



**In re Estate of the Late Eliakim Sigar Awimbo (Deceased) (Probate & Administration E004 of 2024) [2025] KEHC 7409 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7409 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT SIAYA**

**PROBATE & ADMINISTRATION E004 OF 2024**

**DK KEMEL, J**

**MAY 23, 2025**

**(FORMERLY KISUMU HIGH COURT SUCCESSION CAUSE NO. 952 OF 2014)**

**IN THE MATTER OF THE ESTATE OF THE LATE ELIAKIM SIGAR AWIMBO(DECEASED)**

**IN THE MATTER OF**

**ELIAKIM SIGAR AWIMBO ..... 1<sup>ST</sup> PETITIONER**

**MARGARET ADHIAMBO SIGAR ..... 2<sup>ND</sup> PETITIONER**

**RULING**

1. The Petitioners herein Eliakim Sigar Awimbo and Margaret Adhiambo Sigar were appointed on 29/11/2023 after the former administrator Peter Ong'injo Awimbo was removed and further the certificate of confirmation of grant issued to him was cancelled. The said new administrators were directed by the court to file fresh summons for confirmation of grant. They duly filed summons for confirmation of grant dated 28/10/2024 wherein they sought that the grant issued on 29/11/2023 be confirmed and that all properties comprising of land parcel numbers Siaya/ Kokwiri/1726, 1760, 1805, 1694, 1685, 1700, and 1714 be registered wholly in the name of the 2<sup>nd</sup> Petitioner herein Margaret Adhiambo Sigar. However, the Protestor herein Alsahlmus Acholla Oketch filed an affidavit of protest dated 24<sup>th</sup> January 2025 wherein he opposed the proposed mode of distribution of the estate of the deceased by the Petitioners herein.
2. The Protestor's gravamen is inter alia; that he is the registered proprietor of all that parcel of land number Siaya/Kokwiri/1714 as per the copy of Title Deed and Certificate of official search dated 27<sup>th</sup> January 2025 attached to the affidavit and marked AAO 2(a) and (b) respectively; that on 31<sup>st</sup> December 2015, he entered into a sale agreement with one Peter Ong'injo Awimbo in respect of all that parcel of land known as Siaya/Kokwiri/1714 as per the copy of agreement marked as AAO 3; that at the time of entering into the said agreement, the said Peter Ong'injo Awimbo who was the lawful and legal administrator of the estate of Eliakim Sigar Awimbo held a valid grant of letters of administration of the deceased's estate and a certificate of confirmation of the said grant copies of which are attached and



marked as AAO 4(a) and (b) respectively; that after execution of the said agreement and payment of the full agreed purchase price, the said Peter Ong'injo Awimbo caused the said parcel to be transmitted into his name then transferred the same to the Protestor's name as the purchaser; that he knows that the said Peter Ong'injo Awimbo has transferred all the parcels of land that are assets of the estate of the late Eliakim Sigar Awimbo in favour of the current administrators of the estate namely Margaret Adhiambo Sigar and Eliakim Sigar Awimbo; that at the time the said Peter Ong'injo Awimbo sold the said parcel to him, he had the capacity to do so hence he was not under the restrictions set out under Section 55(1) of the Law of Succession Act, Cap 160 Laws of Kenya; that his claims are backed by the averments of the former administrator vide a further replying affidavit sworn on 9/6/2023 and 31/5/2024 which he annexed to his affidavit herein and marked as AAO5; that for all intents and purposes, he acquired a good title to all that parcel of land known as Siaya/Kokwiri/1714 as an innocent purchaser for valuable consideration in an overt market without notice hence his ownership/proprietorship and registration as the owner/proprietor is protected under Article 40 of the Constitution and Sections 24,25 and 26 of the Land Registration Act; that the said land parcel is no longer an asset in the estate of Eliakim Sigar Awimbo and hence cannot be a subject of distribution of the estate; that if the current administrators have any issues on the disposal of the said parcel of land, the same extends to asking Mr. Peter Ong'injo Awimbo to render accounts on the proceeds of the sale of the land as required under Section 76(d) (iii) of the Law of Succession Act; that he lawfully acquired the said parcel of land as there is no fraud committed in the transaction, procedure, process leading to his acquisition of proprietary rights in the said parcel of land; that the Administrators' attempt to include L.R. Siaya/Kokwiri/1714 as part of the assets of the estate of the late Eliakim Sigar Awimbo and to have it as a subject of distribution should be rejected by this court.

3. The Petitioners opposed the protest and filed a response vide an affidavit sworn by Margaret Adhiambo Sigar sworn on 18/2/2025 wherein she averred inter alia; that the grant that gave rise to the protestor's title was revoked and therefore the title was likewise revoked; that the protestor is not a beneficiary of the estate thus cannot put any documentation to protest the confirmation; that article 40 of the constitution does not aid the Protestor in any way since sections 24, 25 and 26 of the Land Registration Act are not applicable since there was fraud in the acquisition of parcel Siaya/Kokwiri/1714; that the said parcel forms part of the estate of the deceased and that the Protestor should surrender the same to the estate; that the Protestor is not a beneficiary of the estate of the deceased in any way since the former administrator from whom he allegedly bought the land was also not a beneficiary; that the Protestor has recourse against the former administrator.

4. Parties agreed to canvass the protest by way of written submissions. Both parties duly complied. The rival submissions are mainly a reiteration of the averments in their rival affidavits.

I have considered the protest, the affidavit in reply to the same, the annexures attached to the protest, and the rival submissions. It is not in dispute that the former administrator of the estate herein Peter Ong'injo Awimbo had been issued with the grant of administration and proceeded to have the said grant confirmed wherein he distributed the estate of the deceased between himself and the protestor herein as shown in the Certificate of Confirmation of Grant dated 14/12/2015. It is also not in dispute that in the said certificate of confirmation of grant dated 14/12/2015, the Protester herein Alsahlmus Achola Oketch is indicated as a heir as can be seen from the certificate of confirmation of grant dated 14/12/2015. . It is not in dispute that the said administrator later entered into a sale agreement with the said protestor on the 31/12/2015 wherein the protestor acquired LR No. Siaya/Kokwir/1714 and that a title deed thereto was issued to him. It is not in dispute that the current administrators herein later moved to the court and lodged an objection which was allowed by the court and that the former administrator was removed and that the two new administrators were appointed and that a fresh grant was issued in that effect It is also not in dispute that the former administrator was directed to execute



all the relevant documents to effect the transfer of all the parcels of land namely Siaya/Kokwir/1685, 1694, 1805, 1760, 1726 to the new administrators and that the other parcels of land were left to be dealt with during the summons for confirmation of grant. It is not in dispute that one of the parcels left out is Siaya/Kokwir/1714 which is currently in the name of the Protestor. It is not in dispute that the new administrators vide the fresh summons for confirmation of grant have listed parcel No. Siaya/Kokwir/1714 as one of the assets for distribution among the beneficiaries. It is not in dispute that administrators upon being issued with a certificate of confirmation of grant are allowed under the Law of Succession Act to deal with the properties of the estate as is appropriate and that in the event of sale of property such as land, the buyer is protected under Section 93 (1) of the Law of Succession Act by virtue of being bonafide purchasers for value. I find the issue for determination is whether the protest has merit.

5. It is noted from the rival affidavits and contentions of the parties that the bone of contention is in regard to parcel number Siaya/Kokwiri/1714. Whereas the new administrators maintain that the said property is part of the estate of the deceased and should be made available for distribution among the beneficiaries, the protestor maintains that he is the registered proprietor of the said land as he purchased it lawfully from the former administrator and that he has been issued with a title deed. As far as the protestor is concerned, the title to the land cannot be defeated since he is an innocent purchaser for valuable consideration in an overt market. Further, he maintains that he was not aware of any defect or problem surrounding the land and that he did not participate in any fraud while acquiring the land.
6. The Petitioners on their part maintain that the protestor and the former administrator had meddled with the estate of the deceased. Further, the Petitioners blame the former administrator for having misled the court and obtained the grant fraudulently by presenting misleading information to the court and which led to the revocation of the grant and his eventual removal as an administrator. The Petitioners maintain that the defence of innocent purchaser for value without notice is not available to the protestor since he did not purchase the land from the deceased and further he purported to purchase the land from an administrator whose role was nullified by the court. Again, the Petitioners contend that the Protestor is not a creditor to the estate and a liability so as to warrant him being considered in the distribution of the estate.
7. Learned counsel for the Protestor has maintained that his client is protected not only by Section 93(1) of the Law of the Succession Act but also Sections 24, 25 and 26 of the Land Registration Act which set out the effect of registration of a person as the proprietor of land, the interest conferred by registration, the rights of a proprietor and the legal import of a certificate of registration. Section 26 (1) of Act provides as follows:
  - “(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by courts as prima facie evidencethat the person named as proprietor of land is the absolute and indefeasible owner, subject to the encumbrances, casements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except -
    - “(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
    - (b) where the certificate of title has been acquired illegally, or through a corrupt scheme.



It was the view of counsel for the Protestor that his client did nothing wrong since the former administrator sold the land to him as the administrator needed the money for purposes of administering the estate of the deceased and therefore the title acquired is in defeasible. In any event, it was argued that the administrator was entitled to handle the property in accordance to Section 83(1) of the [Law of Succession Act](#) and consequently a bonafide purchaser is protected under Section 93(1) of the [Law of Succession Act](#) which provides as follows:

- “(1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.

It was finally submitted by counsel for the Protestor that his client should not be denied ownership of the land that he had lawfully purchased from the former administrator and that the protest should be allowed.

9. It is noted that the Protestor has given somehow a good account of himself regarding the circumstances leading to the acquisition of land parcel Siaya/Kokwiri/1714. However, the record shows that the Protestor herein entered into a sale agreement with the former administrator on 31/12/2015 whereas the certificate of confirmation of grant dated 14/12/2015 indicates the Protestor as a heir and was allocated parcel No. Siaya/Kokwiri/1714. In the summons for confirmation of grant dated 20/8/2015 filed by the former administrator, the protestor is indicated vide paragraph 6 of the affidavit in support as a purchaser and who signed a consent to confirmation of grant dated 20/8/2015. It is instructive that both the former administrator and the Protestor signed consent to the confirmation of grant and purported to be the beneficiaries of the estate of the deceased. Indeed, the court later allowed an objection lodged by the current administrators and duly revoked the grant and cancelled the certificate of confirmation of grant. It would appear that the Protestor and the former administrator had started meddling in the estate of the deceased much earlier as can be seen by the summons for confirmation of grant dated 20/8/2015. Further, the Protestor had already been made a beneficiary of the estate prior to the confirmation of grant and that is why he is indicated as a heir as can be seen from the certificate of confirmation of grant dated 14/12/2015. It is therefore quite strange that the Protestor who had been purportedly made as a heir could go ahead after the certificate of confirmation of grant and enter into a sale transaction over property that had been ‘allocated’ and/or ‘distributed’ to him. It is clear therefore that the conduct of the Protestor and the former administrator was that of persons out to intermeddle in the estate. Even though the former administrator tried to assist the Protestor in this matter, I find the same to be of no significant value because it became clear that he had engaged the said Protestor much earlier even before the grant could be confirmed. That being the position, their activities were for all intents and purposes intermeddling with the estate of the deceased which was contrary to the provisions of Section 45 of the [Law of Succession Act](#). As the Protestor was an intermeddler, he cannot seek protection under Section 93(1) of the [Law of Succession Act](#) as an innocent purchaser for value without notice. Had the Protestor waited until the former administrator concluded the confirmation of the grant, then he would have comfortably proceeded with the sale transaction without any blemish since the certificate of confirmation of grant was to give the administrator the legitimacy to deal with the estate of the deceased as is appropriate. The Protestor has not explained how he had been made a heir of the estate of the deceased yet he was neither a child nor a dependant of the deceased. The act of the Protestor being made a heir of the estate four months prior to entering into a sale transaction with administrator gave him a way. He was indeed an intermeddler of the estate of the deceased and therefore he cannot get any protection of the law. It is instructive that as soon as the current administrators



lodged an objection, the former administrator quickly gave up and entered into a consent with the new administrators and agreed to be removed as an administrator and further agreed to relinquish all the assets that he had registered in his name in favour of the new administrators. Looking at the circumstances of how the Protestor acquired the title to parcel No. Siaya/Kokwiri/1714, I have no doubt in my mind that the same was acquired in an irregular manner as the former administrator while purporting to sell the land had not yet obtained a confirmed grant and hence did not have the requisite capacity to pass any title to the Protestor. Much as the Protestor would want to have the court believe his claim that he bought the property after the grant had been confirmed, the certificate of confirmation of grant dated 14/12/2015 listed him as a heir pursuant to a schedule of distribution of the estate dated 20/8/2015. This was clear proof that the Protestor was an intermeddler in the estate of the deceased and which whitewashed his purported sale transaction dated 31/12/2015. It would appear that the Protestor was trying to cover up for his missteps and that of the former administrator in the all scenarios. I am not convinced by his assertion that he is an innocent purchaser for value without notice. Hence, the Protestor must relinquish his claim to parcel No. Siaya/Kokwiri/1714 which should revert to the name of the deceased and be made available for distribution among his beneficiaries. As noted above, the Protestor cannot seek protection under Section 93 of the *Law of Succession Act* as the title had been illegally acquired. He is not protected by Section 93 of the Act. In the case of *Munyu Maina Vs. Hiram Gathiba Maina* 92013) eKLR, the court held as follows:

We state that when acquisition of proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need to be noted on the register.

As noted from the foregoing, the Protestor's acquisition of parcel No. Siaya/Kokwiri/1714 was not legitimate in view of the fact that the seller had not yet acquired a confirmed grant. Again, his conduct in agreeing to pass himself off as a heir when he knew that he was neither a child of the deceased nor a dependant, has discredited him and left the impression that he was out to snatch the property from the legitimate heirs. This can be seen from the fact that he agreed to be made a beneficiary of the estate much earlier before subsequently purporting to enter into a sale agreement with the former administrator. If indeed, the former administrator needed money for administering the estate and that he approached the Protestor to lend him the same and would sell him a portion of the land, then the Protestor should have waited until the administrator secures a confirmed grant then they could proceed to enter into the sale agreement. However, the Protestor agreed to be made a beneficiary and heir of the estate yet he was neither a child nor dependant of the deceased. This was a grave error from which the Protestor should not be heard to claim that he is an innocent purchaser for value without notice. The Protestor knew right from the beginning that the administrator did not have capacity to sell the land until after the grant had been confirmed but he waded into the matter too early and therefore the court cannot protect his claim. If indeed he had made payment to the former administrator, he still has recourse in law to pursue him for compensation in the appropriate forum.

10. Learned counsel for the Protestor has proposed that the new administrators should pursue the former administrator and require him to render a full and accurate inventory of the assets of the deceased as well as a full and accurate account of all dealings in accordance with section 83(h) of the *Law of Succession Act*. Whereas that is a good suggestion, the same should not be used as a shield to prevent the Protestor from being made to suffer for his actions in passing himself off as a heir yet he is not a child or dependant of the deceased so as to acquire parcel No. Siaya/Kokwiri/1714. I find the issue of accounts being rendered by the former administrator is an internal matter between the new administrators and the former administrator which can be addressed at any time while the issue of the Protestor must be



dealt with first. As the Protestor has failed to convince this court that he had legitimately acquired the title to LR. Siaya/Kokwiri/1714, then he must relinquish any claim thereto and that the same must be cancelled and it reverts to the name of the deceased and it be made available for distribution among the beneficiaries.

11. In view of the foregoing observations, it is my finding that the Protestor's protest dated 24/1/2025 lacks merit. The same is dismissed. The following orders are hereby issued:
- i) The registration of Land Parcel No. Siaya/Kokwiri/1714 in the name of the Protestor herein Alsahlmus Achola Oketch is hereby cancelled and that the title do revert in the name of the deceased herein Eliakim Sigar Awimbo forthwith and be made available for distribution among the beneficiaries.
  - ii) The Grant of Letters of Administration intestate made to the said Eliakim Sigar Awimbo and Margaret Adhiambo Sigar on 29/11/2023 is hereby confirmed.
  - iii) The estate of the deceased shall be distributed as proposed vide paragraph 6 of the affidavit of the Petitioners sworn on 28/10/2024.
  - iv) A certificate of confirmation of Grant shall issue forthwith.
  - v) Each party to bear their own costs.

**DATED AND DELIVERED AT SIAYA THIS 23<sup>RD</sup> DAY OF MAY, 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

Onsongo.....for Protestor

BF Odhiambo.....for Petitioners

Okumu.....Court Assistant.

