



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT HOMA BAY**  
**SUCCESSION CAUSE NO.6 OF 2017**  
**(Formerly Oyugis SRMCC Succ. Cause No.91 of 2009)**

IN THE MATTER OF THE ESTATE OF:

CORNEL NDOLO NGIELA ..... DECEASED

AND

JAMES MBORI NDOLO ..... PETITIONER

VERSUS

WILLIAM MIRERI NYANGIGA ..... RESPONDENT

**JUDGMENT**

1. When **CORNEL NDOLO NGIELA** died on 15<sup>th</sup> January 2000, his son **JAMES MBORI NGIELA** commenced succession proceeding and obtained grant of letters of administration of his estate on 15<sup>th</sup> October 2009.
2. He has now sought revocation of the grant and that fresh grant of letters of administration intestate do issue to him, and the respondent **WILLIAM MIRERI NYANGIGA** be removed from the green card. Apparently the respondent is currently the registered owner of parcel **NO. CENTRAL KASIPUL/KAMUMA/1793** which previously belonged to the deceased **CORNEL NDOLO NGIELA**.
3. The applicant contends that the respondent is not related to him yet proceeded to make changes at the land registry to have the parcel registered in his name.
4. The respondent opposes this prayer pointing out that by the time the applicant commenced the succession cause, the property in question had ceased to be part of the deceased's estate. He explains that the deceased entered into a sale agreement dated 07/03/1989 with one **ENOSH ADHANJA OMBOGA** whereupon the deceased sold the entire suit property and diverted himself of any further interests. The deceased thereafter sought for and obtained consent from the Land Control Board to transfer the property to and in favour of **ENOSH ADHANJA OMBOGA**. The deceased then executed the instrument of transfer in favour of the said purchaser. Thereafter **ENOSH** sold the said parcel to the respondent vide sale agreement dated 15<sup>th</sup> December 2008, and the same was duly transferred and registered in his name. Subsequently he was issued with a Title Deed on 6<sup>th</sup> May 2009.
5. The respondent has drawn this court's attention to a search certificate dated 3<sup>rd</sup> March 2009 which shows that the parcel was registered in the name of **ENOSH ADHANJA**.

6. It is his contention that the said property has nothing to do with the deceased's estate and revocation of the grant cannot affect the validity of his title.
7. The respondent explained that it later transpired that **ENOSH** did not complete payment of the purchase price, and he pleaded with the Respondent to clear the outstanding balance. Despite his reservation and release the respondent nonetheless acceded to the request and paid the outstanding balance.
8. The applicant's prayer for revocation of the grant is precipitated by ulterior motives.
9. The matter proceeded by way of *viva voce* evidence. The applicant explained in his evidence that after grant was issued in his favour he went to have it confirmed, and was informed that the asset proposed for distribution belonged to someone else.
10. On cross examination he admitted that when he applied for the green card he realized it belonged to someone.
11. Indeed the entry No.4 in the green card bore the name of **ENOSH ADHANJA MBOGA** but was adamant that he was not aware of any land sold to the latter.
12. Upon being shown the sale agreement and consent to transfer the parcel, the applicant stated he was not aware his father had involved himself to that extent and disputed that his father signed the sale agreement.
13. Oddly enough, the applicant admits that he entered into an agreement where at the office of **BANA** advocate that he was ready to receiving the outstanding balance of Kshs.200,000/= for sale of the same parcel in question which was owing by **ENOSH** and would be paid by the respondent – infact he confirms signing a document to that effect and that he actually received Kshs.220,000/=.
14. So if his father had not sold the land and if he had no idea about the sale, why did he receive the money as a final payment?
15. The applicant admitted that he only changed his mind about the sale because he realized the parcel measured much larger than was indicated in the sale agreement.
16. The respondent **WILLIAM MIRERI NYANUGA** (DW1) explained how he got involved with **ENOSH** in purchasing the land. Infact at the time of purchase, **ENOSH** had established a homestead on the parcel comprising two houses and a pit latrine. **JAMES MBORI** (applicant) lived on parcel No.1792 and according to the respondent; he must have seen these structures.
17. The respondent moved onto the land and lived there for 6 years. He explained that he paid the applicant the outstanding balance in an advocate's office and denied suggestions that he had colluded with officials at Lands Office to illegally get registered as the proprietor.
18. From the evidence presented, what I can deduce is an individual who is motivated by malice. He acknowledges receiving money paid as an outstanding balance for the sale of the very parcel of land he now insists belonged to his father. Yes once upon a time it belonged to his father but the record clearly shows the father sold the land to **ENOSH** who in turn sold it to the respondent. Indeed **ENOSH's** name was entered in the green card as an owner. By the time he was filing the cause, that land was no longer an asset for the estate.
19. I need not say more – there is no basis for revoking the grant or giving directions that the title reverts to the deceased's name.
20. The application has no merit and is dismissed with costs to the respondent.

**Delivered and dated this 21<sup>st</sup> day of August, 2017 at Homa Bay**

**H.A. OMONDI**

**JUDGE**