



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Ipero Okemeri (Deceased) (Succession Cause
77 of 2006) [2025] KEHC 1984 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1984 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

SUCCESSION CAUSE 77 OF 2006

WM MUSYOKA, J

FEBRUARY 21, 2025

IN THE MATTER OF THE ESTATE OF IPERO OKEMERI (DECEASED)

RULING

1. This cause relates to the estate of the late Ipero Okemeri, who died on 13th July 1978, according to the certificate of death on record, serial number 876715, dated 30th May 2006. There is a letter, on the record, from the Chief of Ochude Location, dated 5th June 2006, which, curiously, indicates that the deceased had sold 4½ acres of his land to Longino Wanjala Ekesa on 28th August 2002 and 2 acres to David Ekine Geege on 22nd May 2006. “Curiously,” as at the time of the alleged sales the deceased had been dead for over 2 decades. The said letter was issued at the instance of “a son” of the deceased, named Rasmus Okemeri Okilengi.
2. Representation, in intestacy, was sought by Rasmus Okemeri Okilengi, vide a petition filed herein on 31st May 2006, in his purported capacity as son of the deceased. The deceased was said to have had died on 13th July 1978, possessed of South Teso/Angoromo/664. Letters of administration intestate were made, on 31st October 2006, to Rasmus Okemeri Okilengi, and a grant was duly issued on even date. I shall refer to Rasmus Okemeri Okilengi, hereafter, as the administrator.
3. The administrator filed a summons for confirmation of grant, dated 2nd September 2008. He listed himself as the sole survivor of the deceased, in his purported capacity as a child of the deceased, and proposed that the estate, South Teso/Angoromo/664, be shared out between him, David Ekine George, Longino Wanjala Ekesa and Benard Kimende Kimende. The confirmation hearing happened on 2nd February 2009, and 2 acres of the property devolved upon Rasmus Okemeri Okilengi and David Ekine Geege each, while Longino Wanjala Ekesa took 1½ acre and Benard Kimende Makina took the other 1 acre. A certificate of confirmation of grant, in those terms, was issued, on 7th September 2009.
4. I am tasked with determining a summons for revocation of grant, dated 8th August 2023. It is at the instance of Eliza Amukulono Abura, who I shall refer to hereafter as the applicant. She claims to be a daughter of the deceased, and that the administrator was her brother. Then again, in a succeeding paragraph, describes the deceased as her grandfather, and the administrator as her uncle. She alleges that the rightful heirs were left out, and the estate had been sold to strangers. She asserts that the



administrator was not a son of the deceased, but a distant brother to her. She identifies the survivors of the deceased as the late Antonina Anyokorit, the wife of the deceased; the late Santulino Asang'ai, a son of the deceased, survived by Dalmás Asang'ai and Brenda Nanjala; Wilbroda Imurang, a daughter of the deceased; and Eliza Amukolon, also a daughter. She states that their consents to administration were not obtained, and their existence was concealed from the court. She further avers that confirmation was obtained without their involvement.

5. There are affidavits on record, sworn on 13th September 2023 and 4th October 2023, by a court process server, to the effect that the application and mention notices were served on the administrator on diverse dates. An appearance was filed by Okeyo Ochiel & Company, Advocates, dated 23rd November 2023.
6. I have not come across any response to the summons for revocation of grant, filed by the administrator.
7. Directions were taken on 18th October 2023, for disposal of the application, by way of viva voce evidence.
8. The matter initially came up for hearing on 16th November 2023, when it was adjourned, to enable Mr. Okeyo, Advocate, properly come on record for the administrator. When it came up again on 19th December 2023, Mr. Okeyo indicated that the administrator was unwell, hence the delay in filing a response to the application. At the next appearance, on 8th February 2024, when the matter was due for hearing, Mr. Okeyo indicated that he was open to negotiations, and the matter was taken out. On 7th March 2024, the administrator was in attendance personally, and confirmed being served with the summons for revocation, but asserted that he had an Advocate, who was not in court then, and the matter was taken out.
9. On 20th May 2024, the matter came up for hearing but was taken out at the request of Mr. Okeyo, for the administrator, on grounds of differences between him and his client, and he asked for time to formally apply to cease acting for him. When the matter came up next, on 18th July 2024, no such application had been filed, and Mr. Okeyo did not attend court. The matter eventually proceeded on 15th January 2025, the date having been fixed before the Deputy Registrar, by consent of both parties. Mr. Okeyo attended court that morning, before me, for a criminal matter where a plea was taken, and another matter, but was unavailable for the hearing of this matter, despite efforts made by the court assistant, Mr. Arthur Etyang, and the Advocate for the applicant, Mr. Ouma, to contact him.
10. The applicant, who introduced herself to the court as Elizabeth Amukoloni, was the first to take to the witness stand. She described the deceased as her biological father, and the administrator as her uncle. She complained that the administrator obtained representation to the estate without involving her. She said that the deceased had 3 children, who she named as Wilbroda Imurang, Elizabeth Amukolon and Santulino Asanga'i. She stated that Santulino Asang'ai had died, but had been survived by a son, Dalmás Asang'ai. She asked that the grant made to the administrator be revoked, to allow them conduct succession to the estate of their father.
11. Dalmás Asang'ai followed. He described himself as a grandson of the deceased, being a son of Santulino Asang'ai, who was a son of the deceased. He supported the motion for revocation of the grant.
12. Emmanuel Aman Ikileng testified next. He was a nephew of the deceased. He described the administrator as his half-brother. He said that the administrator sold the land of the estate when the children of the deceased were not aware. He supported the application for revocation.
13. At the end of the oral hearing, the applicant chose not to submit and left it to the court to decide on the application, based on the material on record.



14. The only issue for me to determine is whether the grant herein should be revoked.
15. The application, that I am called upon to determine, is for revocation of the grant made to the administrator. The discretion, granted by section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya, is for revocation of a grant of representation, along 3 broad themes. See *Joyce Ngima Njeru & another v Ann Wambeti Njue* [2012] eKLR (Githinji, Nambuye & Maraga, JJA) and *In re Estate of Luka Modole (Deceased)* [2019] eKLR (Musyoka, J).
16. The first is where the process of obtaining the grant was beset by procedural and integrity challenges. See *Mwathi v Mwathi & another* [1995-1998] 1 EA 229 [1996] eKLR (Gicheru, Kwach and Shah, JJA), *In Re the Estate of Dr. Arvinder Singh Dhingra (Deceased)* [2001] eKLR (Aluoch, J), *Musa v Musa* [2002] 1 EA 182 (Ringera, J), *In Re Estate of Naftali (Deceased)* [2002] 2 KLR 684 (Waki, J), *In Re Estate of James Kiarie Muiruri (Deceased)* [2004] eKLR (Kooome, J), *Patrick Ng'olua M'Mungania v Fredrick Kimathi Ng'olua & 8 others* [2013] eKLR (JA Makau, J), *Samwel Wafula Wasike v Hudson Simiyu Wafula* [1993] LLR (Kwach, Omolo & Tunoi JJA), *Yasmin Rashid Ganatra & another (Suing as legal representatives of Rashid Juma Kassam) v Gulzar Abdul Wais* [2015] eKLR (Waki, Nambuye & Kiage, JJA), *Susan Wangithi Muchungu & 6 others v James Thurui Mucungu & another* [2016] eKLR (Limo, J), *In re Estate of Magangi Obuki (Deceased)* [2020] eKLR (Wendoh, J), *In re Estate of Jeremiah Njoroge (Deceased)* [2021] eKLR (Onyiego, J) and *Chepkerich v Murei & another* [2022] KEHC 3115 (KLR)(Ogola, J).
17. The second is where there was failure of administration. See *In re Estate of Festo Akwera Kusebe (Deceased)* [2019] eKLR (Musyoka, J), *In re Estate of Kiruthu Kimiti (Deceased)* [2021] eKLR (Mutuku, J), *In re Estate of Peter Ngumbi Mulei (Deceased)* [2021] eKLR (Odunga, J) and *In re Estate of the Late Njonjo Kibiga (Deceased)* [2022] eKLR (Chemitei, J). While the third is where the grant had become useless and inoperative. See *Julia Mutune M'Mboroki v John Mugambi M'Mboroki & 3 others* [2016] eKLR (Gikonyo, J), *In re Estate of Goolamboosain Manjee Keshavjee (Deceased)* [2017] eKLR (Onyiego, J), *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR (Musyoka, J) and *In re Estate of Kamatu Kabara (Deceased)* [2021] eKLR (Gitari, J).
18. The applicant anchors her case on 2 of those broad reasons for revocation of grant. In the first place, it is argued that the process of obtaining the grant, which is sought to be revoked, was defective, and that that process had been beleaguered by fraud and concealment of matter from the court. It is also implicitly argued that the applicant ranks in priority, over the administrator, in terms of entitlement to administration of the estate.
19. She argues that the deceased was her father, while the administrator was her uncle. When the administrator sought representation, he posed as a son of the deceased, and he did not disclose the applicant and her siblings as the immediate heirs. She goes on to complain that the administrator sold the land to strangers and went on to have the estate devolved to them, to the detriment of the real heirs and survivors. She states that they were not informed of nor involved in the process of obtaining grant and confirming it.
20. The application is not opposed, for the administrator did not reply to it. He was aware of it, and he attended court and said he had indeed been served with the court papers. His Advocate, Mr. Okeyo, had the matter taken out at one instance to enable him respond to the application. In the end, no response was filed, and at the hearing of the application neither the administrator nor his Advocate attended court. The case presented by the applicant and her siblings is uncontroverted or uncontested.
21. The deceased herein died on 13th July 1978, long before the *Law of Succession Act* came into force on 1st July 1981. The effect of that would be that his estate would be subject to distribution in accordance



with customary law, by virtue of section 2(2) of the [Law of Succession Act](#), and, by dint of the same provision, its administration should be subject to Part VII of the [Law of Succession Act](#), in terms of the process of obtaining representation and the other attendant processes. The deceased died intestate. Representation herein has been sought and granted in intestacy, and no will has been brought forth, nor any claim made that he had died testate. See [In the Matter of the Estate of Alloyce M. Obiero \(Deceased\)](#) [2011] eKLR (Nambuye, J), [In Estate of Stanley Kori Kiongo alias Kori Kiongo-Deceased](#) [2016] eKLR (Mativo, J), [Agnes Wanjugu Ndunyu & another v Godfrey Nguyo Mwai & 2 others](#) [2018] eKLR (T. Matheka, J) and [Elijah Matumbi M’Nkanata v David Mutuma M’Nkanata](#) [2021] eKLR (Muriithi, J).

22. The process of applying for appointment as administrators is provided for under section 51 of the [Law of Succession Act](#), which falls under Part VII of the [Law of Succession Act](#). Under that provision, at section 51(2)(g), there are disclosure requirements on the survivors of the deceased, and the first in line, for disclosure purposes, are the surviving spouses and children. See [Stephen Marangu M’Itirai v Silveria Nceke & 4 others](#) [2015] eKLR (JA Makau, J) and [In re Estate of George Muriithi Gitahi \(Deceased\)](#) [2019] eKLR (Nyakundi, J). In short, the process of probate and administration expects that surviving spouses and children should be at the forefront. When it comes to administration, section 66 of the [Law of Succession Act](#) gives the surviving spouse and the children prior right to administration over any other person or relative of the deceased. See [In re Estate of Aggrey Makanga Wamira \(Deceased\)](#) [2000] eKLR (Waki, J).
23. For avoidance of doubt, section 66 of the [Law of Succession Act](#) provides:

“ 66. Preference to be given to certain persons to administer where deceased died intestate

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors ...”

24. Section 51(2)(g) of the [Law of Succession Act](#) provides:

“ 51. Application for grant

- (1) ...
- (2) Every application shall include information as to—
 - (a) ...
 - (b) ...
 - (c) ...



- (d) ...
- (e) ...
- (f) ...
- (g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;
- (h) ...
- (i) ...
- (3) ...
- (4) ...”

25. Section 76 of the [Law of Succession Act](#) provides for revocation of grants. Under section 76(a)(b) and (c), a grant would be liable for revocation, where the process of obtaining it was defective, or tainted with fraud, misrepresentation and concealment of matter from the court. The process would be defective, where section 51 of the Act is not complied with, in terms of non-disclosure of a surviving spouse or a child of the deceased. Section 66 of the [Law of Succession Act](#) envisages that a spouse and children have prior entitlement to administration over other relatives, as indicated above.
26. Rules 7(7) and 26 of the [Probate and Administration Rules](#), which operationalise section 66 of the [Law of Succession Act](#), on the other hand, envisage that should anyone with a lesser right seek representation, they ought to cite those with prior right, or get them to renounce their prior right, or get them to consent to those with lesser right applying. See [AKM & another v AKA](#) [2015] eKLR (Mrima, J), [Monica Adbiambo v Maurice Odero Koko](#) [2016] eKLR (Nagillah, J), [In re Estate of M’ikiara Kimiri](#) [2018] eKLR (Ong’ino, J) and [In re Estate of Reuben Mutuku Kiva \(Deceased\)](#) [2021] eKLR (Odunga, J).
27. Failure to comply with Rules 7(7) and 26 of the [Probate and Administration Rules](#), would be a defect in respect of which the grant could be revoked. See [Albert Kithinji Njagi v Jemima Wawira Njagi & another; Simon Nyaga Njeru & another \(3rd Respondent/Interested Parties\)](#) [2020] eKLR (Njuguna, J), [In re Estate of Rahemtulla Ali Bux \(Deceased\)](#) [2020] eKLR (Thande, J) and [In re Estate of Reuben Mutuku Kiva \(Deceased\)](#) [2021] eKLR (Odunga, J). Non-disclosure of a surviving spouse or child would be a matter either of fraud, or misrepresentation or concealment of matter from the court, in addition to being a non-compliance with section 51 of the [Law of Succession Act](#), and Rules 7(7) and 26 of the [Probate and Administration Rules](#). It is a ground for which a grant could be revoked.
28. Under section 76 of the [Law of Succession Act](#), a grant may be revoked on application, or by the court of its own motion. The court would act on its own motion, or suo moto, in cases where it stumbles on material, in the absence of a formal application for revocation, which material would justify revocation, and one such case, where that could happen, is when the court is handling a confirmation application.
29. For avoidance of doubt, section 76(a)(b)(c) of the [Law of Succession Act](#) states:

“76. Revocation or annulment of grant



A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) ...”

30. Rules 7(7) and 26 of the *Probate and Administration Rules* state as follows:

“7(7) Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has –

- a. renounced his right generally to apply for grant; or
- b. consented in writing to the making of the grant to the applicant; or
- c. been issued with a citation calling upon him to renounce such right or to apply for a grant.”

“26

- (1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
- (2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.”

31. The applicant is arguing that the administrator was appointed through a process that was defective or was marred by fraud, misrepresentation and concealment of matter. Her case is that she and her siblings were not disclosed, yet they were children of the deceased. Such non-disclosure would be a defect in the process, and an act of fraud. As children of the deceased, it would mean that the applicant and her siblings have prior right to administration, over the administrator herein, who appears to be their uncle, and either a cousin or brother of the deceased, yet their consents were not obtained,



- or their renunciation of probate obtained, or citations issued to them to either renounce or take up probate, contrary to what is required by Rules 7(7) and 26 of the Probate and Administration Rules. That omission would amount to a defect in the process. It can also be treated as an act of fraud or misrepresentation.
32. There is no dispute that the applicant and her siblings are children of the deceased. In the circumstances, they should have been treated, at the time representation was being sought by the administrator, as such, and they should have been disclosed as such, in the papers that were filed in court, and should have been involved in the process. They had prior right to administration of the estate of their father, by dint of section 66 of the *Law of Succession Act*, over the administrator, who should have sought compliance with section 51 of the *Law of Succession Act*, and Rules 7(7) and 26 of the *Probate and Administration Rules*. These non-disclosures and non-compliances would mean that the process of obtaining that grant was defective and was marred by the improprieties of lack of integrity, fraud, misrepresentation and concealment of matter from the court.
 33. It could be that in 1978, when the deceased died, or 2006, when representation was sought, the applicant and her siblings were minors, and could not seek representation on their own on account of age. If that was the case, then the administrator should have complied with section 58 of the *Law of Succession Act*, that is in cases where a continuing trust arises, in situations where any of the survivors or beneficiaries are under disability, such as where the survivors of the deceased include minors, like in this case, then “the court shall, subject to section 66, appoint as administrators the applicant and not less than one or more than three persons as proposed by the applicant” It was held, in *Veronica Mwikali Mwangangi v Daniel Kyalo Musyoka* [2005] eKLR (Ang’awa, J), that failure to comply with section 58 renders the grant invalid.
 34. There is more to this section 58. Although administrators are generally trustees, standing in a fiduciary relationship with respect to the beneficiaries, administrators appointed in compliance with section 58, are specifically so appointed as to care for the interests of the person with disability, and they are indeed trustees with respect to that person, during the duration of the disability of the person. Where such person is a minor, the administrator has to act as the trustee for the minor until the minor attains 18 years. See *In re Estate of Esther Wangui Chege (Deceased)* [2021] eKLR (Mwongo, J). In this instance, if the applicant and her siblings were minors, when the deceased died in 1978 and the administrator sought representation in 2006, then, coming under section 58, as he should have done, the administrator would have become the trustee for the applicant and her siblings until they attained the age of majority. He would have been expected to protect the interests of the children of the deceased during the period of their disability on account of their minority age. He appears to have done the opposite, taking advantage of their minority, to plunder the estate for his own good, rather than managing it in their best interest.
 35. The net effect of the non-disclosure and lack of involvement, of the children of the deceased, in the process of administration and distribution of the estate of their father, was that they were disinherited. At confirmation, the estate was devolved wholly upon the administrator, and the persons that he had sold the land to, despite he not being entitled to that estate, in view of the survivorship of the children of the deceased. As he had no right to inherit the land, he had no right to sell it, and as he had no title to the land at all, through succession and inheritance, he could pass no good title to anyone. He had nothing to sell, with respect to that property, and the purported buyers acquired no good title at all from him.
 36. I trust that I have said enough to demonstrate that the applicant has made a good case for revocation of the grant that was made herein on 31st October 2006, to Rasmus Okemeri Okilengi, and the



nullification of all the processes that were undertaken on the strength of the said grant and its certificate of confirmation.

37. The final orders, on the summons for revocation of grant, dated August 8, 2023, are as follows:
- a. That the grant of letters of administration intestate, made on October 31, 2006, to Rasmus Okemeri Okilengi, is hereby revoked;
 - b. That the orders, that were made on February 2, 2009, confirming the said grant, are hereby quashed or set aside, and the certificate of confirmation of grant issued on February 7, 2009, based on those orders, is hereby cancelled;
 - c. That, if South Teso/Angoromo/664 was transmitted on the strength of the confirmation orders the subject of (b) above, then, I shall and hereby nullify such transmissions, and direct the Land Registrar for Busia County, to cancel the same, and revert the property to the name of the deceased;
 - d. That I hereby appoint Dalmas Asang'ai, Wilbroda Imurang and Elizabeth Amukolon administrators of the estate herein, and a grant of letters of administration intestate shall issue to them;
 - e. That the new administrators shall have the liberty to apply for confirmation of their grant, once the transmission of South Teso/Angoromo/664, if at all, has been cancelled and the property reverted to the estate, in any case within the next 90 days;
 - f. That the matter shall be mentioned on May 21, 2025, for compliance and further directions; and
 - g. That any party aggrieved by these orders has leave of 30 days to move the Court of Appeal, appropriately.

38. It is so ordered.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 21ST DAY OF FEBRUARY 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Ouma, instructed by BM Ouma & Company, Advocates for the applicant.

Mr. Okeyo, instructed by Okeyo Ochiel & Company, Advocates for the administrator.

