



In re Estate of Alfred Wandanda Wanganya (Deceased) (Succession Cause 43 of 2006) [2025] KEHC 3682 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3682 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 43 OF 2006
SC CHIRCHIR, J
MARCH 20, 2025**

IN THE MATTER OF THE ESTATE OF ALFRED WANDANDA WANGANYA (DECEASED)

BETWEEN

RISPER OKUTOYI MUSA 1ST APPLICANT

DAVID ANDANDA OKUMU 2ND APPLICANT

AND

GODFREY EVANS AMWOMA 1ST RESPONDENT

NANCY BENTA OKUTOI 2ND RESPONDENT

DAVID W MUKA 3RD RESPONDENT

RULING

1. The application dated 20th July,2018 seeks for the following orders:-
 - a. That this Honorable Court be pleased to revoke the Grant of letters of Administration Intestate, granted in the cause herein on the 10th May,2006 to Margaret Chituyi Okema (now deceased), together with all consequential acts, events and orders flowing therefrom, including but not limited to vacation of the Orders of 29th May, confirming the said Grant.
 - b. That the Honorable Court be pleased to cancel the Title of the 2nd Respondent over land parcel Number S.wanga/musanda/8 and direct Land Registrar Kakamega to cause it to revert back in the name of the deceased, namely Alfred wandanda wanganya
 - c. That this Honorable Court be pleased to order the respondents to shoulder the costs of this application, jointly and severally.



The Applicant's Case

2. The 1st applicant deposes that she is a daughter of the deceased herein and therefore has a right to benefit from the deceased estate. She further states that the deceased was the registered proprietor of land parcel No. S.wanga/musanda/8(parcel No. 8).
3. She further states that the Grant of Letters of Administration intestate granted to Margaret Chituyi Okema, now deceased,(Margaret) as well as the orders of 29th May,2008 confirming the said Grant were fraudulently obtained through concealment of material fact, namely that the deceased was survived by other beneficiaries.
4. She also deposes that shortly after the Grant herein was issued, Margaret Chituyi Okema swiftly moved and registered land parcel parcel No. 8 in favor of the 1st respondent who in turn transferred it the to the 2nd respondent.
5. The applicant further submits that upon discovery of the aforesaid fraud, the 2nd applicant registered a caution and filed a suit at the High Court in Kakamega HCCC No.195 of 2015 seeking inter alia cancellation of the Title of the 2nd respondent over land parcel No. 8. However, the matter was dismissed vide a judgement delivered on 31st May,2018.
6. The applicant further deposes that it is in the interest of justice, fairness and overriding objective of the law that the Orders sought in the application herein be granted.

The respondent case

7. The 1st respondent deposes that the 1st applicant herein is a total stranger to the estate herein as she is not a biological child of the deceased but a daughter to one AMWOMA who was a brother to the deceased . He further states that the 1st applicant benefitted directly from her own late father's estate vide parcel No. S.wanga/musanda/9 which she has since sold to one Wycliffe Omolo.
8. The respondent further avers that the 2nd applicant is his first cousin and a son to his maternal uncle , one Rodgers Wandananda Okumu ; that the said Rogers has benefitted from land parcel No. S.wanga/musanda/11,(parcel No. 11) belonging to his own father and that he did not object to the succession cause herein in any event
9. The respondent further states that the deceased herein had two wives namely Jesca Andeso and Joyce Abwalaba. That the first house of Jesca Andeso was blessed with a son namely Rodgers Wandanda Okumu the father of the 2nd applicant. This first house was given parcel No. 11
10. The 2nd house of Mama Joyce Abwalaba was blessed with four children namely; Mary Olubui, Risper Okutoyi, Alice Wanga and Margaret Chituyi.The 2nd house was given parcel No. 8
11. The respondent further deposes that the 1st applicant and Margaret were born of the same mother but different fathers; that the 1st Applicant's father was one Amwoma while Margaret was the biological daughter of the deceased.
12. The 1st respondent avers that the 1st applicant has been aware of the institution of the succession proceedings herein since its inception . That his mother legally transferred the suit property to him and passed a good title. Further, that there was no illegality committed when he sold the land to the 2nd respondent herein.
13. The 2nd respondent also averred that she is a stranger to the estate herein. That she bought the land from the 1st respondent after exercising due diligence.



The Applicants' submissions

14. The applicants' counsel submitted that the 1st applicant is the biological daughter to the deceased herein. That the respondents are total strangers and they are not part of the beneficiaries of the estate of the deceased herein. That none of the respondents have ever lived in or cultivated on parcel No. 8.
15. The counsel further submitted that it is only for the interest of justice if the grant is revoked and the applicants' prayers are allowed as prayed.

The respondents' submissions

16. It is the respondent's submissions that 1st applicant is a daughter of one Amwoma and not the biological daughter of the deceased herein. That the dispute between Margaret and the 1st Applicant had been decided by South Wanga Land Tribunal and the award arising therefrom had been adopted under Kakamega CMC Misc. Award No.33 of 2004. , and that the present Application is a duplication of the tribunal case.
17. In respect to the 2nd Applicant, it is submitted that he is the son to Rodgers Okumu Wandanda a half- brother to the mother of the 1st respondent herein and a grandson to the deceased. It is therefore submitted that the applicants are strangers to the deceased estate. It is stated that the 2nd Applicant has duly inherited parcel No. 11 through his father Rodgers.

Analysis and Determination

18. Section 76 of the *Law of Succession Act* sets out the grounds upon which a grant may be revoked and the grounds has been the subject of numerous past decisions of the courts. In *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* (2015) eKLR the court stated:

“The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”
19. In *Albert Imbuga Kisigwa v Recho Kavai Kisigwa* [2016] KEHC 1528 (KLR), the guiding principle in determining an Application for revocation of Grant was given as follows:

“(13) Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.” (Emphasis added)
20. The grounds upon which the revocation is sought in this case are that the deceased Administrator, Margaret concealed from the court the fact that the deceased was survived by other heirs. The Applicants listed the survivors left out as :Mary Olubui(deceased Rodgers Okumu(Deceased), Risper Okutoyi- 1st Applicant and Alice Wanga (deceased).



21. It emerged from the various Affidavits filed that the 1st Applicant is not the biological child of the deceased. Indeed in her further Affidavit, she admits that her father was a brother to the deceased and he predeceased the deceased. She further stated in that the deceased married her mother when her own father passed away and the deceased took over her father's land. However there was no evidence showing that parcel No. 8 was initially owned by Amwoma , the 1st Applicant's biological father.
22. Thus if the deceased married the 1st Applicant after the demise of the 1st Applicant's own father , then her claim can only be based on dependency under section 26 as read with section 29 of the Law of Succession Act. She is otherwise not an heir or survivor of the deceased.
23. The 2nd Applicant is a grandchild to the deceased and son of Rodgers Okumu, also deceased . According to the 1st respondent Rodgers was a step- brother to Margaret and the deceased had allocated him parcel No. 11 , and accordingly the 2nd Applicant's inheritance is in parcel No. 11 that belonged to his father and not parcel No. 8. The 2nd Applicant admits that parcel No. 11 belongs to his father , he however insists that his father acquired parcel 11 through his own means, but he has an interest in parcel No. 8 because it is an ancestral land.
24. According to the 1st Applicant however parcel No. 11 was given to the 2nd Applicant's father during the lifetime of the deceased , and was done so during the Adjudication process. I find this later piece of evidence plausible as it is supported by the certificate of official search filed, which search certificate indicate that that the registration of parcel No. 11 was in the name of the 2nd Applicant's father's name. I have also had a look at the tribunal proceedings. It was one of the findings of the tribunal that Jesca Andeso had already been allocated parcel No. 11. It came out from the evidence that Jesca was the mother of Rogers , the 2nd Applicant's father. It lends credence to the 1st respondent's assertion that the 2nd Applicant's inheritance is in parcel No. 11 and not parcel No. 8.
25. The Applicants made what I would call a scanty reference of other dependants of the deceased which were left out , but none of these children or grandchildren swore any affidavits in support of the Applicants Application. There were no identity cards or birth certificates to demonstrate the existence of these alleged survivors.
26. In conclusion, am not satisfied that, save for the Applicants, whose exclusion has been justified, the deceased Administrator failed to disclose other survivors of the deceased or any other material fact. Consequently, there are no valid grounds for revoking the grant.
27. It is necessary to point out that the death of an Administrator is also a ground for revoking a grant. In this case however ,the only property of the estate has not devolved to the beneficiary, but has been transferred to a third party . Am of the view that the transmission process is complete and appointing a new Administrator will not serve any purpose.
28. The Application is unmerited. It is hereby dismissed. Each party to meet their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ISIOLO THIS 20TH DAY OF MARCH , 2025.

S. Chirchir

Judge

In the presence of :

Godwin Luyundi- Court Assistant

Mr. Getanda for the Respondent.

