



REPUBLIC OF KENYA



**In re Estate of Wilson Ochong'a alias Wilson Onchong'a Orangi (Deceased) (Succession Cause 448 of 2013) [2025] KEHC 6785 (KLR) (Family) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6785 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 448 OF 2013**

**TA ODERA, J**

**MAY 14, 2025**

**IN THE MATTER OF THE ESTATE OF WILSON OCHONG'A  
ALIAS WILSON ONCHONG'A ORANGI(DECEASED)**

**IN THE MATTER OF**

**JOSEPH BOSIRE ONCHONGA ..... 1<sup>ST</sup> APPLICANT**

**JOSEPHEN ONCHONGA ORANGI ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. The objector /applicants filed the application dated 31.1.25 Under Article 159 (2) of the *Constitution*, Sections 1A,1B, 63(e) and 80 of the *Civil Procedure Act*, Order 45 Rules 1, 2 and order 51 Rule 1 of the *Civil Procedure Rules* and all the enabling provisions of law seeking:
  - a. That this application be certified urgent and be heard exparte in the first instance and service be dispensed with in the first instance.
  - b. That this Honourable Court do set aside, review and or vacate the Orders made on 7th May, 2018 and reinstate the instant succession cause and set the instant Application for hearing.
  - c. That this Honourable Court be pleased to appoint Lucia Bosibori Onchong'a and Yusavia Kemunto Ombati as the administrators for purposes of completing the administration of the Estate of Wilson Onchong'a Orangi Alias Wilson Onchong' a.
  - d. That the Honourable Court be pleased to declare as null any dealings in the assets of the estate especially dealings in West Kitutu/Mwakibagendi/1014.
  - e. That this suit be reinstated for proper determination of the rights of all the beneficiaries.
  - f. That the costs of this application be in the cause.



2. The application is supported by the annexed affidavit sworn by Lucia Bosibori Onchong'a and the grounds that;
- i. That sometimes in February 2024, the Applicants conducted a historical search over a parcel that was listed as one of the assets in the instant succession cause being West Kitutu/Mwakibagendi/1014.
  - ii. That through the search they came to realize that pursuant to the instant succession cause, the said property was transmitted to the Respondents/Petitioners on February, 2014 and the title was subsequently closed on 21st October 2024 as a result of sub-division.
  - iii. That the Applicants would not understand how the cause prompted the said transmission and subsequent subdivision since as far as they are concerned the succession was never finalized for the reason that; when the summons of confirmation of grant were due to be filed, the petitioners refused to sign the same citing that Applicants did not have a right to inherit since they are daughters.
  - iv. That following the realization that the assets of the estate had been distributed, the Applicants visited the High Court Family Probate and Administration Registry to find out the status of the succession matter and this is when they realized that the instant matter was dismissed and/or closed on the 7th of May, 2018 for want of prosecution and subsequently the Letters of Administration Intestate issued to the Respondents/Petitioners revoked.
  - v. That to this end, the Respondents who are well aware that the Applicants were listed as beneficiaries in the instant succession cause have gone ahead to disinherit them by subdividing the aforementioned asset which belongs to the estate to the exclusion of the Applicants.
  - vi. That since the said subdivision West Kitutu/Mwakibagendi/1014, purportedly arose from the instant succession cause the only way the arising issues in respect to the estate of the deceased can be addressed is through reinstatement of the instant suit.
  - vii. That if the instant succession cause is not reinstated and set for hearing on a priority basis, the Respondents herein will continue to cause further wastage of the estate and/or intermeddling with the assets without due regard to the rights of the Applicants.
  - viii. That the Applicants are keen on prosecuting this matter to finality.
  - ix. That the Applicants stand to suffer great loss if the instant Application is not heard expeditiously, the order dismissing the instant succession cause for want of prosecution on 7<sup>th</sup> May, 2018 vacated, any dealings on the assets belonging to the estate cancelled and subsequently the Applicants appointed as administrators of the estate for purposes of finalizing administration.
  - x. That this application has been made diligently and without unreasonable delay.
  - xi. That in the circumstances, it is desirable that the application filed herewith be heard and determined by this Honourable Court as a matter of extreme urgency.
3. The 1<sup>st</sup> applicant deponed that she is a daughter to Wilson Onchong'a Orangi alias Wilson Onchong'a (the deceased herein) and the 1<sup>st</sup> applicant herein one of the Applicantt herein. She Annexed a copy of her national Identity card and the chief's letter LBO1 a' and 'b'). Further that she swore the affidavit on her own behalf and her sister and co-applicant Yusavia Kemunto Ombati and she aannexed LBO 2 which is copy of Yusavia's identification card. She said that sometimes in February 2024,



she and the said Yusavia Kemunto Ombati conducted a search over a land parcel no. West Kitutu/Mwakibagendi/1014. Which formed the estate of deceased and realized that the said property was purportedly transmitted to the Petitioners/Administrators Joseph Bosire Onchong'a and Josephine Kemunto Orangi on 19th February, 2014 pursuant to the instant succession and the title was subsequently subdivided and closed on 21st October, 2024. 75 as per a copy of the green card "LBO 3". They could not understand how the instant succession cause prompted the said subdivision since as far as they are concerned the succession was never finalized for the reason that; when the summons of confirmation of grant were due to be filed, the petitioners Joseph Bosire Onchong'a and Josephine Kemunto Orangi refused to sign the same citing that they (objectors) did not have a right to inherit since they are daughters.

4. She went on to state that following the realization that the assets of the estate had been distributed, they visited the High Court Family Probate and Administration Registry to find out the status of the file and this is when we discovered that the matter herein was dismissed on the 7th of May, 2018 for want of prosecution and subsequently the Letters of Administration Intestate issued to the petitioners Joseph Bosire Onchong'a and Josephine Kemunto Orangi were revoked as per the Court order "LBO4" (is copy of the Court Order). She deponed that respondents deliberately disinherited them by subdividing the aforementioned asset which belongs to the estate to their exclusion. Further that they have been advised by their counsel on record which advice they verily believe to be true that since the said transmission and subsequent subdivision of West Kitutu/Mwakibagendi/1014 purportedly arose from the instant succession cause the only way the arising issues in respect to the estate of the deceased can be addressed is through reinstatement of the instant suit.
5. Also, that if the succession cause herein is not reinstated and the same set for hearing on a priority basis, the petitioners herein will continue to cause further wastage of the estate and/or intermeddling with the assets without due regard to their rights. And that they are keen on prosecuting this cause to finality. 1<sup>st</sup> objector also deponed that they stand to suffer great loss if the order dismissing the instant succession cause for want of prosecution on 7th May, 2018 vacated, any dealings on the assets belonging to the estate cancelled and subsequently they are appointed as administrators of the estate for purposes of finalizing administration. Finally, she stated that that the application has been made diligently and without unreasonable delay.
6. The application was not opposed as they neither appeared in court nor filed a response despite service.
7. I have carefully considered the application and the oral submissions by Dr Kembero advocate for the objector /applicants.

The issues for determination are;

- a. Whether the objectors have made out a case for reinstatement of the cause.
- b. Whether the objectors should be appointed as administrators in place of the respondents.
- c. Whether the court should declare as null any dealings in the assets of the estate especially dealings in West Kitutu/Mwakibagendi/1014.

objectors have satisfied conditions for revocation of grant under Section 76 of the *Law of Succession Act*.

8. On whether the cause ought to be reinstated, I have considered the circumstances of this case and I note that the objectors who are the daughters of the deceased as per the chief's letter were not the administrators and the administrators dilly dallied with the matter till it was dismissed. The reason granted by the objectors is plausible and I allow the prayer for reinstatement of the cause.



9. On Whether the objectors should be appointed as administrators in place of the respondents. The objectors said they are daughters to deceased and beneficiaries to his estate and they accused the administrator of obtaining the confirmed grant fraudulently after the cause had been dismissed. This is not contested. Section 83 of the Law of Succession Act provides for duties of administrators which include;
- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account; Section 71 (1) of the Law of Succession Act also imposes upon the administrators the duty to move the court to confirm the grant six months after the date of its issue. Section 71 provides that: - (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets. The respondents/ administrators failed in their duties under sections 83 and 71 of the Act. The administrators also fraudulently obtained title deeds using the letters of administration which had not been confirmed and in any event had been revoked. The position of an administrator is that of trust and it is clear that the administrators breached the same. They can no longer be trusted as administrators of the estate of deceased. Anyway, the grant had been revoked and I proceed to appoint Lucia Bosibori Onchong'a and Yusavia Kemunto Ombati as Joint administrators of the estate herein.
10. On whether the court should declare as null any dealings in the assets of the estate especially dealings in West Kitutu/Mwakibagendi/1014. It has emerged that the administrator had the land transferred into their names as per the green card filed herein. As at the date of the transmission the grant had already been revoked and there was no confirmed grant as required by the law, the said acts of the respondents were thus fraudulent, null and void.
11. In the upshot the application dated 31.1.25 is allowed. I proceed to issue the following orders;
- i. The succession cause herein is reinstated.
  - ii. Lucia Bosibori Onchong'a and Yusavia Kemunto Ombati as Joint administrators of the estate herein.
  - iii. The Kisii County Land Registrar to cancel the dealings with the said land parcel West Kitutu/ Mwakibagendi/1014. and revert the title back to the name of the deceased herein.
  - iv. Fresh Summons for confirmation of grant be filed within 4 months from today.
  - v. The Kisii Land Registrar and Surveyor to visit the said land within 3 months from today and file a ground occupation report.
  - vi. Costs to the applicants.

**T.A ODERA**

**JUDGE**

**14.5.25**

Delivered Virtually Via Teams platform in the presence of:

Court Assistant - Oigo

Counsel for the Applicants – Absent

