



REPUBLIC OF KENYA



**In re Estate of Joseph Oketch Adede (Deceased) (Probate & Administration
E010 of 2020) [2025] KEHC 2052 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2052 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
PROBATE & ADMINISTRATION E010 OF 2020**

DK KEMEL, J

FEBRUARY 21, 2025

IN THE MATTER OF THE ESTATE OF JOSEPH OKETCH ADEDE (DECEASED)

BETWEEN

CARENA ATIENO OKECH OBJECTOR

AND

DAVID OTIENO ODUOR ADMINISTRATOR

RULING

1. The Objector herein has brought an application under sections 48 and 76 of the *Law of Succession Act* Cap 160 Laws of Kenya, and under Rule 44, 49 and 73 of the Probate and Administration Rules. The said application is dated 5/9/2023 and supported by an affidavit dated 4/9/2023 sworn by the Applicant herein Carena Atieno Okech. The application seeks the following orders:
 - i. That the grant of letters of administration intestate to the estate of Joseph Oketch Adede (deceased) issued to David Otieno Oduor on 14th March 2021 and confirmed on 15th February 2023 be revoked.
 - ii. That the certificate of confirmation of grant issued on 15/2/2023 be set aside.
 - iii. That this court be pleased to issue fresh letters of administration to the estate of the deceased Joseph Okech Adede to Carena Atieno Okech.
 - iv. That the respondent be condemned to pay costs of this application.
2. This application is pivoted by the grounds on the supporting affidavit of the Applicant inter alia : that the Respondent acted with fraud and material non-disclosure when he was applying for the grant to the deceased's estate.; that the objector is the only surviving biological child of the deceased; that the Respondent is a child of Cleophas Oduor Adede- a distant cousin to the deceased; that the Respondent failed to disclose this facts in his application for grant to the court; that in his petition, the Respondent



made material falsehoods that he had obtained the consent from persons having prior right to bring the petition when he had not; that the Objector only learnt of the matter when the Respondent brought surveyors to the suit land for purposes of subdivision.

3. The Respondent filed his replying affidavit dated 10/01/2024 opposing the said application wherein he averred inter alia; that he is the son of Cleophas Oduor Adede who was the only son of the deceased and thus he is a grandson of the deceased herein; that the area chief gave him the introductory letter which enabled him to initiate the succession cause; that the Objector Applicant did not raise any objection when the cause was gazette which paved way for the confirmation of the grant; that the Applicant is neither the deceased's biological daughter nor a family member; that the purported letter from the chief relied upon by the Applicant is not genuine or authentic as compared with the one issued to the Respondent; that the Applicant is a stranger to the estate of the deceased.
4. The application was canvassed by way of viva voce evidence.
5. The Objector Carena Atieno Oketch testified that the deceased herein was her biological father and that her mother was called Sabina Ombuga. That her father had two wives and that the first wife Francisca Akinyi did not have children and hence brought in Sabina who had three children namely Joseph Oluoch, Owino Amisi and herself. That her two siblings are deceased and that she is the only surviving child of the deceased. That she does not know the Petitioner herein and that she is seeing him in court for the first time. That the parcel of land which he transferred to himself belongs to her father. That there was a house belonging to her step mother on the land which the Petitioner demolished. That Cleophas Oduor Adede whom the Petitioner claims to be his father was a clan elder in the area. That when her father died, the said Cleophas Oduor Adede took away her father's ID card in order to obtain the burial permit. That she had a letter from the area chief.

On cross-examination, she stated inter alia; that she does not know the Petitioner; that she does not know the persons mentioned in the introductory letter issued to the Petitioner by the area chief; that the alleged persons named in the letter are not children of the deceased; that she did not see the gazette notice; that she does not know the name of the chief who issued her with an introductory letter and that the writings on the rival letters are not the same.

On re-examination, she stated inter alia; that she does not know the persons mentioned as children of the deceased; that her father was the last born who stayed in Ugenya with his sister before moving to Alego.

That marked the close of the Objector's case.

6. Pet W1 David Otieno Oduor testified that he is the Petitioner herein. He adopted the contents of his replying affidavit as his evidence. He went on to state inter alia; that the deceased herein was his biological grandfather and that his father is Cleophas Oduor Adede who was the fourth born son of the deceased herein; that his father's siblings were Patricia Adero Adede, Atieno Adede and Alfred Adede all of whom are all deceased; that he has the letter from the Area Chief which he used to file this succession cause. That he has never known the objector until when somebody was charged in a case of forcible detainer. That the objector is out to acquire the land and hand it over to the Ochogo family. That the letter of the chief relied upon by the Objector does not contain the name of the chief who wrote it and that he does not believe it to be authentic.

On cross-examination, he stated inter alia; that the land was partitioned and that he has the new title number 3308; that he did not take a tractor to the land but that he is aware that the land was ploughed; that indeed; he demolished a structure on the land; that this court had directed that anybody with interest on the land do appear in court; that the letter by the chief does not mention the names of the other children of the deceased and that in the petition, he did not mention them; that Atieno Adede is



alive but he did not mention her; that the document filled in support of a certificate of death described the informant Cleophas Oduor Adede as a clan elder; that the mother of Cleophas Oduor Adede was Ragolo Aloo; that the deceased herein was staying in Uganda.

On re-examination, he stated inter alia; that he is the one who processed the certificate presented to court; that he cannot confirm the authenticity of the certificate of death shown to him on cross-examination.

7. Parties filed and exchanged submissions. The Objector/Applicant submitted inter alia; that the deceased herein Joseph Okech Adede was her biological father; that the deceased was married to two wives namely Francisca Adikinyi and Sabina Ombuga; that Francisca also known as Prisca was not blessed with children and so she brought her sister Sabina Ombuga to her husband and that they were blessed with three children namely Joseph Oluoch, Owino Amisi and Carena Atieno Okech (herself); that her two brothers were both deceased leaving her as the only surviving child of the deceased; that she only got to physically know the petitioner when she first saw him in court which was after he had transferred her father's land to his name and gone ahead to demolish her step mother's house which stood on the suit land at a time when the Objector was admitted in hospital.
8. The Applicant further submitted that Cleophas Oduor Adede, father to the Petitioner had served as a village elder at the time when the deceased herein died and had taken the deceased's ID and burial permit for purposes of processing a death certificate. That she produced a chief's letter of introduction which confirmed her as the daughter of the deceased. She disputed the allegation that Cleophas Oduor Adede was a son of Joseph Okech Adede. She also denied knowledge of Patricia Adero Adede, Alfred Adede and Atieno Adede whom the Petitioner claimed were children of the deceased. That the Petitioner had confirmed the fact that Prisca Adikinyi Okech also known as Francisca was a wife of the deceased, a fact brought forth by the Objector.
9. The Objector also submitted that in these parts of the country, children often take their fathers surnames as their last names and not their grandfathers surname. That the father of the Petitioner/ Respondent is named Cleophas Oduor Adede; he is Cleophas Oduor son of Adede. The Petitioner himself is called David Otieno Oduor, he is David Otieno son of Oduor. The Objector/Applicant is called Carena Atieno Okech, she is Carena Atieno daughter of Okech. The deceased herein is known as Joseph Okech Adede. If indeed the Petitioner's father -Cleophas was a son to the deceased herein, his names would have appeared as Cleophas Oduor Okech. She further submitted that none of the people that the Petitioner named as the children of the deceased carry the name Okech meaning that they are not children of the deceased.
10. In support of her submissions, the Objector relied on the cases of Michael Odhiambo Ayimba vs. Peter Otieno Ogutu(Siaya High Court Civil Appeal no. 41 of 2019) and *Priscilla Vugutsa Kamaliki vs. Mary Runyanyi Ochieng*(2016)eKLR.
11. On his part, the Respondent submitted that he is a grandson of the deceased herein. That his father Cleophas Oduor Adede was the only son of the deceased. That the Objector could not avail evidence on how she had obtained a questionable letter from the area chief yet the Petitioner had been given the genuine letter by the area chief one Abidha. It was also submitted that the Applicant confirmed in her evidence that her letter from the chief is different from the one filed by the Petitioner. He thus submits that the application be dismissed.
12. I have considered the application and the rival viva voce evidence as well as the submissions filed by the parties. I find that the issue for determination is:
 - a. whether the grant should be revoked?



- b. What orders should the court grant?
13. Section 76 of the *Law of Succession Act* states as follows:
- 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;
14. From the court record, the dispute herein relates to the succession of half share portion of land parcel East Alego/Bar Agulu/963. It is noted from the record that the Petitioner herein petitioned for the grant to the deceased's estate as a grandson. That his father Cleophas Oduor Adede was son to Joseph Okech Adede the deceased herein. This fact has been disputed by the Objector herein who avers that she is the only surviving child of the deceased and thus she ranked higher in priority to take out letters of administration to her father's estate and hence the instant application for revocation of grant that had been issued to the petitioner.
15. It was submitted by the Objector that the deceased had two wives Francisca Adikinyi and Sabina Ombuga. That Fransisca could not bear children and so she brought Sabina to her husband who is the deceased herein. That the deceased and Sabina were blessed with three children; Joseph Oluoch, Owino Amisi and Carena Atieno Okech (herself). That both of her brothers have since died leaving her as the only surviving child of the deceased. She attached a chief's letter dated 15/8/2023. That Cleophas Oduor Adede was not the son of the deceased but a distant cousin of the deceased and a former clan elder.
16. Further, it is noted that the Petitioner confirmed knowing Francisca Adikinyi as a wife to the deceased but denied knowing the Objector's mother and her children. The petitioner also confirmed to have demolished a house of the mother of the Objector in the year 2023 which stood on the suit land. The Petitioner likewise confirmed that the chief's letter he used to conduct the succession did not include the names of other children that survived the deceased and neither did he include them in form P& A 5 when he filed the petition.
17. While the objector was very clear on the family tree of the deceased, the Petitioner did not mention the names of the wives of the deceased especially that he did not disclose who the biological mother of Cleophas Oduor Adede was, as he claimed to be his biological father and a son to the deceased.
18. The Objector submitted rather convincingly that in these parts of the country, children often take their fathers surnames as their last names and not their grandfathers surname. The father of the Petitioner/ Respondent is named Cleophas Oduor Adede; he is Cleophas Oduor son of Adede. The Petitioner himself is called David Otieno Oduor, he is David Otieno son of Oduor. The Objector/Applicant is called Carena Atieno Okech, she is Carena Atieno daughter of Okech. The deceased herein is known as Joseph Okech Adede. If indeed the Petitioner's father -Cleophas was a son to the deceased herein, his names would have appeared as Cleophas Oduor Okech. She further submitted that none of the people that Petitioner named as the children of the deceased carry the name Okech meaning that they are not children of the deceased.



19. Section 76 of the *Law of Succession Act* states that 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;
20. From the rival evidence of both the Objector and the Petitioner, it is clear that the Petitioner came out as an untruthful witness for three reasons. Firstly, he claimed that his father Cleophas Oduor Adede was a son of the deceased while in actual fact the said Cleophas Oduor Adede was a cousin of the deceased. Secondly, he denied the existence of the deceased's 2nd wife Sabina Ombuga who was the mother of the Objector herein and two other sons who are now deceased. Thirdly, the Petitioner while filing the Succession Cause indicated names of other persons as beneficiaries yet those persons are not children of the deceased. What the Petitioner did was to list names of persons from his family and left out the legitimate children of the deceased one whom is the Objector herein. Even though, two of the deceased children are deceased, their names ought to have been captured and their status described. It is noted that the Petitioner sought to rely on the chief's introductory letter which indicated some names as beneficiaries of the deceased. It is common knowledge that chiefs may not be in a position to know all persons residing in their respective locations and therefore they have to rely heavily on the persons seeking those introductory letters to avail the requisite information required to be indicated therein. It is obvious that the Petitioner gave out the names to be endorsed by the chief. If indeed the Petitioner sought to rely on the contents of the letter, he should have gone ahead and call the chief to come and substantiate on the same. Indeed, the Petitioner admitted having demolished the homestead of the Objector's late mother Sabina Ombuga which seems to support the Objector's claim that the Petitioner is out to disinherit her of the property of her late father. Further, the Petitioner confirmed that there is another child of the deceased by the name Atieno Adede who is still alive but which he failed to indicate in the petition forms. This therefore shows that the Petitioner gave false information to the court while seeking letters for grant and therefore he obtained the said grant by means of untrue allegation of facts. It is essential in point of law yet he knew that the information her presented to court was false. He also failed to list the true beneficiaries of the estate of the deceased who included the Objector.
21. I am therefore satisfied by the evidence of the Objector that the Petitioner misled the court in obtaining the grant and that the Objector has satisfied the conditions imposed by Section 76 of the *Law of Succession Act*. It is instructive that the Objector being the surviving child of the deceased ranked in priority to the Petitioner pursuant to Section 66 of the Laws of the Succession Act. In any event, the petitioner who has described himself as the grandson of the deceased ranks below the Objector since the Objector is the child of the deceased. Further, the purported description of the Petitioner as the grandson of the deceased is a white lie because it has transpired the Petitioner is a son of one Cleophas Oduor Adede who was a cousin to the deceased. It can clearly be seen that the Petitioner is quite distant in the family tree as far as the deceased is concerned. Hence, the Objector has satisfied the conditions provided for under the Act which merits an order for revocation of the Grant as well as cancellation of the Certificate of Confirmation of Grant.
22. In view of the foregoing observations, the Objector's summons for revocation of the Grant dated 5th September, 2023 has merit. The same is allowed in the following terms:



- i. The grant issued to the Petitioner on 14th March 2021 is hereby revoked and, in its place, a fresh grant be and is hereby issued to Carena Atieno Okech forthwith.
- ii. The Certificate of Confirmation of Grant issued to the Petitioner dated 15th February, 2023 is hereby cancelled.
- iii. That the title to land parcel East Alego/ Bar Agulu/3308 registered in the name of David Otieno Oduor be and is hereby cancelled and that the same be reverted to the name of the deceased Joseph Oketch Adede and be made available for distribution to the rightful beneficiaries.
- iv. The Objector/Applicant herein do file fresh summons for confirmation of Grant within 30 days of issuance of the fresh Grant.
- v. Each party to bear their own costs.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 21ST DAY OF FEBRUARY, 2025.

D. KEMEI

JUDGE

In the presence of:

Ooro F.....for Objector/Applicant

Sigoma.....for Petitioner/Respondent

Ogendo.....Court Assistant

