



**In re Estate of Petro Ondoro Onunga (Deceased) (Succession Cause 891 of 2015) [2025] KEHC 7350 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7350 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
SUCCESSION CAUSE 891 OF 2015**

**OA SEWE, J**

**MAY 22, 2025**

**IN THE MATTER OF THE ESTATE OF PETRO ONDORO ONUNGA (DECEASED)  
IN THE MATTER OF AN APPLICATION FOR REVOCATION OF GRANT**

**BETWEEN**

**WILLIAM OWINO NYANGILI ..... APPLICANT**

**AND**

**MARY ADERA OGUMBO ..... RESPONDENT**

**RULING**

1. Before the Court for determination is the Summons for revocation of Grant dated 21<sup>st</sup> February 2024. It was filed by William Owino Nyangili (hereinafter, the applicant) against Mary Adera Ogumba (the respondent) pursuant to Section 76(a), (b) and (c) of the *Law of Succession Act*, Cap 160 of the Laws of Kenya and all the enabling provisions of the *Probate and Administration Rules*. They seek orders that:
  - (a) That the Grant of Letters of Administration Intestate made and issued to the respondent herein be revoked and or annulled.
  - (b) The Court be pleased to make a declaration that the applicant herein is entitled to benefit out of the estate property comprising Central Kasipul/Kamuma/1775.
  - (c) That the costs of the application be paid by the respondent.
2. The application was predicated on the grounds that the proceedings that led to the issuance of the Grant of Letters of Administration Intestate to the respondent were defective in nature and substance because the respondent obtained the Grant through concealment and/or misrepresentation of material facts. The applicant averred that the respondent failed to disclose to the Court the beneficiaries of the estate of the deceased and thereafter proceeding to cause the asset comprising the estate, namely land parcel No. Central Kasipul/Kamuma/1775 to be transmitted to herself to the



- exclusion of the applicant. The applicant further stated that, being a grandson of the deceased, he is a deserving beneficiary and ought to have been given a share of the estate.
3. In his Supporting Affidavit sworn on 21<sup>st</sup> February 2024, the applicant averred that the deceased, Petro Ondoro Onunga died on the 23<sup>rd</sup> November 2003 and was survived by two daughters, namely Mary Adero Ogumba (the respondent) and Risper Achieng Nyangili (hereinafter referred to as Risper). He stated that Risper is also deceased, having died on 21<sup>st</sup> October 1995. The applicant further deposed that the respondent petitioned for Grant of Letters of Administration Intestate in the year 2015, long after the death of Risper; and that, as the only surviving son of the said Risper, he ought to have been included in the Petition as one of the beneficiaries, but was not.
  4. The applicant explained that the deceased had bequeathed to him part of his property measuring 1.86 Hectares and therefore complained that the respondent ignored this fact and proceeded to subdivide the land into two, thereby creating Central Kasipul/Kamuma/2933 and 2934, respectively. He added that the respondent thereafter sold some portions to third parties without any reference to him. It was therefore the prayer of the applicant that the Grant be revoked or annulled.
  5. The application was resisted by the respondent. To that end, she filed a Replying Affidavit, sworn by her on 28<sup>th</sup> October 2024. She acknowledged that the applicant is her nephew, the son of her sister Risper Achieng Nyangili. The respondent explained that her siblings are all deceased; and that before her demise, Risper was already married and was living in Koguta Sub-location in Nyakach Sub-County within Kisumu County.
  6. The respondent further conceded that the deceased was the registered owner of land parcels No. Central Kasipul/Kamuma/2933 and 2934; and that because she was also married and lived away from home, the applicant took advantage of her absence and sold portions of the estate property to third parties in collusion with his cousin, one George Lusi. The respondent explained that, when the third party buyers piled pressure on George Lusi, he filed this Petition seeking Grant of Letters of Administration Intestate to administer the estate while all the while keeping her in the dark.
  7. At paragraph 9 of her Replying Affidavit, the respondent deposed that, when she got wind of what was going on, she instructed an advocate to act for her and seek revocation of the Grant already issued to George Lusi. She stated that her application was allowed. The first Grant was accordingly revoked and a fresh Grant issued to her. She added that when the third party buyers got to know of this development, they turned to her in pursuit of their respective portions. She averred that, out of compassion, she honoured those claims, treated them as liabilities to the estate and caused the respective portions to be transferred to the purchasers after confirmation of Grant.
  8. The respondent further averred that she shared the net estate equally between her and the applicant. According to her, the applicant quickly sold away his portion after which he started demanding that he be given more land; which demand she declined because there was no more land left to distribute. The respondent denied having obtained the Grant by concealment or fraud and stated that they went before the area chief with the applicant and had the issue of distribution of the estate of the deceased discussed; and that it was the chief who gave her authority to go to court.
  9. The respondent also mentioned that the court process was open and transparent and that if there was any fraud then the applicant ought to blame for it for having disposed of the larger portion of the estate property without any form of accountability. She added that, since the exercise of distribution is complete, no useful purpose would be served by revocation of the Grant. She prayed for the dismissal of the application.



10. Further affidavit of Wilian Owino Nyangili sworn on 10<sup>th</sup> November 2024, he deposed that when the deceased started ailing, he (the applicant) resigned from his employment and returned home to take care of the deceased. He averred that he took care of the deceased until his demise. He produced the Certificate of Death for the deceased to demonstrate that his name appears on the said document as the informant. He reiterated his earlier assertions to underscore his contention that he is also a beneficiary of the deceased.
11. The application was canvassed by way of written submissions. The applicant relied on his written submissions dated 19<sup>th</sup> January 2025 in which he proposed one issue for determination, namely, whether the Grant of Letters of Administration Intestate issued to the respondent should be revoked. The applicant reiterated his stance that the proceedings leading to the issuance of Grant to the respondent were flawed. He relied on Sections 51(2) and 76 of the Law of Succession Act and the cases of In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR and Re Estate of Moses Wachira Kimotho (deceased) Succession Cause 122 of 2002 [2009] eKLR, among other authorities in urging his application to pave way for an equitable distribution of the estate of the deceased.
11. The respondent filed her written submissions dated 30<sup>th</sup> December 2024. He contended that the application for revocation is misplaced and is therefore an abuse of the court process. In essence, the submissions of the respondent amount to a reiteration of the averments set out in her Replying Affidavit. On the basis thereof, the respondent urged the Court to find that the Grant of Letters of Administration issued to her was properly issued and confirmed in accordance with the applicable law. She prayed for the dismissal of the application.
12. In the light of the foregoing, the single issue for determination is whether sufficient cause has been shown by the applicant for the revocation of the Grant of Letters of Administration Intestate issued herein to the respondent.
13. A perusal of the court record shows that the Petition for Grant of Letters of Administration Intestate in respect of the estate of the deceased, Petro Ondoro Onunga, was initially filed, not by the respondent as alleged by the applicant, but by George Opiyo Lusi. In his Affidavit in Support of Petition, George Opiyo Lusi described himself as the Administrator of the estate of the deceased. At paragraph 4 thereof, he listed the beneficiaries of the deceased as follows:
  - (a) George Opiyo Lusi Adult Administrator
  - (b) William Owino Nyangile Adult Step grandson
  - (c) Fredrick Odhiambo Ndede Adult Nephew
  - (d) Jacktone Omondi Lusi Adult Step grandson
14. The only asset comprising the estate was listed as Parcel No. Central Kasipul/Kamuma/2933 and 2934 valued at Kshs. 200,000/= . It is notable therefore that in that initial Petition, no reference ever made to Land Parcel No. Central Kasipul/Kamuma/1775. The court record further confirms that when the matter came up for confirmation of Grant on 8<sup>th</sup> March 2017, the applicant was one of the beneficiaries present and he is recorded as having consented to the proposed Mode of Distribution as per the Affidavit of George Opiyo Lusi sworn on 13<sup>th</sup> December 2017.
15. In the aforesaid Affidavit, it was proposed that the applicant be given the whole of Land Parcel No. Central Kasipul/Kamuma/2934; and that Land Parcel No. Central Kasipul/Kamuma/2933 be shared amongst George Opiyo Lusi, Fredrick Odhiambo Ndede and Jacktone Odhiambo Lusi. The Grant was accordingly confirmed and a Certificate of Confirmation issued on 21<sup>st</sup> March 2018. It was



- therefore the applicant who knowingly colluded with third parties and participated in a process that entirely disinherited his aunt, the respondent.
16. The respondent successfully applied for revocation of Grant and in its Ruling dated 21<sup>st</sup> July 2021, the Court (Hon. Kiarie, J.) noted at paragraph 4 that:
- "4. The respondent does not deny that the applicant was the daughter of the deceased herein. He however failed to disclose this fact in Form P&A 5. He listed other purported beneficiaries and left the applicant out. I therefore find that the grant was obtained fraudulently and by means of untrue allegations.
5. The application is allowed with costs. The applicant is hereby appointed administrator and ought to file proposed mode of distribution within 30 days."
17. It is also manifest from the court record that the respondent was indeed issued with a Grant of Letters of Administration Intestate in respect of the estate of her late father, Petro Ondoro Onunga, on the 11<sup>th</sup> November 2021. Thereafter, the respondent applied for confirmation of Grant vide her application dated 13<sup>th</sup> August 2021. She listed both Land Parcel Numbers 2933 and 2934 as available for distribution but proceeded to state at paragraph 5 of her Supporting Affidavit that:
- "I now require Certificate of Confirmation of Grant for the purpose of issuance of Title Deed in respect to the Deceased's parcels herein in my names as required my share thereof being (whole share)."
18. What emerges from the foregoing is that the issue of who has the right to administer the estate of the deceased is res judicata; the same having been settled in the Ruling aforementioned. Indeed, Section 66 of the *Law of Succession Act* is explicit on the order of priority for purposes of Grant of Letters of Administration. It provides that:
- When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-
- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors"
19. It is plain from the above provision that the respondent falls higher in rank as opposed to the applicant; and therefore would ordinarily be accorded preference for purposes of Grant of Letters of Administration. In the premises, no justification has been made for revocation or annulment of the Grant issued to the respondent. Moreover, as pointed out herein above, the issue of who is entitled to administer the estate of the deceased is now res judicata.
20. What the parties seem to be disputing about is distribution of the estate. Section 38 of the *Law of Succession Act* provides that where the intestate is survived by children but no spouse, then the net intestate shall be equally divided among the surviving children; thus making it clear that the children



of the deceased have priority and that they rank in pari passu with each other. It is for this reason that Rule 7(7) of the *Probate and Administration Rules, 1980*, provides that:

Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has—

- a. renounced his right generally to apply for a grant; or
- b. consented in writing to the making of the grant to the applicant;
- c. been issued with a citation calling upon him either to renounce or to apply for a grant.

21. In the same vein, Rule 26(2) of the *Probate and Administration Rules* provides that:

An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.”

22. Given the foregoing provisions, it is plain that, for purposes of administration in cases where the deceased is survived by his children but no widow, the right persons for appointment as administrators are the surviving children. It is also plain that grandchildren, such as the applicant, can only be considered for appointment as administrators where there is renunciation or consent of the surviving children; or for some other good cause to be explained by way of an affidavit. A revocation or annulment in the circumstances hereof would therefore in conflict with the applicable law.

23. I hasten to add, however, that administration must be distinguished from inheritance; and it is far from saying that orphaned grandchildren, such as the applicant, are not entitled to directly inherit a share of the estate in place of their deceased parents. *In Re Estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR, it was held that:

Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1<sup>st</sup> July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

24. Having been given the mandate to administer the estate of her late father, it was indeed improper for the respondent to leave out the applicant in the entire process. For purposes of distribution, any properties that the applicant may have obtained beforehand would have been factored in with a view to achieving an equitable distribution as by law required. It was similarly important for the respondent to disclose and take into account the other children of Risper as alluded to in her written submissions.

25. Where, as has been shown herein the applicant and his siblings were left out, the applicant ought to have moved the court, not by way of revocation of grant, but by way of an Affidavit of Protest before



confirmation. This the applicant did not do. He cannot now say he was unaware of what was going on since he was a party to the initiation of the Petition in 2015.

26. In the result, I find the Summons for Revocation of Grant dated 21<sup>st</sup> February 2024 misconceived. The same is hereby struck out with no order as to costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT HOMA BAY THIS 22<sup>ND</sup> DAY OF MAY 2025**

**OLGA SEWE**

**JUDGE**

