2018 was brought by **CHARLES OCHWONYO OBILO**, seeking the revocation or annulment of the Grant that had been issued to the Petitioner, **WILLIAM OCHIENG AKECH**.

1. The Applicant also sought orders for the nullification and setting aside of all the subsequent orders or actions arising from and incidental to the Grant; including the confirmation of the said Grant, which culminated in the change of proprietorship of the deceased's land **L.R. NO. NORTH GEM/NDERE/521**.
2. The application is premised on the following grounds, which were set out on the face thereof;

“1. THAT the proceedings leading to the obtaining and/or confirmation of the grant therein were defective.

2. THAT the said grant was obtained and/or confirmed fraudulently by making false representations.

3. THAT the said grant was obtained and/or confirmed through concealment of material facts and the interests of the applicant herein in the estate of the deceased were not disclosed and/ or catered for.

4. THAT the entire succession process in respect of the estate of the deceased and transfer of the deceased's land parcel number NORTH GEM/NDERE/521 from the name of the deceased to the names of WILLIAM OCHIENG AKECH, SAMUEL OKOTH OLIECH, and JOHN OWINO RAGOT, and the subdivision of the deceased's said parcel of land into parcel numbers NORTH GEM/ NDERE/1537 (registered in the name of WILLIAM OCHIENG AKECH and JOHN OWINO RAGOT) and NORTH GEM/NDERE/1538 (registered in the name of SAMUEL OKOTH OLIECH) was done without the consent and/ or knowledge of the applicant herein.”

3. The application was supported by the Applicant's affidavit, which was sworn on 11th October 2018.

4. The Applicant deposed that he was a younger step-brother of the deceased, **PAULO RAGOT OBILO *Alias* RAGOT OBILO**.

According to the Applicant, the father of the deceased was also his father, but their mothers were different.

5. The Applicant stated that his mother's home was situated on the suit land; and that he had occupied a portion of the said land for over 20 years.

6. The deceased (“*Paulo*”) is said to have been survived by 2 sons, namely **JOHN OWINO RAGOT** and **JOSEPH AKECH**. The said Joseph was the father of the Petitioner, **WILLIAM OCHIENG AKECH**.
7. However, although the said land was registered in the name of Paulo, it was the Applicant’s case that Paulo held the said property in trust

“for all persons including myself who had a beneficial interest in the land.”
8. In contrast, the Interested Party, **SAMUEL OKOTH OLIECH**, was described as a stranger to Paulo. Therefore, when Samuel acquired a portion of the suit property, the Applicant described him as an inter-meddler.
9. The Applicant pointed out that whilst the Grant was confirmed in the year 2014, Samuel had allegedly purchased a portion of the suit property in the year 2011.
10. It was the Applicant’s case that the Petitioner is the person who facilitated the change of proprietorship from the name of Paulo, into the names of **JOHN OWINO RAGOT** (“*John*”) and **SAMUEL OKOTH OLIECH** (“*Samuel*”).
11. The Applicant’s further case was that the Petitioner ought to have sought his consent or should have disclosed his name at the time when the Petitioner applied for the Grant and also when he later applied for confirmation of the said Grant. His reason for so saying was that the Petitioner knew all along, that the Applicant had occupied a portion of the land for many years. Based on the occupation of a portion of the land, the Applicant asserted that he had a beneficial interest in the suit land.
12. As the Applicant’s beneficial interest was not disclosed by the Petitioner, it was the Applicant’s assertion that the Grant was issued and was also later confirmed through the non-disclosure of material facts.
13. In answer to the application, the Petitioner (“*William*”) said that Paulo was his grandfather. At the time of his death, Paulo was survived by 2 sons, **JOSEPH AKECH RAGOT** and **JOHN OWINO RAGOT**. Paulo was also survived by his brother **JAMES OYOO OBILO**.
14. It was the Petitioner’s case that although Paulo was the registered proprietor of the suit land, he held the said land in trust for himself and his brother James Oyoo Obilo.
15. The reason why Paulo held part of the land in trust for James is that at the time of land adjudication, James was still a minor.
16. The Petitioner said that James was in actual occupation and control of his portion of the suit land.
17. According to the Petitioner, Paulo had, (during his lifetime) allocated to his sons Joseph Akech and John Owino, their respective portions of the suit land.
18. The Petitioner also said that Paulo had left to his brother James, the portion belonging to the said brother.
19. On 20th April 2011, James sold his portion of land to Samuel. A copy of the Agreement for sale was made available to this Court, to enable the Court verify the transaction in question.
20. It therefore follows that Samuel purchased his portion of the suit property from James Oyoo Obilo, who had a beneficial interest in the said portion.
21. In my considered view, as James Oyoo Obilo sold his portion of land, during his lifetime, he had no legal obligation to either seek the consent of the Applicant, or to notify the Applicant about the intention to do so.
22. By selling the portion which he had a beneficial interest in, James Oyoo Obilo cannot be deemed to have intended to deprive the Applicant or John Owino Ragot of any property that those 2 were entitled to.
23. The Applicant pointed out that whilst Samuel focused on the 0.8 Hectares which he allegedly purchased, he did not expressly deny that the Applicant resides on the remaining 2.8 Hectares.
24. It was perhaps lost on the Applicant that 1.4 Hectares was transferred to John Owino Ragot; and another 1.4 Hectares was transferred to William Ochieng Akech. Effectively, therefore, after the allocation and transfer of the total 2.8 Hectares (after hiving-off Samuel’s 0.8 HA), there was no land remaining, as asserted by the Applicant.
25. As regards the procedure utilized by the Petitioner to apply for the Grant, I find absolutely no defect.
26. The Petitioner first lodged a Citation, through which he acknowledged that John Owino Ragot ranked in priority, to petition for letters of administration.
27. It is on record that John Owino Ragot renounced his right to petition, thus enabling the Petitioner to institute these proceedings.

28. In effect, the Petitioner followed due process when instituting the succession proceedings herein.
29. The Applicant has not demonstrated any fraudulent conduct on the part of the Respondent or any other person.
30. If anything, it appears that it is the Applicant who stands upon shaky ground. I so find because it was not until 12th October 2018 that the Applicant lodged an application at the Huduma Centre, Kisumu seeking an Identity Card. He exhibited the Waiting Card that was issued to him, which was marked as exhibit "COO-1".
31. In other words, the Applicant's application for his Identity Card was lodged some six (6) days before he filed the application for revocation of the Grant.
32. It is in the application for his Identity Card that the Applicant used the name **CHARLES OCHWONYO OBILO**.
33. Prior to that date, the Applicant's name, as reflected in the following documents, was simply **CHARLES OCHWONYO**;-

(i) List of Witnesses (In ELC Case

No. 51 of 2014)

(ii) Plaintiff's 2nd Witness

34. I agree with the Respondents herein, that it is probable that the Applicant deliberately decided to apply for a National Identity Card on 12th October 2018, solely for the purposes of incorporating the name of "OBILO" to his identity.
35. The Applicant concedes that he was a witness for John Owino Ragot, in **ELC CASE NO. 45 OF 2018**. The documents provided to this Court show that he testified under the name **CHARLES OCHUONYO**.

36. As he was only a witness the Applicant herein said that

"the extent of my prayers in the land case were limited."

37. It would be a valid point, that a witness who is not a party within the case he or she was testifying in, cannot be granted reliefs.
38. Nonetheless, the issue here is not whether or not the Applicant could have sought some relief in the case before the **ELC** Court. The point is that the Applicant expressly testified that the suit property ought to have been sub-divided between the 2 brothers, John Owino and Joseph Akech, (represented by William Ochieng).
39. If that were the correct factual position, it implies that the Applicant had acknowledged, in his earlier testimony which was before the Land Court, that there was nothing from the suit property that would be left to him as the whole parcel of land would have been divided between the 2 brothers.
40. In the final analysis, I find no merit in the application before me. Accordingly, the said application is dismissed. The Applicant will pay to the Respondent and the Interested Party, the costs of the summons for revocation dated 11th October 2018.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 27TH DAY OF SEPTEMBER 2021

FRED A. OCHIENG

JUDGE