



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Juma Omwanda (Deceased) (Succession Cause
148 of 2011) [2025] KEHC 4268 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4268 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 148 OF 2011**

WM MUSYOKA, J

APRIL 4, 2025

IN THE MATTER OF THE ESTATE OF JUMA OMWANDA (DECEASED)

RULING

1. The application, dated 13th December 2023, is by Domitila Adhiambo Ongang and Jenipher Awino Olunga, for revocation of the grant herein made to Charles Otieno Ondengi, on 8th August 2011 and the certificate of confirmation of grant dated 14th June 2012. I shall refer to Domitila Adhiambo Ongang and Jenipher Awino Olunga as the applicants, and Charles Otieno Ondengi as the administrator.
2. The background is that the succession cause was in respect of a property known as Bukhayo/Bugengi/366, which had been registered in the names of the deceased herein and Odenyi Abunga, in equal shares. The estate was shared out at confirmation as if it belonged to 1 deceased person, and in a manner that excluded the family of the other proprietor. The property was only shared out between the family of Juma Omwanda, to the exclusion of the family of Odenyi Abunga, according to the application, and the applicants claim to be the children of the said Odenyi Abunga.
3. The applicants have attached several documents to their application. There is a certificate of official search for the estate property, Bukhayo/Bugengi/366, dated sometime in November 2010, which indicates that it was registered sometime in August 1971, in the names of Odenyi Abuga and Juma Omwanda, with each holding $\frac{1}{2}$ share, and that a title deed had been issued sometime in September 2007.
4. There is a greencard for the same property, carrying the same details, but with additional entries on what happened thereafter. It is indicated that the administrator was registered as such, in that title on 25th January 2013. On the same date, the certificate of confirmation of grant was lodged, and the 3 beneficiaries named in it were registered as proprietors. The register, for Bukhayo/Bugengi/366, was closed on 27th August 2013, upon partition of the property, into Bukhayo/Bugengi/10558, 10599 and 10560.



5. There is a letter from the Assistant Chief of Esikulu Sub-Location, dated 29th August 2023, disclosing that Bukhayo/Bugengi/366 had been registered in the names of the deceased herein and Odenyi Abunga, in equal shares, that both are since deceased, and that succession had been done by the family of Juma Omwanda, and the property has been devolved wholly to his family to the exclusion of the family of Odengi Abuga.
6. The applicants lodged another application, dated 15th July 2024, seeking conservatory orders, pending hearing and determination of the revocation application. That application was heard on 17th October 2024, when the conservatory orders sought were granted.
7. On 17th October 2024, directions were given for disposal of the revocation application by viva voce evidence.
8. The hearing happened on 18th December 2024. There was evidence, by way of an affidavit, sworn on 23rd October 2024, showing that the administrator had been served.
9. Only Domitila Adhiambo Ongang testified. What was to come up for hearing was the application, dated 19th December 2023. However, she did not testify on that application. Instead, she said that her application was dated 15th July 2024, and she was relying on her affidavit, witness statements and documents.
10. To my understanding, the application dated 15th July 2024, sought conservatory orders, not revocation of the grant, and the same, the application dated 15th July 2024, was disposed of on 17th October 2024. Since it does not seek prayers for revocation of the grant, I cannot make any revocation orders on it. In any case, it was spent on 17th October 2024, when it was disposed of.
11. I am not clear as to how the applicants herein are or were related to the deceased. In the affidavit in support of the revocation application, they claim to be the only children and dependants of the late Odenyi Abunga; while in the affidavit in support of the application for conservatory orders, Domitila Adhiambo Ongang claims to be a sister of the late Juma Omwanda. In the petition that was filed herein, the administrator had claimed to be a son of Juma Omwanda. Yet, in the application for conservatory orders, the applicants claim that the administrator was not a member of the family of the late Juma Omwanda.
12. The documents filed by the applicants are vague on whose estate they are pursuing, whether it is that of Juma Omwanda, or that of Odenyi Abunga. There is no clarity as to who belongs to which of the 2 families. I have seen a certificate of death for Juma Omwanda, but not that for Odenyi Abunga, and I am not certain as to whether the said Odenyi Abunga is also dead.
13. I was tempted to revoke the grant suo moto, as section 76 of the *Law of Succession Act* allows that. However, due to these uncertainties, I shall not. Let the applicants decide on what they intend to do about the issues that I have raised. The matter shall be mentioned on 6th May 2025, for directions. Orders accordingly.

DELIVERED VIA EMAIL, DATED AND SIGNED, AT BUSIA, THIS 4TH DAY OF APRIL 2025.

W. MUSYOKA

JUDGE

Arthur Etyang, Court Assistant.

Advocates.

Mr. Oduol, instructed by Oduol Achar & Company, Advocates for the applicants.

