



REPUBLIC OF KENYA



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In re Estate of Peterson Okemwa Omariba alias Okemwa Omariba (Deceased) (Probate & Administration E009 of 2021) [2025] KEHC 4567 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4567 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
PROBATE & ADMINISTRATION E009 OF 2021**

WA OKWANY, J

APRIL 3, 2025

**IN THE MATTER OF THE ESTATE OF PETERSON OKEMWA
OMARIBA ALIAS OKEMWA OMARIBA (DECEASED)**

BETWEEN

DAVID OKEMWA 1ST ADMINISTRATOR

ESTHER KEMUNTO OKEMWA 2ND ADMINISTRATOR

AND

CHARLES MAEBA OKEMWA 1ST OBJECTOR

ABRAHAM OMARIBA OKEMWA 2ND OBJECTOR

JOHN MORARA OKEMWA 3RD OBJECTOR

AND

DONALD MOSETI & OTHERS PURCHASER

RULING

1. The Applicants/Purchasers/Interested Parties herein filed the Summons for Alteration/Rectification of Grant or the Revocation/Annulment of Grant dated 5th July 2024 seeking the following orders: -
 1. Spent
 2. The Grant made on 29th April 2024 and orders dated 20th May 2024 be set aside pending rectification of the errors thereon.
 3. That the honourable Court be pleased to rectify the errors on the orders dated 20th May 2024 which are prejudicial to the Applicant's purchasers'/interested parties.



4. That the orders dated 20th May 2024 be revoked/annulled and new orders be issued factoring in the interests of the Applicants/Interested Parties.
 5. That this Honourable Court issue fresh orders as it deems fit and just in the circumstances.
 6. That costs be in the cause.
 7. That this Application be heard inter-partes as the honourable court may direct.
2. The Application is brought under Sections 73, 74 and 76 of the Law of Succession Act (the Act) and Rules 43 and 44 of the Probate and Administration Rules (Rules). The Application is supported by the affidavit of the Purchaser's advocate Mr. Benedict Odhiambo Oloo, and is premised on the grounds that: -
- i. That the honourable Court confirmed the grant herein on 29th April 2024 and issued orders dated 20th May 2024.
 - ii. That in the consent of 27th November 2023, the interest of the purchasers was not catered for and their counsel was not present in court and Mr. Ooga holding brief for counsel for the purchasers/interested parties did not have permission to enter into such consent.
 - iii. That indeed on 27th November 2023, the court heard the Petitioners and the purchasers and their sentiments were that the transfers to the purchasers in LR. No. Nyaribari Masaba/Bomobea/1022 was to flow from the administrators to the purchasers and not the beneficiaries.
 - iv. That by giving LR. No. Nyaribari Masaba/Bomobea/1022 to the siblings of the late Peterson Okemwa Omariba denies the rights of the purchasers from getting their (*sic*).
 - v. That the objectors herein have vowed not to transfer the plots in LR No. Nyaribari Masaba/Bomobea/1022 to the purchasers unless they pay afresh for the plots which they had completed payment, developed and stayed on for more than 15 years.
 - vi. That it will be prejudicial to the purchasers if the land were to devolve to the siblings of Peterson Okemwa Omariba.
 - vii. That to avoid costly legal battles in LR. No. Nyaribari Masaba/bomobea/1022, it will be prudent if the grant were to be rectified to avoid animosity and costly legal suits as a result of the current orders.
 - viii. That due to the complexity, insincerity and unjust behaviour of the objectors who had vowed not to transfer their shares to the purchasers, it shall be just and fair for the honourable court to order that LR. No. Nyaribari Masaba/Bomobea/1022 be registered in the names of the administrators for onward transfer to the purchasers/interested parties.
3. The Objectors and all the beneficiaries, except the administrators and the daughters of the deceased, opposed the Application through the replying affidavit of Charles Maeba Okemwa. The 1st Interested party, Donald Moseti Ratemo, filed a further affidavit in response to the Objector's Replying Affidavit wherein he averred that according to the findings of the Mediator, the 1st Objector was the first to sell his portion of land which sale was confirmed by the area Assistant Chief. He added that the sale agreements for the various Interested Parties were already before the Court.
4. The Application was canvassed by way of written submissions which I have considered.



5. The main issue for my determination is whether the Applicants have made out a case for the granting of orders to revoke, annul, alter or rectify the grant.

Analysis and Determination

6. Section 74 of the *Law of Succession Act* (the Act) stipulates as follows on rectification of grant: -

“74. Errors may be rectified by court:

Errors in names and descriptions, or in setting forth the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”

7. Rule 43(1) of the *Probate and Administration Rules* (the Rules) provides as follows: -

1. Where the holder of a grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time or place of death of the deceased or, in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was made.

8. *In the matter of the Estate of Hasalon Mwangi Kabero* [2013] eKLR the court explained what constitutes an error for rectification of grant as follows: -

“An error is essentially a mistake. For the purposes of Section 74 and Rule 43, it must relate to a name or description or time and place of the deceased death, or the purpose of a limited grant. Is an omission of a name or in the description of a thing an error” It would be an error if say a word in the full name of a person is omitted or a word or number or figure in a description is omitted. But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word “error” too far to say that that would amount to the error or mistake envisaged in Section 74 and Rule 43.”

9. In the instant case, I find that the grounds listed, by the Interested Parties/Applicants, when considered alongside the facts of the case, do not amount to an error or mistake as envisioned under Section 74 of the *Act* and Rule 43 (1) of the *Rules*. This is because the confirmed Grant does not contain the names of the purchasers/interested parties and does not mention their interests in the parcels of land that they claim to have bought and occupied over the years.

10. I find that the issues raised by the Applicants are fundamental issues that cannot be resolved by mere rectification or inclusion of their names in the Grant. I am of the view that the issues raised can only be determined through a substantive inquiry process to establish whether the Applicants should be included in the Estate of the deceased as beneficiaries or creditors.

11. I have also considered the law on revocation of grant as stated under Section 76 of the *Law of Succession* which stipulates as follows: -

76. Revocation or annulment of grant

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;
- d. that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - ii. to proceed diligently with the administration of the estate; or
 - iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- e. that the grant has become useless and inoperative through subsequent circumstances.

12. *In Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR the court expounded on the circumstances under which a grant may be revoked or annulled as follows: -

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

13. From the facts of this case, it is clear that the Applicants’ claim is that they are entitled to a share of the deceased’s Estate, particularly LR. No. Nyaribari Masaba/Bomobea/1022, even though not as beneficiaries but as purchasers of the said land. I note that even though the Applicants/Purchasers are listed as Donald Moseti & Others, nowhere in the instant application has the names of the alleged “other” applicants been mentioned. In this regard, this court is at a loss as to the exact identity of the alleged purchasers. I further note that the Applicants did not attach any sale agreements to the instant



application so as to confirm their claim but merely stated that the said agreements were already in the court file. I therefore find that the Application is vague not only to the extent of the identity of the Applicants but also in respect to proof of the allegation that they are purchasers.

14. I have taken time to peruse the documents in the court file and I note that in the 2nd Administrator's Affidavit dated 11th July 2023 in response to the Objection, she attached several sale agreements. I note that the said agreements were made between purchasers and some of the beneficiaries to the deceased's estate long after the death of the deceased and before the confirmation of the grant. The Applicant herein, Donald Moseti, was categorical that he purchased land from the 1st Objector, Charles Maeba Okemwa. It is clear that none of the Purchasers claim that they bought land from the deceased. My finding is that, in the face of undisputed fact that the Purchasers bought the land from the beneficiaries of the deceased's estate, after his death, and not directly from the deceased, they cannot lay a claim from the estate of the deceased as their recourse is only against the persons who sold them the land.
15. While this Court recognises the fact that the Applicants may be bonafide purchasers for value, the appropriate course of action should be against the parties who sold them the land since the law only recognises third parties who are direct creditors (liabilities) of the Estate of a deceased person.
16. It is also trite that the law forbids any dealings with the property of a deceased unless the person is authorised by the law. Section 45 of the Act which stipulates as follows: -

“(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or both fine and imprisonment ...”

17. In Veronica Njoki Wakagoto (Deceased) (2013) eKLR Musyoka J. held that: -

“The effect of [section 45]...is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorised to do so by the Law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”

18. In In Re Estate of M'Ngarithi M'Miriti (2017) eKLR the court expounded on the meaning of the term “intermeddling” as follows:

“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the Law of Succession Act. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free



property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the *Law of Succession Act*. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

19. In the instant case, having found that the property that forms part of the estate of the deceased was sold to the Applicants herein by the deceased’s beneficiaries before the confirmation of the grant, I find that such sale amounted to intermeddling with the estate of the deceased which is an illegal act that this court cannot ratify by revoking or rectifying the grant so as to recognize the said sale agreements. This court reiterates its finding that the only recourse that is available to the Applicants is to sue the respective beneficiaries for the portions that they purchased from them.
20. For the reasons that I have stated in this ruling, I find that the instant application is not merited and I therefore dismiss it with no orders as to costs.
21. It is so ordered.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 3RD DAY OF APRIL 2025.

W. A. OKWANY
JUDGE

