



REPUBLIC OF KENYA



KENYA LAW

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**Omolo (Suing as the Legal Representative of the Estate of Charles
Omolo Onyango) v Ragot & 3 others (Environment & Land Case
228 of 2017) [2025] KEELC 4130 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4130 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT & LAND CASE 228 OF 2017**

M SILA, J

MAY 22, 2025

BETWEEN

**JOSIAH OUMA OMOLO (SUING AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF CHARLES OMOLO ONYANGO) PLAINTIFF**

AND

DAVID OWUOR RAGOT 1ST DEFENDANT

JAMES OBUDHO ALIAS OBUDHO JAMES 2ND DEFENDANT

HELLEN AUMA OLOO 3RD DEFENDANT

TIMON OLOO ODIRA 4TH DEFENDANT

JUDGMENT

(Plaintiff representing estate of a deceased person who died in 2002; 1st and 2nd defendants obtaining titles in 2012 without succession being done; their titles cancelled by the Land Registrar but 1st and 2nd defendants continuing in possession hence suit filed in 2012 for their eviction; in 2015 plaintiff filing for a full grant in the High Court and obtaining grant in the year 2016; in course of the trial, 3rd defendant purporting to file two succession cases in the Magistrates Court at Rongo and Migori in 2019 and 2023 and obtaining grants; 3rd defendant using the said grants to transfer one title to herself and the other to the 1st defendant; plaintiff amending plaint to inter alia seek cancellation of these titles; apparent to court that 3rd defendant embarked on a fraudulent scheme of filing multiple succession cases in the Magistrates' court in order to defraud the estate of the deceased; court of view that the titles were fraudulently obtained through this scheme; in any event a grant issued by the Magistrates Court at a later time could not override a grant earlier issued by the High Court;



judgment entered in favour of the plaintiff inter alia for cancellation of the titles of the 1st and 3rd defendants)

A. INTRODUCTION AND PLEADINGS.

1. The dispute herein has mutated over time since the original suit was commenced by Josiah Ouma Omolo (Josiah) vide a plaint filed on 17 June 2013 before the Environment and Land Court in Kisii. That suit was registered as Kisii ELC No. 266 of 2013. In that plaint, Josiah sued as the administrator and legal representative of the Estate of Charles Omolo Onyango (deceased) who died on 26 December 2002. His case was that at the time of his death, the deceased was the registered proprietor of the two parcels of land in dispute herein, being Kamagambo/Kanyajuok/4X6 and Kamagambo/Kanyajuok/4X0. He pleaded that in the year 2012, David Owuor Ragot, whom he sued as 1st defendant, fraudulently obtained title to the land parcel Kamagambo/Kanyajuok/4X0, whereas James Obudho, whom he sued as 2nd defendant, fraudulently obtained title to the land parcel Kamagambo/Kanyajuok/4X6 (for brevity the two parcels of land are sometimes hereinafter simply referred to as parcels No. 4X6 and No. 4X0). He further pleaded that these two persons had trespassed into the two parcels of land. He averred that the family of the deceased raised complaint regarding the alleged fraudulently acquired titles to the Land Registrar, Migori, who proceeded to cancel the said titles of the 1st and 2nd defendants, and revert title back to the name of Charles Omolo Onyango.
2. Indeed, the Green Cards, which were produced during the hearing, revealed that the deceased had been the first registered proprietor of the two parcels of land on 17 November 1977. Entry No. 2 in both registers, showed that he was issued with a Land Certificate on 24 April 1982.
3. In respect of the land parcel No. 4X6, Entry No. 3, registered on 8 March 2012, was the registration of James Obudho, as proprietor, and entry No. 4, entered on 15 March 2012 was issue of title deed to the said James Obudho. For the parcel No. 4X0, Entry No. 3 similarly entered on 8 March 2012, was registration of David Owuor Ragot as proprietor, and Entry No. 4 equally entered on 15 March 2012 was issued of title deed to him. In both registers, Entry No. 5, dated 19 April 2012, states as follows : “Entry No. 3 & 4 entered by error. Title deed issued on 15 March 2012 recalled to be cancelled. Entry No. 1 & 2 reinstated.” At the time the case was filed, there had been registered an Entry No. 6, dated 20 April 2012, in both titles, reading as follows : “Restriction: No dealings until Succession is done. Proprietor reported dead (Certificate No. 775236 dated 15th January 2003).” This was the status of the register when Josiah commenced suit on 17 June 2013.
4. In his plaint, he complained that despite the titles of David Owuor Ragot and James Obudho having been cancelled, they were still trespassing on the suit lands. In his original plaint, he wished to have a declaration that the suit lands are registered in name of Charles Omolo Onyango (deceased), an order of eviction and permanent injunction, general damages for trespass, and mesne profits.
5. David Owuor Ragot and James Obudho appointed counsel and filed a joint statement of defence. They claimed that the suit lands were fraudulently registered in name of Charles Omolo Onyango and that the said fraud was rectified by them being registered as proprietors. They asserted that they took possession of the suit lands as proprietors and they cannot be trespassers. David Owuor Ragot added that he was a bona fide purchaser of the land parcel No. 4X0 and his title cannot be defeated. They pleaded that the Entry No. 5 (cancelling their titles) was entered irregularly without due process being followed. James Obudho filed a counterclaim where he outlined the alleged fraud that Charles Omolo Onyango (deceased) committed in order to obtain the two titles. He wanted the name of the deceased expunged from the registers and for them to be registered as proprietors, and a further declaration that the two parcels of land do not belong to the estate of the deceased.



6. Up to that point in time, this was a straight case between Josiah, as legal representative of the deceased, and David Owour Ragot and James Obudho, who were also asserting title to the suit land.
7. Things got a little convoluted when one Timon Oloo Odira (Timon), filed an Originating Summons against Josiah, seeking title to the two parcels of land by way of adverse possession. His Originating Summons was filed on 23 March 2016 and registered as Kisii ELC No. 71 of 2016 (OS). The OS was opposed.
8. On 11 October 2016, Mutungi J, who was then the Environment and Land Court Judge in Kisii, ordered the two files to be consolidated, that is Kisii ELC No. 266 of 2013 and Kisii ELC No. 71 of 2016 (OS), with direction that the suit Kisii ELC No. 266 of 2013 be the lead file. At around the same time, the Migori Environment and Land Court (ELC) was established, and since the suit lands were located in Migori, on 23 February 2017, the good judge ordered the suits transferred to Migori ELC. When they arrived at Migori, there was only one number given to the two cases, that is Migori ELC No. 288 of 2017. This may have been an error, since there were two cases, and there ought to have been two separate numbers for the two cases. That single registration brought quite some confusion in the pleadings, as eventually, Timon Odira ended up being the main litigant, yet the main case was in fact that dispute over title between Josiah and the two persons that he sued.
9. But that was not the end of it. Matters got pretty much convoluted by the emergence of a new entrant into the dispute. This new entrant was Hellen Auma Oloo. She commenced a suit, through plaint filed on 7 October 2019, against Timon Odira, in the Rongo Magistrates' Court being the case Rongo SRMCC NO. 45 of 2019. In that plaint she asserted to be the registered proprietor of the land parcel Kamagambo/Kanyajuok/4X6, and alleged that in the year 2014, Timon had trespassed into the said parcel of land. In her suit, she wished to have a declaration that she is the proprietor of that land parcel No. 4X6, eviction and permanent injunction, and general damages for trespass. The Court's attention was drawn to the presence of this suit and Ongondo J, then the ELC Judge in Migori, ordered that the said case be transferred to the ELC, Migori for possible consolidation.
10. I had a short stint in Migori, relieving the station, when they had no sitting judge, and that is how this case came to be before me. It was apparent to me that we need first to hear the dispute over title, and the case of adverse possession by Timon, would have to await the outcome of the dispute over title. So too that case by Hellen Auma against Timon i.e Rongo SRMCC NO. 45 of 2019. Out of that direction, Josiah proceeded to amend his plaint, and added both Hellen Auma Oloo and Timon Odira respectively as 3rd and 4th defendants (though it was probably not necessary to add Timon since his case was for adverse possession which is to be tried separately).
11. The amended plaint was filed on 15 November 2024. At this time, the registers of the suit lands were no longer reflecting title in the name of the deceased, contrary to the position when the suit was commenced in 2013. Instead, the registers now reflected title in name of Hellen Auma Oloo (3rd defendant), as proprietor of the land parcel No. 4X6 (registered on 19 June 2019), and David Ragot (1st defendant) as proprietor of the land parcel No. 4X0 (registered on 3 August 2023).
12. In his amended pleadings, the plaintiff averred that they obtained registration by fraud, inter alia by fraudulently presenting themselves as heirs of the deceased and faking a Death Certificate which they used to obtain letters of administration for his estate and have the titles transferred to them. He pleaded that after the Land Registrar had reinstated title in the name of the deceased (pursuant to the cancellation of title done in 2012), the defendants devised a new trick where they used Hellen Auma Oloo (3rd defendant) to file multiple and parallel succession cases with a view to have title in name of the 1st and 3rd defendant. He decried the continuing trespass and claimed that the family has been losing



- Kshs. 1.7 million every two years which they could have obtained through the planting of sugarcane. He asked for the titles of the 1st and 3rd defendants to be cancelled and ownership to revert back to the estate of the deceased, eviction, general damages for trespass, mesne profits at Kshs. 1,723,000/= for every two years which he claimed for 12 years, costs and any other order the court may deem expedient.
13. The 1st defendant filed defence to the amended plaint wherein he asserted that he is the lawful owner of the land parcel No. 4X0. He pleaded that he first purchased it in the year 2011 from Timon Odira, and later from Hellen Auma Oloo on 10 November 2022. He described Hellen as the lawful administrator of the estate of the deceased. He pleaded that Hellen (3rd defendant) obtained title after undertaking succession and she then transferred the land to him. He averred that the plaintiff did not raise any objection to the succession proceedings filed by the 3rd defendant and has filed no application for revocation of grant, and he cannot now ask for the property to revert to the estate of the deceased. He also raised issue that the suit is caught by limitation of time. He asked that the suit be dismissed and he be allowed to enjoy the rights of ownership over the land parcel No. 4X0.
 14. The 2nd defendant (James Obudho) filed a defence which to me comprises of a denial of the claim of the plaintiff in total. Significantly, there was now no counterclaim.
 15. The 3rd defendant (Hellen) filed defence where she refuted the particulars of fraud and denied trespass. She contended that the issuance of title to her was done in accordance with the law. She also raised issue that the claim for trespass and mesne profits was time barred.

DIVISION - B. EVIDENCE OF THE PARTIES.

16. Hearing commenced on 18 February 2025 when Josiah Ouma Omolo testified as PW-1. He is a Professor of Chemistry. He testified that he is son of the late Charles Omolo Onyango (deceased). When he testified, he had in court the original title deeds in the name of the deceased which was among the exhibits he produced. He also had the original Death Certificate of the deceased, that is Certificate No. 775236, the same Death Certificate that was entered by the Land Registrar in the register of the suit lands. He pointed at the Certificate of Death used by the 3rd defendant in the various succession cases that she filed. He pointed out that it showed that his father died aged 49 years yet he died after retirement. The same also shows that his father was a peasant yet he was a teacher. He also pointed out that the Certificate of Death showed that his father died on 18 March 2022 yet his father died on 26 December 2002. The place of death was in Homa Bay District Hospital yet the Death Certificate of the 3rd defendant showed that he died in Kisii District Hospital. He asserted that the Death Certificate used by the 3rd defendant was fake.
17. He testified that the 3rd defendant filed two succession cases over the estate of his late father. The first was Rongo Succession Cause No. 13 of 2018 where she listed the parcel No. 4X6 as the only property of the deceased. The second succession case was filed in Migori, being Migori Succession Cause No. 179 of 2021, wherein she listed the parcel No. 4X0 as the sole property of the deceased. He testified that his family never gave consent to the 3rd defendant to file these cases and they were not even aware of them. I will go into the details of these succession cases later in my analysis of the case, suffice to state that arising out of these two succession cases, the 3rd defendant obtained grants in respect of the estate of the deceased and caused herself to be registered as proprietor of the suit lands. He testified that in both succession cases, the 3rd defendant described herself as daughter in law but they had no brother who was married to her. According to him, the 3rd defendant is wife of one Joseph Obudho Waringa who was son of Paulus Waringa Oloo, and James Obudho, the 2nd defendant, is her son. He testified that he is not related to them. He testified that Timon Odira had filed for a limited grant ad litem in respect of the estate of Paulus Waringa Oloo. He referred to Rongo Succession Cause No. 4 of 2018 and an affidavit therein filed by Timon Odira stating inter alia that the 3rd defendant was married to



- Joseph Obudho, son of Charles Omolo Onyango (deceased), with whom they sired James Obudho, Nancy Adhiambo, and Jessica Awuor. He had a Birth Certificate of Jessica Awuor showing that she is daughter of the 3rd defendant and Joseph Obudho Waringa. He testified that all these show that the 2nd, 3rd defendant and the 4th defendant belong to the Waringa Family and not the family of the deceased.
18. He testified that he had, in the year 2015, on behalf of the family, filed a succession case in respect of their deceased father, being Homa Bay High Court Succession Cause No. 334 of 2015. He obtained a grant which was confirmed on 27 June 2019. Regarding the succession cases filed in the Rongo and Migori Magistrates' Courts, he testified that he filed for revocation of grant. He had also filed at the Migori High Court, Migori High Court Miscellaneous Succession Cause No. 1 of 2023, to have the two grants revoked, but the same was dismissed owing to a technicality, in that the High Court held that the two lower courts had jurisdiction to revoke the grants.
 19. On the manner in which the 1st defendant obtained title, he could see that there was a sale agreement dated 10 November 2022. The sellers were Hellen Auma Oloo, James Obudho, and Jessica Awuor, with the buyer being David Owuor Ragot (1st defendant). The property being sold was the parcel No. 4X0. He testified that at the time the sale agreement was being drawn this case was already pending.
 20. He testified that in 2023, he learnt that an entity known as Nchau International Limited had come to the land parcel No. 4X6 and started mining operations. He got to know that the 3rd defendant had leased the land to the said Nchau International Limited.
 21. He testified that they had been using the suit lands before the death of his father and were growing sugarcane, maize and beans, but they cannot now access them owing to the occupancy of the defendants. He had a letter dated 14 June 2006 written to his mother Caren Gogo Omolo over sugarcane that she planted in 2003. The letter was written for purposes of having his mother claim compensation from Sony Sugar Company for failing to harvest the cane. The letter was however not produced as an exhibit owing to an objection. He testified that the defendants came to the land at different times. He stated that the 3rd defendant started coming into the land in 2018.
 22. Regarding the titles, he testified that an entry No. 7 was registered in the parcel No. 4X6, removing the restriction (i.e the restriction in entry No. 6 that there be no dealings until succession is done) pursuant to Rongo Succession Cause No. 13 of 2018. The grant was confirmed in the said case and the 3rd defendant registered herself as proprietor. For the parcel No. 4X0, after removal of the restriction, the land got registered in name of the 2nd defendant, 3rd defendant, and Jesca Awuor, after which it was transferred to the 1st defendant on 3 August 2023. He did not think that the 1st defendant was an innocent purchaser. He pointed out that he (1st defendant) previously had a title prior to 2012, which title was revoked by the Land Registrar after which he was sued. He added that the 1st defendant obtained title while this case was still going on.
 23. He testified that his father was not living on the suit land and neither was he buried there. He was living in Tonye Area near Rongo in North Kamagambo. He could see that the Chief who introduced the 3rd defendant was from South Kamagambo. He introduced her as daughter in law of the deceased, James Obudho as his grandson, Nancy Odhiambo as his granddaughter, and Jessica Awuor as his granddaughter. He stated that if a letter was to be written by the Chief, it needed to be from the Chief of North Kamagambo. On the 4th defendant, Timon Odira, he testified that he had filed a case before the Migori Land Disputes Tribunal seeking the parcels of land and his case was dismissed.
 24. The defence case proceeded on 19 February 2025. DW – 1 was David Owuor Ragot, the 1st defendant. He is an Education Officer working with the Ministry of Education. He testified that he first interacted



with the land parcel No. 4X0 in 2005 when he was introduced to Timon and informed that he had the land to sell. The land was five acres and was being sold at Kshs. 80,000/= per acre, thus a total of Kshs. 500,000/= , which he paid. He produced a sale agreement dated 21 December 2011. He testified that he took possession, created paddocks, and built a homestead. In 2012, the Land Registrar wrote to him recalling his title on the basis that it was issued by error. He testified that he surrendered the title. A restriction was entered that there should be no dealings until succession was done. He however continued living on the land and making developments on it. Later, the 3rd defendant approached him and asked him whether he still had interest in the land. She showed him a grant and this made him enter into a sale agreement with her. The sale agreement is that dated 10 November 2022. He was then issued with title on 23 April 2023. According to him, he purchased the land after the 3rd defendant had done succession and obtained confirmation of the grant vide Migori Magistrates' Court Succession Cause No. 179 of 2021. He argued that his title had earlier been cancelled for reason that succession had not been done and this was cured by the 3rd defendant undertaking succession.

25. During cross-examination, he now testified that he did not buy land from Timon, but from James (2nd defendant) as depicted in the sale agreement of 21 December 2011. He conceded that he had lied by stating that he purchased land from Timon. He confirmed getting a letter from the Land Registrar that his title, issued in 2012, needed to be cancelled as it was issued fraudulently. He testified that he does not originally come from the area and he has a home in South Sakwa which he can still go back to. He admitted that the developments he did on the land was after he had been served with the letter by the Land Registrar informing him that the title he held needed to be cancelled. He readily admitted that he took a deliberate risk in undertaking the developments as this was dependent on the outcome of the case. He nevertheless denied colluding with the 3rd defendant and her son, the 2nd defendant, to obtain title. He testified that when he got registration the second time, there was no order against the title.
26. The 2nd defendant testified online as he stated that he was in Zambia. He introduced himself as a medical engineer and he moves around the world given the nature of his work. He relied on a witness statement which as far as I can see only states that he never participated in any fraud. Cross-examined, he testified that his father is Joseph Obudho and his grandfather is Paul Waringa. His mother is the 3rd defendant and he has a sister called Jessica. His father is deceased. He knew Charles Omolo Onyango (the deceased) whom he described as a brother to his grandfather. According to him, the deceased was just a peasant farmer. He denied selling land to the 1st defendant in 2011 and in fact denied selling land to anybody. He stated that he has never seen the original title deed in name of the deceased.
27. DW – 3 was Hellen Auma Oloo, the 3rd defendant. She introduced herself as wife of Joseph Obudho who was son of Paulus Waringa. She stated that Charles Omolo Onyango (the deceased) and Paulus Waringa were brothers. She thus described herself as daughter in law of Charles Omolo Onyango. She testified that Paulus left only one son, her husband, and that he is now deceased. According to her, Charles Omolo Onyango did not have a wife or children, and in that regard, it is her to inherit his estate, since she is the only surviving person in the family. She claimed not to know Josiah, who has filed this suit on behalf of the estate of Charles, and is not aware of any succession case that he filed. She testified that she got registered as proprietor of the parcel No. 4X6 after filing in the Rongo Magistrates Court the succession case No. 13 of 2018 and the grant was confirmed on 18 February 2019. For the parcel No. 4X0, she filed in Migori Magistrates' Court succession case No. 179 of 2021. She presented the grant at the Lands office and got registered as proprietor. She then sold the land to the 1st defendant. She asserted that the grants she obtained have never been revoked and are still valid. She nevertheless acknowledged that the plaintiff has filed for their revocation but the objection is yet to be decided. She claimed that she filed two succession cases because she is a farmer and unschooled. She sensationally alleged that it was Mr. Orondo Tuli, the advocate for the plaintiff, who in fact advised her on filing the



- succession cases. She claimed that when she filed Rongo Succession Case No. 13 of 2018, she did not realize that she had left out part of the estate and that she did not go back to that court to introduce the parcel No. 4X0 because she was advised that she can file another case at Migori. She testified that she has leased the parcel No. 4X6 to Nchau International after she became registered owner and the parcel No. 4X0 is now owned by the 1st defendant (after being sold to him).
28. In cross-examination, she inter alia stated that she did not know that her son, the 2nd defendant, had earlier sold the land to the 1st defendant. She however testified that she has known the 1st defendant for over 10 years and that it was her who approached him and asked him if he was interested in buying the land. She now claimed that he first got the land from Timon and the 2nd defendant. She testified that she knew that the title was returned because no proper succession had been done. She stated that she was not aware that the Land Registrar had registered a Death Certificate number. She testified that she has not yet filed succession for the estate of Paulus Waringa for reason that she had no sufficient funds. She denied filing Rongo Succession Case No. 4 of 2018 in respect of the Estate of Paulus Waringa.
29. Questioned on how she obtained the title deeds, she testified that she obtained them after filing succession. She did not have the original title deeds for surrender before a new title was issued to her. She did not have a Gazette Notice advertising the titles as lost.
30. DW – 4 was Timon Oloo Odira, the 4th defendant. He denied ever selling land to the 1st defendant and denied colluding with the other defendants to defraud the estate of the deceased. He stated that his interest in the land is through adverse possession which case is yet to be determined. He testified that the 3rd defendant filed succession in respect of the estate of Paulus Waringa in Rongo Court and he filed an objection.
31. With the above evidence the defendants closed their case.
32. I invited counsel to file submissions, and I have taken note of the submissions filed before arriving at my decision.

C. ANALYSIS AND DISPOSITION.

33. I have already set down the respective cases of the parties and the evidence that was adduced in court. In a nutshell, the plaintiff claims the suit lands as part of the estate of Charles Omolo Onyango (deceased). He sues as the administrator of this estate. The case of the 3rd defendant is that she undertook succession of the estate of the deceased, and that she properly obtained grants of representation for the estate, after which she obtained registration of the suit parcels of land. She retained one parcel i.e No. 4X6 which she leased to Nchau International and the parcel No. 4X0 was sold to the 1st defendant. The 1st defendant of course claims to be a bona fide purchaser for value. The 2nd defendant has absolved himself from any blame and has denied selling any land to any of the parties. For the 4th defendant, he denies colluding with any of the other defendants and of course claims the land through adverse possession. For the avoidance of doubt, the case of adverse possession is not the subject of this judgment. That case will need to be heard separately after this court has determined the issue of title. In fact, a separate case number needs to be given to that adverse possession case so that there is no confusion with this suit. The case of the 3rd defendant against Timon, i.e Rongo SRMCC No. 45 of 2019, was also stayed pending determination of this case. It follows that if she does not succeed in this case she will have no case to pursue, since she will not have title to the parcel No. 4X6 and that case will be for striking out.
34. Before I go too far, there was an issue of limitation of action raised. I wonder on what legs. The suit was commenced in 2013 when the 1st and 2nd defendants had barely been in possession for one year. They got registered as proprietors on 8 March 2012. They barely held the titles for one month for



- the cancellation was done on 19 March 2012 and registration was reverted back to the name of the deceased. The titles changed in 2019 for the parcel No. 4X6 and 2023 for the parcel No. 4X0. The amended plaint was filed in 2024. Twelve years had not lapsed from the time of these titles to the time of amendment. There is no place for an argument regarding limitation of time.
35. It is common ground that Charles Omolo Onyango died, but two Certificates of Death, bearing two different dates of death, were produced. The two certificates of death have very different entries. In the Certificate of Death No. 775236 the deceased is said to have died on 26 December 2002 aged 62 years. His occupation is shown as teacher and he died in Homa Bay. The Certificate of Death No. 0716254 shows that the deceased died aged 49 years and that he was a peasant. It is alleged that he died in Kisii District Hospital on 18 March 2002. I am fully persuaded that the correct Certificate of Death is Certificate of Death No. 775236 and not Certificate of Death No. 0716254. The latter was relied upon by the 3rd defendant to file the two succession cases in Rongo and Migori Magistrates' Court. I say so because, first, there was uncontroverted documentary evidence produced of the deceased being a teacher. He could not therefore be assigned the description of a peasant. Secondly, it is the Certificate of Death No. 775236 that was registered against the title to inform the Land Registrar that indeed the proprietor is deceased. If that Certificate of Death was wrong, it could have been raised with the Land Registrar even at the time that he cancelled the titles issued in 2012, but nobody raised any issue regarding that Certificate of Death. It follows that the Certificate of Death No. 0716254 is a fraud and it is in fact my finding that it was procured to fraudulently file the two succession cases in Rongo and Migori Magistrates Courts.
36. It is not disputed that at the time of his death, and this is irrespective of whether he died on 26 December 2002 or 18 March 2002, Charles Omolo Onyango was the registered proprietor of the two disputed parcels of land i.e parcels No. 4X6 and 4X0. There could be no dealings or transfer registered after he died as the process of succession first needed to be undertaken. Somehow, on 8 March 2012, the 2nd defendant got himself registered as proprietor of the land parcel No. 4X6 and the 1st defendant got himself registered as proprietor of the parcel No. 4X0. It is not clear how the 2nd defendant obtained that registration in his name for the parcel No. 4X6. On his part, the 1st defendant claims to have obtained registration after he bought the land. He could not of course have legally purchased the land, whether he purchased from Timon Odira or James Obudho, as none held any grant of letters of administration for the estate of the deceased at the time of the alleged sale in 2011. It follows that the registration of the 1st and 2nd defendant as proprietors of the land parcels No. 4X0 and 4X6 on 8 March 2012 was outrightly fraudulent. The plaintiff testified that he reported this fraud to both the police and the Land Registrar and the 1st defendant acknowledged that he had to surrender the title to the parcel No. 4X0 for cancellation. Both titles to the parcel No. 4X6 and No. 4X0 were indeed cancelled by the Land Registrar and an entry of their cancellation was entered on 19 April 2012. A restriction was thereafter registered barring registration of any dealings until succession is done.
37. There is evidence, and it is not disputed, that the plaintiff filed before the High Court in Homa Bay, the case Homa Bay High Court Succession Cause No. 334 of 2015. He obtained a grant of letters of administration on 14 May 2016. Thus, there was already a succession case filed and a grant issued when the 3rd defendant purported to file the two succession cases before the Magistrates' Court at Rongo and Migori. She first filed Rongo Magistrates' Court Succession Cause No. 13 of 2018 where she listed the property Kamagambo/Kanyajuok/4X6 as the only property of the deceased. On 18 February 2019, the court purported to confirm the grant and bequeath this land parcel Kamagambo/Kanyajuok/4X6 to the 3rd defendant. Subsequently, in the year 2021, the 3rd defendant filed in Migori Magistrates' Court, Succession Cause No. 179 of 2021. She proceeded to procure a confirmation of grant on 26 September



2022. This time, the sole property named was the land parcel Kamagambo/Kanyajuok/4X0 which was bequeathed to herself, James Obudho, and Jesca Awuor, jointly.

38. The law does not contemplate a person filing two succession suits over the same estate. Neither does it contemplate a scenario where two persons hold two different grants issued by different courts over the same estate. Where there is discovery of additional assets the avenue is to file an application within the existing succession cause not to file a fresh succession matter. In *Re Estate of Kanyingi Gatwe* (deceased), Kerugoya High Court Succession Case No. 862 of 2013, Gitari J, pronounced herself as follows :

“Where property is discovered after confirmation the parties have a window to go back to court with an application for review for the confirmation of the grant to be reconsidered within the same cause rather than file another cause.”

39. In *Re Estate of Nyambia Mukaya* (Deceased) [2019] KEHC 8080 (KLR) , a succession cause was filed by the daughters of the deceased, A and B, in the Muranga Magistrates’ Court. A grant was obtained but was challenged. The challenge was allowed and the grant revoked. The property was distributed to the objectors. A, then proceeded to file a second succession case in the High Court at Nairobi, and obtained a grant on the basis of an alleged will. The objectors filed an application to revoke this grant on the argument that A could not proceed to file a second suit since there was already a previous suit regarding the distribution of the estate of the deceased that had previously been decided. The High Court agreed and proceeded to revoke the said grant. This is what the Onyiego J held :

“30. The respondent does not deny filing both succession causes. What justification is there in filing a succession cause in respect of one estate affecting same property in two different courts and worse still after losing the first one?

31. I do agree with Mr. Gacheru there cannot be two separate succession files in respect of the same estate. It does not matter whether there is a Will. The best the respondent would have done was to disclose to the High court of the existence of a similar file already determined. Alternatively, the respondent should have filed an appeal to the high court for revocation of the grant on account of discovery of new material evidence in this case a Will. It is embarrassing to the court process to have two parallel proceedings touching on the same estate with different enforceable orders.

32. Without considering the merits or validity of the Will, it is my conviction that the respondent is guilty of concealment of material facts and or information by failing to disclose that there was another case having been filed at Murang’a, fully determined and estate fully distributed.”

40. The court proceeded to hold that filing a second succession cause without disclosing that a previous one had been filed was tantamount to concealment of material facts thus subject to revocation under Section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya.

41. In *Re Estate of Saleh Awke* (2019) eKLR, an application to revoke a limited grant issued by the Kadhi’s Court was made and allowed. It was allowed on the basis that there was already a previous grant issued



by the High Court in a separate suit. An application was made to review that order revoking the grant of the Kadhi's Court. In dealing with the application for review, this is what Mwita J stated :

- “ 14. In the ruling of 4th April, 2019 this court pointed out that there was already a grant of representation issued by the High Court sitting in Nairobi, on 2nd October 1967 to Saleh Awke in Cause No. 273 of 1967 and, therefore, it was not possible to have two grants for the same estate held by two different administrators....
18. First, counsel for the Petitioner/ applicant has admitted that he has never perused the High Court file in Cause No. 237 of 1967 and that he is not sure whether the full grant issued on 2nd October 1967 was still in force. Without ascertaining whether or not that grant was in force, the Petitioner could not seek to have another grant for the same estate. And as this court stated on 4th April, 2019, there cannot be two administrators for the same estate appointed through different grants of administration whether full or limited. In other words, there cannot be two succession causes over the same estate.
19. Second, without ascertaining whether or not the grant issued by the High Court was still in force, the Kadhi's court could not purport to revoke that grant and appoint other administrators. Simply put, the Kadhi's Court cannot revoke a grant issued by this Court. It has no jurisdiction to do so and anything purported to have been done by the Kadhi's Court that would amount to revoking a grant issued by a Superior court would be a nullity because Kadhi's court has no such jurisdiction.
20. Even assuming that the Kadhi's court had jurisdiction to revoke the grant and appoint new administrators, there would still be a problem for the petitioner/ applicant herein. The Kadhi's court having appointed other administrators, there would be no need to issue another grant given that there would already be other administrators. The entire scheme of the law of succession Act does not contemplate the situation perpetrated by the petitioner/ applicant to the extent of there being two grants for the same estate.”(emphasis mine).
42. In the case of *Mangala v Mangala & another* (Miscellaneous Civil Application 48A of 2023) [2024] KEHC 5942 (KLR) (27 May 2024) (Ruling), Musyoka J, weighed in as follows :
- “ 2. Succession proceedings to that estate have been undertaken in 2 causes, Kisumu HCSC No. 39 of 2006 and Busia CMCS No. E262 of 2021. The grants in both causes have been confirmed, that in the Kisumu cause on 17th May 2006, while that in the Busia cause was confirmed on 19th January 2022. Of course, it is unacceptable to have 2 succession causes in respect of the same intestate estate. The Busia cause is the latest in time, and it was filed during the pendency of the Kisumu cause, in abuse of court process.
3. The courts have pronounced that the filing of separate succession causes, in respect of the same estate, leading to issuance of different grants of administration, and the making of different orders on distribution of the same estate, is unacceptable. It can only lead to confusion. For rival groups would be holding different grants, all of them authorising them to administer the same estate, and there would be the real spectre of the court giving conflicting orders



or directions, on the distribution of that 1 estate, which would expose the court and the judicial system to disrepute and embarrassment. There is only 1 estate, and, conversely, there should be only 1 administration of that estate, through 1 succession cause...” (emphasis mine).

43. The issue of a person filing and obtaining a grant when there is already an existing one is never taken lightly by courts. In the case of *Chai (Suing as the Legal Representative of the Estate of the Late Balozi Chai Ngala) v Kahindi & 6 others (Environment & Land Case E048 of 2022) [2025] KEELC 3148 (KLR) (2 April 2025) (Ruling)*, the plaintiff obtained a grant ad litem on 24 June 2021 in the suit *Mombasa, Succession Cause E203 of 2021*. He then filed suit using the said ad litem grant. An application to strike out suit was filed on the ground that the plaintiff had no locus standi because there had previously been issued a grant to one Emmanuel Kingi Mwasambu, dated 15 October 2019, in a separate suit which was *Malindi Succession Cause No. 63 of 2019*. Makori J, allowed the application to strike out suit.
44. My own view of the two succession cases, filed by the 3rd defendant in Rongo and Migori Magistrates’ Courts, is that they were filed fraudulently with the sole aim of defrauding the estate of the deceased. As we have seen above, only one succession case is permissible in respect of an estate of a deceased. I am not at the outset persuaded by the reasons given by the 3rd defendant that she was ignorant of the law and that is why she filed two cases for the same deceased person. If she thought that two cases were permissible, it does not add up that she did not proceed to file the second succession matter in Rongo Magistrates’ Court, where she had already obtained a grant, but instead went to a different court to file the said succession cause. The only feasible reason I can find for her not filing the second succession case in Rongo Court is that it would have been easily discovered within their system that they already have in their records a prior succession matter for the same deceased person. Neither am I persuaded that she gave any plausible reason why she did not file an application to include the parcel No. 4X0 in the same Rongo Succession Case No. 13 of 2018. Maybe she thought that there may be discovery of something which may have reversed her gains (for she already had a confirmed grant for the parcel No. 4X6) and she did not wish to take the risk of filing an application within that case. It was a lower risk to file a second succession matter as what she had in the bag (i.e the confirmed grant for the parcel No. 4X6) would remain there. That is the only explanation I can find for her filing the two succession cases before the Magistrates’ Court. The second succession case in Migori was certainly filed by concealment of a very material fact, i.e that there had been a previously filed succession case for the same estate in the Rongo Magistrates’ Court.
45. I am aware that the 3rd defendant tried to point a finger at counsel for the plaintiff but I am not buying her spurious allegations. This was a desperate attempt to try to wriggle out of the tight situation that she found herself. She certainly brought nothing to corroborate the allegation that counsel for the plaintiff was part of the scheme and I certainly do not believe her wild claims. Whatever the case, she cannot shift the illegality and the abuse of court process involved in filing the two succession cases to anybody else. As the person who filed the petitions she is fully responsible for the contents thereof.
46. Of course the argument of the 3rd defendant is that now that she had obtained grants of letters of administration, she properly procured registration of the parcels of land, and that the restriction to the effect that there should be no dealings pending succession was now overtaken. It is only a proper succession case that could lead to the lifting of the restriction and what she filed are not valid succession cases. They are not valid because there was already succession case No. 334 of 2015 filed by the plaintiff before the High Court in Homa Bay and a grant issued on 14 May 2016. There was already an administrator of the estate of the deceased vide a grant issued by a Superior Court. Another court, let alone a court subordinate to the High Court, could not purport to issue a second grant that was



contrary to the grant issued by the High Court as was aptly explained by Mwita J, in *Re Estate of Saleh Awke* which I have already quoted above.

47. Apart from the above, there is the additional fraud of the 3rd defendant purporting to be the closest next of kin to the deceased. It cannot be true that she is the closest next of kin or else you would expect that it would be her to bury the deceased. The deceased was buried on other land and the 3rd defendant never stated that she was at all involved in his burial. She was not the one who surrendered the ID card of the deceased or obtained the proper burial certificate. The deceased was interred by other people who were not the 3rd defendant. The fact that she had to go and look for a fraudulent Death Certificate without even providing the correct date of death tells you that she could not have been the next of kin to the deceased. I do not see how the 3rd defendant could have purported to file a succession cause without first getting consent from the persons closer in consanguinity to the deceased which people she must have known. There is also no evidence that she consulted the Chief of the area where the deceased was buried before filing the succession suit; instead she went to procure a letter from a Chief from an area where the deceased was not ordinarily resident. I have no doubt that the succession case was filed by stealth and under a cloak of darkness for no other reason but for purposes of perpetuating fraud over the suit lands.
48. What I found interesting is that at the time I was hearing this matter, I was told that there are proceedings going on regarding revocation of the grants before the Rongo and Migori Magistrates' Courts and that evidence was being taken before those courts. I wonder to myself what sort of proceedings these are. It should be manifest to the Magistrates Courts, that there was already issued a grant by the High Court when the proceedings before them were filed. It should also be plain and obvious that any grant issued by the Magistrates' Court cannot override a grant issued by the High Court. I wonder why the parties are spending too much time there since to me it is an issue that the subordinate courts should consider simple and direct. Upon being alive to a grant issued earlier by a Superior court, I would have thought that the subordinate courts would simply proceed to do what is inevitable, i.e revoke the grants and nullify the purported succession proceedings before them. This can even be done suo motu and at worst by a simple application. There is no need of taking parties round and demanding evidence because the end result as I have said is plain and obvious, for reason that the subordinate court cannot purport to override a previously issued order of the High Court, and the order of the High Court here is that the estate of the deceased is being administered pursuant to Homa Bay High Court Succession Cause No. 334 of 2015, and that there is a grant issued to the plaintiff herein which grant has already been confirmed.
49. Without any shadow of doubt, the proper grant is that of the High Court. If those two grants were before me for revocation, I would have readily, without much ado, have proceeded to revoke them. The rightful and legal path for the 3rd defendant to take if she thinks that she is the heir of the estate of the late Charles Omolo Onyango is to file an application for revocation of grant before the High Court or seek to be included as a beneficiary of that estate within the Succession matter in the High Court. She should not be entertained at all before the subordinate courts and she should not be allowed to take parties round in circles before the subordinate courts regarding those two succession cases.
50. Counsel for the 3rd defendant submitted that this court has no jurisdiction to nullify a grant. I agree. I am not nullifying any. But I am not restricted in making a finding that a particular succession case has been filed for purposes of perpetuating a fraud. Neither am I restricted, if faced with two grants, from making a finding of which of the two grants the court should uphold. I opt to uphold the grant issued by the High Court as it was issued first in time and a fortiori, it was issued by a Superior Court. The question of nullification of the grants is already before the Magistrates' Court and what I have said



here is obiter. It is not a decision nullifying the grants which is at the doorstep of the two Magistrates' Courts and I have already vented my thoughts on the same.

51. It is crystal clear to me that the 3rd defendant embarked on a fraudulent scheme to obtain registration of the suit parcels of land in her name and/or the names of her children. The fraudulent scheme was to purport to file succession cases which she could then use to obtain registration of the parcels of land in her name and/or those of her acolytes and then defraud the estate. Even the manner that she obtained title was irregular and fraudulent. She did not have the original title deeds for purposes of transmission. How she obtained new title deeds without the lost titles first being gazetted is baffling and downright illegal. The law requires the production of the previous titles or their gazettelement if they are lost before dealings can be done. This is apparent from a reading of Sections 31 and 33 of the [Land Registration Act, 2012](#), which Sections provide as follows :-

31. Production of certificate

- (1) If a certificate of title or a certificate of lease has been issued, then, unless it is filed in the registry or the Registrar dispenses with its production, it shall be produced on the registration of any dealing with the land or lease to which it relates, and, if the certificate of title or the certificate of lease shows all subsisting entries in the register, a note of the registration shall be made on the certificate of title or the certificate of lease.
- (2) Where the disposition is a transfer, the certificate shall, when produced, be cancelled, and in that case a new certificate may be issued to the new proprietor.
- (3) Where the disposition is a charge, the certificate shall be delivered to the chargee.

33. Lost or destroyed certificates and registers

- (1) Where a certificate of title or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a replacement certificate of title or certificate of lease, and shall produce evidence to satisfy the Registrar of the loss or destruction of the previous certificate of title or certificate of lease.
- (2) The Registrar shall require a statutory declaration to be made by all the registered proprietors, and in the case of a company, the director, where property has been charged, the chargee that the certificate of title or a certificate of lease has been lost or destroyed.
- (3) If the Registrar is satisfied with the evidence proving the destruction or loss of the certificate of title or certificate of lease, and after the publication of such notice in the Gazette and in any two local newspapers of nationwide circulation, the Registrar may issue a replacement certificate of title or certificate of lease upon the expiry of sixty days from the date of publication in the Gazette or circulation of such newspapers; whichever is first.
- (4) If a lost certificate of title or certificate of lease is found, it shall be delivered to the Registrar for cancellation.
- (5) The Registrar shall have powers to reconstruct any lost or destroyed land register after making such enquiries as may be necessary and after giving due notice of sixty days in the Gazette.



- (6) Upon the issue of a replacement certificate no further dealings shall be carried out using the replaced certificate.

52. There was no gazettelement of the title in this instance and it follows that the titles procured by the 3rd defendant were procured through fraud and/or illegality. Such titles are subject to cancellation as provided for in Section 26 of the [Land Registration Act](#) which provides as follows :

26.

- (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.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

53. From the above, it will be seen that a title procured through fraud or misrepresentation to which the title holder is a party is subject to cancellation. I have already found that the 3rd defendant embarked on a fraudulent scheme by filing the multiple succession cases in Rongo and Migori Magistrates' Courts in order to obtain registration of the titles in her name. She indeed, through this fraud, obtained registration of the parcel No. 4X6 in her name and the register currently reflects her as proprietor. Being the key player in the fraud, her title to the parcel Kamagambo/Kanyajuok/4X6 is for cancellation.

54. What about the title to the parcel Kamagambo/Kanyajuok/4X0 ? That title is currently registered in the name of the 1st defendant. The 1st defendant argues to be an innocent purchaser for value and therefore his title should be upheld. By any stretch of imagination, he cannot be an innocent bona fide purchaser for value. He had a previous title to the same land which was cancelled in 2011 for having been obtained fraudulently. He knew that the person who complained about this illegally obtained title was the plaintiff. He himself acknowledged that this title obtained in 2011 was not a good title. However, despite his title being cancelled, he continued to remain in possession and even made massive developments. He was sued in 2012 when this case was originally filed. At the time the case was filed the plaintiff had a grant ad litem in respect of the estate of the deceased. He knew that the estate was being administered by the plaintiff. He knew that there was a case against him by the same estate regarding his possession of the suit land. Now, in light of these facts, how could he claim to have entered into a genuine clean sale agreement in 2022 with some third parties who were purporting to now represent the estate of the deceased and/or being beneficiaries thereof? Any prudent purchaser would first have brought the intention to sell to the attention of the person representing the estate in this suit and that is the plaintiff. Even worse, the 1st defendant was aware that this suit was still ongoing. How can he now be heard to allege that he is an innocent purchaser while at the same time the case against him was



still on ? The doctrine of lis pendens catches up with him to neutralize any claim of being an innocent purchaser for value without notice.

55. In fact, I will not be too surprised if the 1st defendant was the mastermind of the corrupt scheme. Okay, I could be wrong in claiming that he was the mastermind, but I cannot be wrong in concluding that he was part and parcel of the corrupt scheme. Given his prior knowledge, he must have colluded with the 3rd defendant to see to it that he gets title in his name. The motive is plain to see : he hoped that by virtue of obtaining title the case herein against him would collapse. The long and short of it is that he is not a bona fide purchaser for value and he cannot be protected. In any event, since he obtained title from a person/s who acquired the same fraudulently, he holds no good title. The bad title of the 3rd defendant is not sanitized by the mere fact that it has now been transferred to somebody else.
56. I think I have said enough to demonstrate that the plaintiff's case is fully merited. I proceed to cancel the titles of the 1st and 3rd defendants to the suit parcels Kamagambo/Kanyajuok/4X0 and 4X6. I order that the titles do revert back to the name of Charles Omolo Onyango (deceased) and it will be subject to the order of succession issued in Homa Bay High Court Succession Case No.334 of 2015 . The plaintiff also deserves the order to evict and permanently restrain the 1st and 3rd defendants from the said land parcels of land Kamagambo/Kanyajuok/4X0 and Kamagambo/Kanyajuok/4X6. These two orders are granted. For the parcel No. 4X0 which is developed by the 1st defendant, it is upon the plaintiff to make an election whether he wishes the 1st defendant to demolish his structures and cart them away or to retain the land parcel as it is. The plaintiff to make this election in writing within the next 14 days and the 1st defendant to comply with the terms of that election. If the plaintiff elects that the 1st defendant vacates the suit land and leaves it in the state that it is, well and good, the 1st defendant to give vacant possession in that state. If the plaintiff elects that the 1st defendant removes all his structures and takes them away, the 1st defendant to comply with that election within 14 days of being informed. If the plaintiff makes no election, then the default order will be for the 1st defendant to vacate and leave the premises as it is with anything attached to the soil being left intact within the next 28 days. If he fails to comply with the order to give vacant possession and/or remove his structures as provided above, he be forcefully evicted and if the plaintiff decides to demolish and remove the structures therein, this be at the cost of the 1st defendant. The same order applies to the 3rd defendant in respect of the land parcel Kamagambo/Kanyajuok/4X6. For avoidance of doubt, this order does not affect the 4th defendant whose case will be tried separately and orders regarding his alleged possession will have to be made within the case for adverse possession which I have already directed to be separated from this suit and be given a new number. However, the holding that the 3rd defendant has no good title means that her case, Rongo SRMCC No. 45 of 2019 holds no water. It is hereby struck out but with no orders as to costs.
57. There is a prayer for general damages for trespass and mesne profits. I will readily allow the prayer for general damages. I have considered the size and location of the suit parcels of land and also their user. I have also taken into account that there was continued trespass out of which the 1st – 3rd defendants benefited greatly. The 1st defendant has benefited by enjoying a residence and farming activities on the land. The 2nd and 3rd defendants must also have enjoyed some benefit in respect of the land parcel Kamagambo/Kanyajuok/4X6 particularly the fact that the 3rd defendant leased it and the 2nd defendant previously held title to it and was in possession at the time this case was filed. As against the 1st defendant, I make an award of Kshs. 3 million in favour of the plaintiff as general damages for trespass. As against the 2nd and 3rd defendants, I make an award against them jointly and/or severally in the sum of Kshs. 4 million in favour of the plaintiff as general damages for trespass. As I have said I have taken into consideration many factors including the user and size of the parcels of land. Parcel No. 4X0 is 2.2 Ha while parcel No. 4X6 is 7.4 Ha. There is the prayer for mesne profits. The plaintiff pleaded for an



award of Kshs. 1, 723,000/= resting on a report of an agricultural officer. The report was however not produced as an exhibit, and in light thereof I am afraid that there is no proof of this loss. I therefore make no award in respect of mesne profits.

58. The last issue is costs. The 1st, 2nd and 3rd defendants were all party to the fraud. They will jointly and/or severally bear the costs of the suit to the plaintiff.
59. There are no orders made for or against the 4th defendant in this suit. I reiterate that his case will be heard separately.
60. Judgment accordingly.

DATED AND DELIVERED THIS 22 DAY OF MAY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MIGORI

Delivered in the presence of :

Ms. Atieno h/b for Mr. Orondo for the plaintiff

Mr. Ogwe for the 1st defendant

Mr. Oywer for the 2nd defendant

Mr. Jura for the 3rd defendant

Mr. Singei for the 4th defendant

Court Assistant – Michael Oyuko

