



In re Estate of Simeon Okwama Opala (Deceased) (Miscellaneous Succession Application E001 of 2024) [2025] KEHC 2575 (KLR) (21 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2575 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS SUCCESSION APPLICATION E001 OF 2024
DK KEMEL, J
FEBRUARY 21, 2025
IN THE MATTER OF THE ESTATE OF SIMEON OKWAMA OPALA (DECEASED)**

BETWEEN

GRACE OJWANG' OWUOR OKWAMA 1ST OBJECTOR

JOEL NYAGUDI OKWAMA 2ND OBJECTOR

AND

SYLVIA ATIENO 1ST PETITIONER

REBECCA WAORE 2ND PETITIONER

AND

JOHN WALTER ONYANGO OTIENO INTERESTED PARTY

RULING

1. The interested party herein has filed an application dated 15th May, 2024 pursuant to Order 1 Rule 1 and 3 of the [Civil Procedure Rules](#) and Section 3A of the [Civil Procedure Act](#) seeking several prayers namely:
 - i. That John Walter Onyango Otieno be enjoined as an interested party in this matter.
 - ii. That the Applicants/Respondents be ordered to serve the interested party/Applicant with the pleading in this matter.
 - iii. That pending the hearing and determination of this application herein inter partes, land parcel number Siaya/Omia Malo/4478 and Siaya/Omia Malo/2159 be preserved and or excluded from the estate of Mzee Simeon Okwama Opala (Deceased).



- iv. That the Applicants/Respondents be compelled to unconditionally transfer Siaya/Omia Malo/2159 to the interested Party/Applicant, upon being confirmed Administrators of the Estate of Mzee Simeon Okwama Opala (Deceased).
 - v. That the Applicants/Respondents be compelled to unconditionally transfer Siaya/Omia Malo/2159 to the interested party/Applicant, upon being confirmed Administrators of the Estate of Mzee Simeon Okwama Opala (Deceased).
 - vi. The costs of this application be in the cause.
2. The application is supported by the grounds set out on the face thereof plus the supporting affidavit of the Applicant sworn on even dates. The Applicant's gravamen is inter alia; that he is the registered title holder of parcel No. Siaya/Omia Malo/4478; that the said parcel together with parcel number 2159 were directly sold to him by the deceased herein in the year 1988 when he was still alive through an oral agreement and that he took possession thereof; that he has been in occupation of the two parcels of land for periods between twelve years to thirty five years; that the deceased died before transferring the same to him but the deceased administrator later organized for him to get title; that the parcel Number 2159 should be transferred to him; that none of the Applicants herein have challenged his ownership of the two parcels of land which he has extensively developed; that it is in the interest of justice that he be enjoined in this proceedings as an interested party.
 3. The application was opposed by the 1st Objector/Applicant Grace Ojwang Owuor Okwama who filed a replying affidavit dated 28/10/2024 who averred inter alia; that the allegation by the interested party that he bought land directly from her late husband in the year 1988 are false since no agreement of sale has been furnished by him; that according to Section 3 (3) of the Law of Contract Act, transactions relating to land must be in writing and which is in the knowledge of the interested party who has been a legal practitioner for many years; that the interested party purportedly registered himself as owner of parcel number 4478 in 2015 which is 26 years after the death of her husband and hence the delay of 26 years has not been explained; that the claim by the interested party of having bought additional parcels in the year 2008 and 2011 from the deceased's administrator must be rejected since the same were unlawful and criminal in nature pursuant to Section 45 of the Law of Succession Act; that the deceased's administrator did not have capacity to pass a good title to the interested party; that the persons who used to occupy the parcels of land belonging to the deceased were there by virtue of the lands' being leased to them and which did not make them to be owners of the land; that during the burial of the deceased, there was nobody who raised any claims against the estate contrary to the claim by the interested party; that the photographs annexed by the interested party only show his compound and that they are not in respect of the lands in dispute; that the claim by the interested party that nobody challenged his occupation of the lands is untrue because the family held a meeting in 2013 and discussed the matter and that a letter was sent to him and copied to the Assistant Chief and the Land Registrar Bondo; that parcel 2159 is in the name of her late husband (the deceased) and that no documents of purchase has been shown by the interested party; that the purported transfer of the property on land parcel 4478 was done fraudulently between the interested party and the deceased's administrator Isaac Otieno Opala after the death of her husband and without the deceased's administrator obtaining a grant of representation.
 4. Learned counsel for the two Respondents Sylvia Atieno and Rebecca Waoro indicated to the court on 13/11/2024 that they are not opposed to the interested party's application dated 15/5/2024.
 5. The application was canvassed by way of written submissions however, it is only the Applicants Grace Ojwang Owuor Okwama and Joel Nyagudi Okwama who complied. It was submitted that the Interested Party has not furnished sufficient reasons to justify this court allowing him to be enjoined as



an interested party in this case since he has not demonstrated his stake in the matter or that his presence is necessary to enable the court to effectively and completely determine the issues in the matter. It was submitted that the Interested party is claiming to have purchased the land from the deceased's administrator yet the Applicants herein have approached this court for revocation of the grant that was issued to the deceased's administrator. It was submitted that the Interested party is only interested in meddling in these proceedings and try to take the attention of the court from dealing with the revocation of grant to issues relating to land ownership which should be dealt with in a different forum. It was submitted therefore that the Interested party's prayer for the two properties to be transferred to him are baseless in view of the fact that he obtained them fraudulently in collusion with the deceased's administrator. It was further submitted that the Interested Party has not produced any sale agreement to prove that he obtained the property legally from the deceased. It was finally submitted that the application lacks merit and should be dismissed with costs to the Applicants.

6. I have considered the Interested Party's application as well as the rival affidavit plus the submissions filed. It is not in dispute that in this estate there was only one administrator Isaac Otieno Okwama who had lodged this succession cause, obtained a grant of administration and later a Certificate of confirmation of Grant. It is also not in dispute that upon the demise of the said Administrator, there has been no substitution by any of the family members. It is also not in dispute that in the Certificate of Confirmation of Grant, the deceased properties comprised of twelve (12) parcels of land in East Asembo. And which were wholly distributed to the said administrator. It is also not in dispute that the said Certificate of Confirmation of Grant, there are no names of other family members and further, the share description is indicated as "whole" implying that all the properties were to be wholly hold by the said administrator Isaac Otieno Okwama who is now deceased. It is also not in dispute that the Applicants herein that is Grace Ojwang Owuor Okwama and Joel Nyagudi Okwama have filed summons for revocation of Grant dated 4/3/2024 which is still pending determination.
7. It is also not in dispute that the proposed interested party herein has laid claim to two of the properties namely LR No. East Asembo/ Omia - Malo/4478 and 2159. It is also not in dispute that the Interested Party has availed a copy of a title deed on Parcel 4478 which indicates that the said parcel of land is registered in his name. It is also not in dispute that the Interested party has not annexed copies of the same agreement over the properties as he has claimed that the transactions were made orally. I find the issue for determination is whether the Interested party's application has merit.
8. As the interested party is seeking to be enjoined in these proceedings, it is trite that he is under obligation to state his interest or stake in the estate of the deceased because that is the thing he seeks to protect and that it must be something which is valuable to him so that in the event of losing it, he stands to suffer prejudice, loss or damage. It has transpired that the Interested Party is already in possession of a title deed to LR No. East Asembo/Omia – Malo/4478 which he claims to have acquired from the deceased himself prior to his demise and in which the deceased's administrator transferred to him after obtaining a confirmed Grant. He has also laid claim/stake on parcel No. East Asembe/Omia-Malo/2159 which he now requires the administrators of the estate to transfer it to him. Even though the Interested party has not presented documents of sale agreements it is clear that there is a recognizable stake or interest in the estate of the deceased. That being the position, his presence in these proceedings is necessary for the purposes of this court determining all the issues in controversy with finality. The issue of a party having an interest in a matter thereby requiring that such a person be enjoined in a suit was aptly captured by Munyao J, in the case of *Republic v Kwale County Lands Registrar & Another; Absbir & 2 Others (Intended Interested Party)* (Miscellaneous Judicial Review 11 of 2021) [2022] KEELC 13759 (KLR) (18 October 2022) (Ruling) where it cited with approval the



decision of the Court in “ *SKOV Estate Limited & 5 others v. Agricultural Development Corporation & another* where J. Munyao held as follows:

“in my view, for one to convince the court that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well as and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one to be enjoined in a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own convenient to be tried alongside the claim of the incumbent plaintiff and defendant..”

It is noted that under Order 1 Rule 1 of the *Civil Procedure Rules* the court is empowered to enjoin necessary parties to a suit where the issue in controversy affects them one way or the other and that the joinder will help the court to trash out all the issues in controversy with finality. This was, there will be no need for parties to file other claims and therefore the precious time is saved for both the parties and the court. However, the joinder of parties in a suit is not a matter of course since the court has the discretion to refuse such joinder especially where the joinder will create confusion in the determination of the suit and thus delay and costs parties hence, the joinder of parties may be declined where the cause of action involving the new party is incompatible to or different from the existing cause of action or relief that has been placed before the court by the parties already in the suit. On the whole the key determinant is that there must be a common question of fact or law which arises between the parties already in the suit and those intended to be enjoined.

9. Looking at the rival pleadings by the parties herein, it is clear that all of them appear to lay claim or stake to the properties listed in the certificate of Confirmation of Grant that had been issued to the deceased's administrator on 5/10/2012. It is also instructive that the parties are yet to ventilate their rival claims and therefore that the interest of justice requires that each one of them must be given their day in court. This then calls for this court to grant the interested party the opportunity to join the other parties who are already in this suit. No prejudice will be caused to the other parties already in the suit if the interested party is allowed to come on board. In any event, those parties already in the suit are yet to present their respective cases and therefore there is no issue of interfering with the proceedings regarding the estate of the deceased since none have been commenced following the demise of the administrator. All the parties therefore will be approaching the court on an equal footing.
10. It is noted that the interested party has sought for a raft of orders. The court is interested in prayer Number 3 and 4 thereof. As regards prayer No. 3, the interested party seeks that property LR No. East Asembo/Omia -Malo/4478 be excluded from the estate of the deceased since he already has a title deed thereto. Whereas that may be so, it is noted that the said property is listed as among the assets of the deceased and ought to be available for distribution to his beneficiaries. Again, some of the parties herein have filed summons for revocation of the confirmed grant and they have indicated that the properties the interested party is claiming belong to the deceased. Under those circumstances, it is proper that the parties herein be given an opportunity to ventilate their rival claims. In that regard, the interested party will have an opportunity to defend his ownership of the properties and explain how he acquired them.



Further, the interested party has sought for an order to compel the Respondents to unconditionally transfer parcel No. 2159 to him. It is obvious that such kind of orders cannot be granted at this stage as it would be prejudicial to other parties since the court must receive the rival evidence and make a determination on those claims. On those grounds, I find the request by the Interested Party lacks merit and must be rejected.

11. In view of the foregoing observations, it is my finding that the interested party's application dated 15/5/2024 only succeeds in terms of prayer 1 and 2 thereof. The rest of the prayers stand dismissed with no order as to costs. Parties are hereby directed to fix the matter for directions regarding the pending summons for revocation of grant dated 4th March, 2024 on priority basis.

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

D. KEMEI

JUDGE

In the presence of:

M/s Wangusi.....for Interested Party

M/s Kinyanjui.....for Applicants

M/s Onyango.....for Respondents

Ogendo.....Court Assistant

