



**Oyugi & another v Okumu & another (Environment & Land Case  
E011 of 2022) [2023] KEELC 19344 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 19344 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT & LAND CASE E011 OF 2022**

**MN KULLOW, J  
JULY 27, 2023**

**BETWEEN**

**ROSE ADHIAMBO OYUGI ..... 1<sup>ST</sup> APPLICANT**

**CHRISTINE PAMELLA ANDAI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**CONSLATA JUMA OKUMU ..... 1<sup>ST</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR, MIGORI ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Applicants herein commenced this suit by way of an Originating Summons dated May 24, 2022 against the Respondents seeking determination of the following issues: -
  - i. Whether land parcel No South Sakwa/alego/285 was first registered in the name of Petro Odamo Oloo aka Odamo Oloo (deceased), and if so, whether the transfer to and registration of the same in the name of the 1<sup>st</sup> Respondent Conslata Juma Okumu was made without a grant of letters of administration to the deceased's estate and therefore whether the registration of the same in the name of the 1<sup>st</sup> Respondent was obtained illegally, unprocedurally and through a corrupt scheme and is therefore null and void.
  - ii. Whether the register for the said land parcel No South Sakwa/Alego/285 should be rectified by cancelling the registration of 1<sup>st</sup> Respondent as proprietor thereof and by restoring and registering the said parcel of land in the name of Petro Odamo Oloo aka Odamo Oloo (deceased), pending succession.
  - iii. Whether the costs of this Summons should be provided for and be paid by the Respondent.



### **Applicants' Case**

2. The Applicants in this case aver that they are the only surviving children of the late Petro Odamo Oloo, who died intestate on November 30, 1989, his widow Victoria Onyango Odamo, died on April 15, 2013. It is their claim that the 1<sup>st</sup> Respondent herein is not a beneficiary of the estate of the deceased and had no capacity to petition any court for a Certificate of Confirmation of Grant. They produced a copy of the Death Certificate as Pexh 1 and a letter from the Assistant Chief as Pexh 2 to support their assertions.
3. It is their contention that the evidence on record confirms that until his death on November 30, 1989, the late Petro Odamo Oloo was the registered absolute proprietor of land parcel No South Sakwa/ Alego/ 285 measuring approx. 12.5 acres with effect from September 9, 1968 and the copy of the Green Card of the suit parcel confirms this position. It is also their claim that to date no succession proceedings has been instituted in any court by any of the beneficiaries of the deceased's estate, for a grant of letters of administration intestate in respect to the said estate of Petro Odamo Oloo aka Odamo Oloo as per the provisions of the [Law of Succession Act](#).
4. It is further their claim that despite there being no succession proceedings instituted in respect to the estate of their deceased father or a Certificate of Confirmation of Grant, sometimes on the July 19, 2007, they learnt that the 1<sup>st</sup> Respondent caused the said parcel No South Sakwa/ Alego/ 285 to be transferred from the name of Petro Odamo Oloo (deceased) and to be registered in her name, without the requisite capacity thereof.
5. They are now apprehensive that the said transfer and registration was unlawful and unprocedural and the same affects their rights as the rightful beneficiaries and/or heirs to the estate of their deceased father, hence the instant suit.
6. According to Entry No 4 dated July 19, 2007 in the register for the said land parcel No South Sakwa/ Alego/ 285, the said transfer was made pursuant to a Grant of Letters of Administration issued July 18, 2007.
7. The Applicants thus maintained that the said Entry No 4 was false and fraudulently made and cannot be the basis of the transfer and subsequent registration of the suit land in the name of the Respondents.

### **Respondents' Case**

8. It was the submission of the 1<sup>st</sup> Respondent that the Originating Summons was a mere frivolity and a waste of Court process. She had acquired title pursuant to Succession no 224 of 2005 and not the file relied on by the Applicants No 224 of 2003. She annexed a Certificate of Grant and a copy of the Gazette Notice of The Kenya Gazette Issue No 1329 of June 17, 2005.
9. She maintained that she got her title lawfully and was therefore the rightful proprietor of the suit land parcel. She had absolute rights and interests over the administration of such estate solely as daughter-in-law of the late Petro Odamo Oloo and administratrix of the said estate.

### **Analysis and Determination**

10. Having considered and reviewed pleadings, the respective exhibits and submissions in totality, in my view the issues arising for determination are as follows: -
  - i. Whether the registration of the suit parcel in the name of the 1<sup>st</sup> Respondent was fraudulent
  - ii. Whether the Applicants are entitled to the reliefs



- iii. Costs of the suit

### **I. Whether the registration of the suit parcel in the name of the 1<sup>st</sup> Respondent was fraudulent**

11. Section 24, 25 and 26 of the [Land Registration Act](#) provides for the rights and interests conferred on registration and the effect of the Certificate of Title issued upon registration. Section 24(a) provides as follows: -
- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;
12. Section 26 of the [Act](#) further provides that a certificate of title shall be held as prima facie evidence of proprietorship and specified the instances when a certificate of title may be challenged. The section states that:
1. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
- a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
13. It is the Applicants' contention that they are the sole surviving beneficiaries of the estate of the late Petro Odamo Oloo a.k.a. Odamo Oloo and they are therefore fully entitled to the subject land. It is their claim that the Respondents, without any color of right or capacity fraudulently caused the subject land previously registered in their late father's name to be transferred and registered in the name of the 1<sup>st</sup> Respondent. They aver that the said process of transfer and registration was illegal and unprocedural contrary to the provisions of sections 45(1) and of the [Law of Succession Act](#), which expressly prohibits any dealing with the free property of a deceased person without a grant of representation.
14. The Applicants annexed a copy of the letter by the area chief marked as Pexh. 2 stating that the deceased had three children and they are the only surviving beneficiaries/ dependents to the estate. They thus maintained that they are the only rightful and lawful beneficiaries of the estate and the 1<sup>st</sup> Respondent is persona non-grata with respect to the estate.
15. This court has taken the liberty to call for the said files Succession Cause No 224 of 2003 and 2005 for purposes of ascertaining the said averments by the Applicants and the Respondents. From a perusal of Succession Cause No 224 of 2003, I do note that the said proceedings do not relate to the estate of Petro Odamo Oloo. This fact was confirmed by the applicants herein in their pleadings/submissions. The notation on the Certificate of Title and/or Green Card as Entry No 4 may therefore be taken to be a clerical error or rather unclear numerals arising out of photocopies. This court will therefore disregard the findings of Succession Cause No 224 of 2003 as the same does not relate to the subject matter in dispute.
16. Further, I have critically perused Succession Cause No 224 of 2005 and it is instructive to note that the 1<sup>st</sup> Respondent herein fully complied with the requisite procedure as per the documents on record. A copy of a letter from the Chief dated 10/5/2005 was adduced in evidence wherein she was listed as



- the sole beneficiary of the estate of Peter Odamo. She was further issued with a Confirmation of Grant in respect of the said estate upon which she proceeded and had the land transferred and registered in her name.
17. From a perusal of the said Succession Cause No 224 of 2005, it is clear that there was a Succession Cause instituted in respect to the estate of the late Peter Odamo and that the 1<sup>st</sup> Respondent followed the outlined procedure to have the subject land transferred and registered in her name. However, from the rival claims made herein, what appears to be in dispute is whether the mode of distribution of the estate was procedural and whether the such transfer and registration solely in the name of the 1<sup>st</sup> Respondent was justified and further, who are the actual beneficiaries and/or dependents of the estate of the deceased.
  18. This Court must however remain conscious of the limits of its jurisdiction as outlined under Article 162 (2) (b) of the *Constitution* as read with section 150 of the *Land Act* and further section 13(2) of the *Environment and Land Court Act* which specifically outlines the jurisdiction vested in this Court. The same certainly does not entail determining issues arising from the distribution of the estate of a deceased person or a determination of who are the actual beneficiaries to an estate, which is the preserve of a High Court Family division. This court will therefore not delve into the merits of the said distribution and the Applicants herein are at liberty to pursue the same in the right forum vested with the requisite jurisdiction to handle the same.
  19. It is the Applicants' claim that the 1<sup>st</sup> Respondent transferred and registered the suit land from his late father's name to her name fraudulently. He thus urged the court to order for the cancellation of the said certificate of title and for the same to revert to the name of their late father. They relied on the two succession causes as the basis of their allegations of fraud on the part of the 1<sup>st</sup> Respondent.
  20. As pointed out earlier in the judgment, from a keen review of the succession cause No 224 of 2005, it is evident that the 1<sup>st</sup> Respondent instituted a succession proceeding in respect to the estate of the late Peter Odamo, wherein she was listed as the sole surviving beneficiary to the said estate. The Applicants on the other hand have also annexed a copy of the letter from the Assistant Chief, wherein they have been listed as the surviving beneficiaries of the late Peter Odamo.
  21. In order to clearly determine the issues arising in the instant suit and determine whether or not the transfer and registration of the suit parcel in the name of the 1<sup>st</sup> Respondent was proper or fraudulent; it is important to first address the rival claims of who are the actual beneficiaries and/or dependents of the estate of the late Peter Odamo. Both parties are contending that they are the sole surviving beneficiaries to the said estate. This as earlier discussed, is the preserve of the succession court.
  22. The court in *In Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR held as follows;  

“.....The *Law of Succession Act*, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.
  23. In view of the foregoing and taking the circumstances of the case in totality, this court is unable to conclusively determine the issues in dispute in the instant case and grant the orders sought before a determination of who are the rightful beneficiaries to the estate is made by the succession court. The



Applicants herein are therefore at liberty to file the necessary Application before the succession court vide Succession Cause No 224 of 2005 to determine among other issues, a determination of who are the actual beneficiaries of the estate of the deceased Peter Odamo Oloo and the distribution thereof.

**Conclusion**

24. In conclusion, I accordingly find that the Applicants' suit is not merited and the Originating Summons dated May 24, 2022 is hereby Struck Out with no orders as to costs. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MIGORI ON 27<sup>TH</sup> DAY OF JULY, 2023.**

**MOHAMMED N. KULLOW**

**JUDGE**

**In presence of; -**

.....for the Plaintiff

.....for the Defendant

Court Assistant - Tom Maurice/Victor

