



**In re Estate of Simiyu Mufumu (Deceased) (Succession Cause  
112 of 2012) [2025] KEHC 2375 (KLR) (11 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2375 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 112 OF 2012  
REA OUGO, J  
FEBRUARY 11, 2025  
IN THE MATTER OF THE ESTATE OF SIMIYU MUFUMU (DECEASED)**

**BETWEEN**

**BENEDICT S SIMIYU ..... PETITIONER**

**AND**

**MODESTA BWONYA BIRABU ..... OBJECTOR**

**AND**

**DANIEL OLE BOIT ..... INTERESTED PARTY**

**RULING**

1. Simiyu Mufumu died on 16<sup>th</sup> January 1985. Benedict Simiyu (“Petitioner”) a son of the deceased filed a petition for letters of administration intestate on 15.3.2012. In his affidavit in support of the application, he listed the following persons as the deceased’s beneficiaries; Sylvester Simiyu, Benedict S. Simiyu, Collins W. Mufumu and Isaac S. Mayende.
2. The deceased left behind one asset, Land Parcel No. East Bukusu/ East Sangalo/ 28 ( Land Parcel No. 28). The liabilities list as per the said affidavit is as follows; Rose C. Boit, Asman M. Rajab, Tomas O. Ojina, Celestine N. Walele, Davis W. Mukhebi, Moses J. Wabomba, Richard W. Kalama, Taina N. Momba, Janet N. Mukokha, Samson S. Musuya, Margaret N. Nyongesa and Augustine M. Wekesa.
3. On 17.5.2012 a grant of letters of administration intestate was issued to Benedict S. Simiyu. On the 1.10. 2012 Modesta Bwonya Birabu filed a Summons for Revocation or annulment of the grant.
4. On 12.6.2013 the petitioner filed an application seeking to restrain the Modesta Bwonya Birabu (“the respondent”) from tilling harvesting the sugarcane growing in Land Parcel No.28 and also to stop Nzoia Sugar Company from paying the respondent money occupying from the field pending the confirmation.



5. The petitioner applied to confirm the grant on the 11.12.2015. According to his affidavit in support of the application, the petitioner proposed that he gets six ( 6) acres, Sylvester, one (1) acre, Collins, four (4) acres, Enock, half (1/2) an acre ) and Schloar N. Waswa, half (1/2) an acre. He mentioned that 2 persons namely Augustine M. Wekesa bought two and a half (2 ½) acres from the deceased and Francis W. Masikana bought two and a quarter ( 2 ¼ ) acres from the deceased. Thereafter the Objector filed an affidavit of protest dated the 6<sup>th</sup> June 2016.
6. On 20.11.2024 the Modesta Bwonya Birabu (“1<sup>st</sup> Objector”) filed a summons for Revocation or annulment of grant. The application is dated the 20.11.2023. She seeks the following orders;
  - i. Spent
  - ii. The status obtaining on the estate of Simiyu Mufumu (Deceased) as of 8<sup>th</sup> November 2023 be maintained pending the hearing and determination of the application.
  - iii. The Grant of Letters of Administration to Benedict S. Simiyu made on 17.5.2012 and confirmed on 2.3.2022 be revoked or annulled.
  - iv. All orders consequential to the confirmed grant be annulled and the title be restored to the name of the original owner Simiyu Mufumu ( deceased)
  - v. Costs of the application be borne by the petitioner.
7. On 22.11.2023 Daniel Ole Boit/ interested party filed a summons for revocation of the grant. The summons is brought under section 76 of the Succession Act and Rules 44 (1) & 59 (1) of the Probate and Administration Rules. He seeks the following orders;
  - i. The certificate of confirmation of grant dated 11<sup>th</sup> May 2022 be revoked or annulled and a fresh confirmed grant be issued in its place
  - ii. Costs of the application be provided for.
8. The 1<sup>st</sup> objector claim is as follows; the grant was fraudulently confirmed on 2.3.2022 and she was side-lined yet she has stayed in the land for 10 years. Her mother Teresina Khaluyi Shanzu (Deceased) bought 2 ½ acres from the deceased. This was not revealed. There has been a court tarsal between her and one Augustine Mukhwana (“ Augustine”) over the same issue and she won. It is the collusion between the petitioner and Augustine to give Augustine her mother’s share of 2 ½ acres. The deceased died before the land was transferred to her mother. She has a limited grant to enable her to sue on behalf of her mother.
9. The interested party claims that the late Taina Nang’unda Memba purchased 4 ¼ acres from the deceased’s land No. East Bukusu/ East Sangalo/28 but had not been given the title and she passed away on 15.10.2016. She was indicated as a liability in the affidavit in support of the petition, but when the grant was confirmed on 2.3.2022 she was not included in the certificate of confirmation of the grant. The petitioner had a duty to inform the court that she was one of the liabilities of the estate. One of the sons of the late Taina Nang’unda Memba, Francis Wabomba Masikan is included in the certificate of confirmation of grant. His share is supposed to be 1 ½ acres but is indicated as 2 ½ acres. The family of Taina is comprised of 5 children and there is no justification in including only the 2<sup>nd</sup> child Francis Wambimba, there is a determination on the acreage Taina’s family is entitled to as follows; Francis Wamboma 1 ½ acres, Charles Wafula Olemuri- ½ acre, David Olemuri - ½ acre, Daniel Ole Boit - ½ acre totaling 3 acres and balance of 1 ¼ acres to Taina . Taina died and her share should go to Beatrice Nednya Kiraka. Though he is not a member of the late deceased’s family he noted that one of the family members Isaac S. Mayende who even consented to the application for confirmation of the



grant is omitted from the certificate of confirmation. The certificate of grant has the name of Sikloastica Nanjala Okumu who is a stranger in the proceedings she is not in the application to confirm the grant and this makes the certificate of confirmation totally inaccurate. The failure to give the court the full picture of the interested parties the confirmed grant does not contain all the beneficiaries of the estate and if it is registered as it is it will lead to unnecessary wrangles and strife.

10. The petitioner's response to the objector and interested party is as follows; it is not true that he filed the letter of administration by concealment and fraud as alleged. Being the eldest son of the deceased during his father's lifetime he would witness all the transactions concerning the sale of the land. He knows his father sold 2 ½ acres to Alex Wafula. In 1980 Winright sold the same piece to Alex Wafula/ in 1981 Alex Wafula sold the same piece of land to the brother of the Objector Francis Lukose Birabu. Francis stayed in the said portion of land with his mother as a dependant and not as a co-proprietor. Francis died and the land was left to his surviving widow. Due to the objector's hostility, the widow sold the 2 ½ acres to Augustine Mukhwana Wekesa. The objector is a stranger to the estate and not a beneficiary. The confirmation was done and the beneficiaries registered on 7/7/2023. The Objector can file suit in the ELC court. The present application is res judicata as the objector filed a similar application which she failed to prosecute for over 10 years. There is no agreement annexed between his late father and her late mother. The Land Tribunal in Kanduyi heard the land dispute between the objector and Augustine Mukhwana and the purchaser was awarded the land. On Dabiel Ole Boit's claim, the petitioner responded as follows; the interested party did not seek leave of the court to be enjoined to the proceedings or the succession cause. The interested party wants to pursue the interest of Taina Nang'unda Memba and yet he has not obtained letters of administration to sue on behalf of the estate of Taina Nang'unda Memba and therefore he has no locus standi. He has not attached any agreement to confirm that the late Taina purchased the land from the deceased. He can pursue his interest in the Environment and Land Court ( ELC).
11. Joel Bwina Beru the objector's first cousin testified that the objector's mother Teresina Khahihi his maternal aunt deserted her matrimonial home and went to stay in Nandi Hills and got married to Mr. Shanzu. In 1981 his cousin Francis Lukose asked to get him land to buy. He did so and Francis bought land from Samson Shem Musoya. Later Francis mother moved in with him together with Modesta and her sibling. The land belonged to Francis and the objector Modesta was a juvenile and was not conversant with any transaction. Upon the demise of Francis Beatrice his only surviving widow disposed off the land to Augustine Mukhwana.
12. The parties filed written submissions, which I have carefully read and considered. The petitioner submits that the objector wants the grant revoked because his mother Teresina (deceased) bought 2 ½ acres from the deceased. The objector did not produce any agreement to the said sale, a consent alone cannot prove that the deceased sold 2 ½ acres. The objector is not an administrator of the estate of the late Teresina and therefore he lacks the locus standi. On the interested party, the petitioner submits as follows; there was no agreement to confirm that the interested party bought the land from the deceased. The interested party is pursuing the land on behalf of Taina Nang'unda Memba and he has not obtained a letter of administration thus lacks locus standi. There is no proof that the late Taina bought the land from the deceased. If the objector and interested party have any claim then the same can be handled by the Environment and Land Court ( ELC). This court has no jurisdiction to deal with the case. Already transmission was registered, partitioning done and beneficiaries have title deeds of respective portions. The petitioner relied on the case of John Nyabuto vs John Moya Nyagawara eKLR Succession Cause No. 418 of 2015- in the estate of William Akeya Sambo where the court quoted the



case of Ileri Nyaga vs Karani Nagri and another- Embu Succession Cause No. 68 of 2007 (2010) the court stated;

“.. buyer or purchaser cannot cause n otherwise valid grant to be revoked for the only reason that he was not recognised in the proceedings. As stated earlier in my ruling, his recourse lies in suing whoever sold the property to him and if such person be dead then he can only sue the administrator of the deceased’s estate”.

13. The Objector in her submissions submits that Teresina the deceased bought 2 ½ acres from the deceased and therefore the grant was obtained fraudulently and concealment of a material fact in the case. The petitioner’s evidence on the said 2 ½ acres is contradictory and therefore he is a liar. It is submitted that the objector exhibited consent on sub-division and transfer dated 10.12. 1981 which is even stronger evidence than an agreement and therefore the objector’s claim for the 2 ½ acres is merited. The petitioner secretly sneaked an application to confirm the grant and misled the court to confirm the grant despite the pendency of the application for revocation dated 1.10.2012, the petitioner has no good intentions to administer the deceased’s estate fairly. Augustine who is alleged to have bought the land does not stay in the said land. A decree from Bungoma CMCC No. 906 of 2009 shows a tussle between the Objector( the plaintiff) and Augustine Mukhwana ( Defendant) and the Objector won the case proving occupation and ownership by transmission. No appeal was preferred. The objector relied on the case of Jane Marithai Njeru & Ndia Njeru vs Eustace Kent Nkonge, Petkey Shem Miriti & Benson Micheni Peter HCCCA No. 2 of 2029 HC Meru KLR, the court stated that a High Court can own its motion revoke a grant for reasons stated under section76 of the *law of Succession Act* Cap 160 of the Laws of Kenya.

### **Analysis And Determination**

14. I have considered the evidence adduced by parties to the 2 applications the subject of this ruling. I have also considered their submissions and the law that guides this court when an applicant seeks revocation of a grant. The main issue from both applications is whether the court can revoke the grant made to Benedict S . Simiyu on 17.5.2012 and confirmed on 2.3.2022. It is not in dispute that the objector and the interested party are not beneficiaries of the estate of the deceased. The objector claims that his mother bought 2 ½ acres from the deceased and the interested party claims that his late mother too bought 4 ½ acres from the deceased.
15. An issue has been raised by the petitioner on the locus standi of the objector and interested party. The objector obtained a grant ad litem for the estate of Teresina Khaluyi Shanzu on the 29<sup>th</sup> of October 2009 for purposes of filing suit. A limited grant is usually granted for a limited purpose. The court in the case of In re Estate of Henry Kithia Mwitari (Deceased) [2021] eKLR stated:-“Therefore, it is clear that a grant ad litem is issued for a specific, limited, and finite purpose. Once the purpose for which such a Grant is issued is achieved, the Grant is exhausted and becomes obsolete”. In Re the estate of Helena Wangechi Njoroge (Deceased) (2015) Eklr, the Court held the following concerning letters of administration ‘ad litem’; “..... It was limited to the purpose of filing suit to preserve the three assets of the estate. It is what is called a grant of letters of administration ad litem. The suit envisaged to be filed on the strength of a grant ad litem is not a probate or succession case, or an interlocutory application within a probate or succession cause, but rather a civil suit. Indeed, one need not obtain a grant of any sort to enable him file a succession cause. A grant of representation is only necessary where one intends to file a civil suit to protect or defence the estate against third parties.”
16. This grant ad litem was issued to the objector to file suit against Augustine Mukhwana in 2009 Civil Suit number 906 of 2009. The grant’s use and function terminated once the suit was filed and



determined. The said limited grant was not meant for this succession cause. The Objector has failed to exhibit that she is the administrator of the estate of Teresina Kahluyi Shanzu. She is not a beneficiary in the estate of the deceased. Her late mother was a purchaser of 2 ½ acre. My view is that this court lacks the jurisdiction to determine the issue of ownership of land bought from the deceased of persons who are not beneficiaries. The objector sued Augustine Mukhwana in 2009. Augustine is mentioned as a liability in the estate. If she won her case against Augustine, then she can only sue the administrator for the portion she alleges belongs to her. She claims that the grant obtained by the petitioner was obtained fraudulently by making a false statement or concealment from the court something of material to the case, she has failed to prove this allegation. She has also failed to prove that the grant was obtained by means of untrue allegations of a fact essential in point of law to justify the grant. She can file suit in the Environment and Land court to pursue her claim of the 2 ½ acres if she is the administrator of the estate of Teresina K. Shanzu.

17. The interested party has an application dated 22.11.2023. It was submitted that he did not seek leave to be enjoined as an interested party. I find that there was no such order sought in his application I also find that he has also not exhibited any grant to show that he is the administrator of the late Taina Nang'unda Memba whom he alleges bought 2 ½ acres. I don't note that in the petition filed by the petitioner, Taina N Memba is listed as one of the liabilities of the deceased's estate. At the time of confirmation of the grant Francis Wahomba Masikana who is a brother of the interested party and a son of Taina appeared before Justice Riechi and told the court that he was a purchaser and had bought 2 ¼ acres and that he was satisfied. Was this the share of Taina? In the petition, the acreage of Taina is not indicated. The only recourse left to the interested party, if he is the administrator of the estate of Taina is to sue the administrator of the estate of the deceased. The Objector and interested party's application are dismissed. Each party is to bear its costs.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 11<sup>TH</sup> DAY OF FEBRUARY 2025.**

**R. OUGO**

**JUDGE**

In the presence of:

Objector - Absent

Daniel Ole Boit /Interested Party

Mr. Wattangah -For the Petitioner

Wilkister -C/A

