



REPUBLIC OF KENYA



**KENYA LAW**

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**Rawiyo & another v Owino & another (Succession Cause  
4 of 2023) [2025] KEHC 6384 (KLR) (16 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6384 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
SUCCESSION CAUSE 4 OF 2023**

**DK KEMEL, J**

**MAY 16, 2025**

**IN THE MATTER OF THE ESTATE OF THADEUS RAWIYO  
ODONGO (DECEASED)**

**BETWEEN**

**ANDREA ONYANGO RAWIYO ..... 1<sup>ST</sup> APPLICANT**

**MARCELUS ODONGO RAWIYO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**FABIAN OWINO OWINO ..... 1<sup>ST</sup> RESPONDENT**

**CHRISTOPHER OMONDI ONYANGO ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The two Applicants herein filed a summons for revocation or annulment of grant dated 26<sup>th</sup> June 2019 wherein they sought the following reliefs:
  1. That an order of injunction to issue against the Respondents and or representatives to restrain them by themselves, their agents, servants and representatives from disposing of, transferring, alienating wasting, selling or in any other manner at all giving away any asset of the estate of the deceased as may be ordered by the court.
  2. That the grant of letters of administration intestate issued on the 10/2/2015 and confirmed on 18/5/2016 allegedly to Marcelus Odongo Rawiyo and Andrea Onyango Rawiyo by the High Court in Kisumu Succession Number 430 of 2012 be revoked and/or annulled as the case may be.
  3. That the title deeds issued to Fabian Owino Owino, Christopher Omondi Onyango and other beneficiaries being Land parcel number Siaya/Ambira/3XX3, Siaya/Ambira/3XX4, Siaya/



Ambira/3XX5 and Siaya Ambira/3XX6 and suspected others be cancelled and be reverted back to the original parcel Number Siaya/Ambira/X5.

4. That the costs of the application be provided for.
2. The application is supported by the grounds set out thereunder as well as the affidavit of the 1<sup>st</sup> Applicant sworn on even date. The Applicants' gravamen is *inter alia*; that the grant was obtained fraudulently as the Respondents misled the court; that the suit property Siaya/Ambira/X5 was registered in the names of Thadeus Rawiyo Odongo and Joseph Muga Odongo; that the said Joseph Muga Odongo had no wife or children while Thadeus Rawiyo Odongo and Joseph Muga Odongo; that the said Joseph Muga Odongo had no wife or children while Thadeus Rawiyo Odongo had four children two of whom are deceased and are fathers to the Respondents herein; that the certificate of confirmation of grant was obtained by fraudulent means and concealment of material facts in that the Respondents secretly worked with some court clerks within the Probate registry and lodged the summons for confirmation of grant after tricking the Applicants; that the Respondents failed to bring to the attention of the court of the fact that the suit property was in names of two persons; that the Applicants were not allowed to raise issues of concern during the hearing of summons for confirmation of grant; that the Respondents have taken huge chunks of the land to the detriment of the Applicants.
3. The Respondents opposed the application through the affidavit of the 1<sup>st</sup> Respondent sworn on 27/9/2019 wherein he averred *inter alia*; that the Applicants delayed succession with the intention of maintaining the status quo so as to disinherit the Respondents; that the Applicants attended court during the hearings wherein the grant was confirmed; that the mode of distribution was in accordance with the wishes of the deceased; that they have disposed off their portions due to the hostility by the Applicants on the grounds; that the Applicants are in possession of new titles on LR Siaya/Ambira/3XX6 and who have even lodged an ELC case No. 275 of 2016 which has since been transferred to Ukwala PM's Court; that the Applicants are out to delay and frustrate the Respondents with a view to disinheriting them; that all beneficiaries have received their shares and that the Applicants herein are inspired by greed to dispose the Respondents of their shares; that the Applicants share of the estate is larger than that of the Respondents.
4. The application was canvassed by way of viva voce evidence.
5. The Applicants reiterated their averments in their affidavits and statements. They called two witnesses Clementina Onyango (OB-PW2) and Fredrick Ogutu Otieno (OB-PW3) who supported the Applicants' claim that the grant should be revoked as they were not given an opportunity to raise issues with the way the confirmation had been carried out and that the land should be shared in accordance with the wishes of the deceased.
6. The Respondents also reiterated their averments in their replying affidavits and statements. The Respondents also reiterated their averments in their replying affidavit and statements. The Respondents confirmed that the Applicants did not sign the summons for confirmation of grant and consent to distribution but that the Applicants were present in court during the hearing of the said summons for confirmation of grant.
7. I have considered the rival affidavits and submissions. The issue for determination is whether the application has met the threshold for revocation of the grant.



8. Revocation of grants is provided for under Section 76 of the *law of Succession Act*, the same is as follows:

“....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 allows;
  - ii. To proceed to diligently with the administration of the estate; or
  - iii. To produce to court within the time prescribed any such inventory or account of administration as it is required by the provisions of paragraphs (e) and (g) of Section 83 or has produced any such inventory or account which is false or in any material particulars.
- e. That the grant has become useless and inoperative through subsequent circumstances..”

A perusal of the court record shows that the matter has had a chequered history. It kicked off with a citation lodged by the Respondents against the Applicants and that eventually the Applicants accepted to take up letters of grant and duly filed the requisite documentation which led to the issuance of the grant of letters of administration. It appears from the record that the Respondents took over the matter once the grant was ready for collection. They literally stole the thunder from under the Applicants and then took charge of the process all the way to the confirmation of grant and issuance of the certificate of confirmation of grant. The record confirms this. On 11/2/20X5, the 1<sup>st</sup> Respondent herein turned up at the probate registry and presented his Identity Card Number 30543982 and thereafter collected the grant of letters of administration intestate on behalf of the Applicants. Again, the Respondents presented to the registry summons for confirmation of grant dated 23/11/20X5 which were not signed by the Applicants and, for unexpected reasons, the same were filed on 27/11/2025. Further, the said summons for confirmation of grant did not have the consent of the Appellants regarding the proposed distribution of the estate. In fact, the consent was signed by the Respondents themselves. Then, come the confirmation hearing on 18/12/20X5, the records indicate the names of 2<sup>nd</sup> Applicant and both Respondents as the persons who were present and that the summons for confirmation of grant dated 23/11/20X5 were allowed. The record further indicates that on the 19/1/2016, the 1<sup>st</sup> Respondent herein turned up at the probate registry and presented identity number 30543982 and collected the certificate of confirmation of grant dated 18/1/2016. It seems the Respondents thereafter went to work and proceeded with the distribution of the estate as proposed by them in the absence of the Applicants and this led to the Applicants filing an application dated 24/9/2021 seeking for an order of



maintenance of status quo but which was dismissed by Kamau J on 28/2/2023 and who ordered the matter transferred from Kisumu High Court to this court.

9. From the foregoing observations as gleaned from the record, it is clear that the Respondents did not allow the Applicants to continue with the process leading to the confirmation of grant. Even though the Respondents had cited the Applicants, the Respondents' role to pursue for letters of grant ended the moment the Applicants agreed to take up the challenge and file for letters of grant. Indeed, the Applicants filed for letters of grant but it seems the Respondents hijacked the process when they collected the grant and went ahead to file summons for confirmation of grant without involving the Applicants. The Respondents, having allowed the Applicants to proceed and file for letters of grant of administration intestate as confirmed by the citation proceedings, should have taken a back seat and wait for the Applicants to file the requisite summons for confirmation of grant and then step in and participate in the confirmation of grant proceedings wherein they would present their preferred mode of distribution of the estate and that in the event of a disagreement on the schedule of distribution, then the court could hear the protest and come up with a determination. This scenario did not take place thanks to the surreptitious conduct of the Respondents in presenting summons for confirmation of grant and passing off as the Petitioners in the matter and securing a hearing date for the same despite the summons not having been signed by the Applicants as well as absence of consent duly signed by the Applicants. It is instructive that it is the Respondents who collected the grant upon issuance and then filed the summons for confirmation of grant and later collected the certificate of confirmation of grant. The Respondents therefore kept the Applicants in the dark yet the Applicants had been appointed as the administrators of the estate. There is nothing on the record indicating that the Respondents took out notices for service upon the Applicants for directions before the court and that there is no evidence that the Respondents raised any issues before the court to the effect that the Applicants as administrators had failed to perform their duties so that the court could go ahead and issue the appropriate orders. It is also noted that the date for the hearing of the summons for confirmation of grant was not fixed at the probate registry and that what is indicated is only the hearing date of 18/12/20X5 when the said summons for confirmation of grant were allowed as prayed.
10. Going by the foregoing observations as noted on the record, it is obvious that the Respondents concealed material particulars and that they made a false statement to the court by purporting to be the administrators of the estate of the deceased which was not the true position. The Respondents ought to have allowed the Applicants herein to lead the proceedings and thereafter they would be at liberty to raise any issues regarding the distribution of the estate of the deceased by allowing each party an opportunity to contest the proposed mode of distribution of the estate. This opportunity was not accorded to the Applicants thanks to the secretive nature and conduct of the Respondents in proceeding with the matter behind the backs of the Applicants. Indeed, the Respondents in their conduct committed an act of fraud against the Applicants. It is therefore clear that the certificate of confirmation of grant was obtained by the making of a false statement or concealment of material facts from the court. The Respondents did not give the Applicants a chance to participate in the confirmation proceedings regarding the schedule of distribution of the estate and therefore they lost the opportunity to challenge the mode of distribution that had been clandestinely made by the Respondent. I find the Respondents engaged in a trickster motive by passing the pleadings as if they had been made by the Applicants yet this was not the true position. By the time the Applicants realized that they had been stringed along by the Respondents who had already ran away with the certificate of confirmation of grant, it was too late. Indeed, the proceedings to obtain the certificate of confirmation of grant were defective in substance warranting this court to consider the application by the Applicants. It is ironical that the Applicants are the administrators of the estate and who should not be seeking for revocation of grant that had been issued to them. They find themselves



in a peculiar situation since their roles had been purportedly carried out by the Respondents to the detriment of the Applicants. They were duped into believing that everything was okay while in actual fact the Respondents were busy pulling the rug from under their feet. The Applicants therefore found themselves in a culdesac situation and hence the present application. Ordinarily, the Applicants would have filed an application for review of the orders earlier made by this court in view of the turn of events wherein some errors apparent on the record have emerged. Even though such an application has not been filed, the provisions of Rule 73 of the Probate and Administration Rules gives this court the power to make such orders as are expedient in order to do justice and to prevent an abuse of the court process. Further, under Article X59(2) (d) of the Constitution, the courts are required not to put a lot of premium on technicalities but to decide matters on merit.

11. It is noted also that the Respondents upon receiving the certificate of confirmation of grant immediately embarked on distributing the estate as proposed by them to the prejudice of the Applicants. The Respondents have maintained that upon the distribution, they sold their portions to third parties. However, they did not avail any documentary evidence in that regard so as to aid the court in directing that those third parties be enjoined into the proceedings. The Respondents were under a duty to seek to enjoin those third parties as interested parties while contesting the summons for revocation of grant by the Applicants. That being the position, and in view of the fact that the Applicants have established the grounds for revocation of grant as provided for under Section 76 of the Law of Succession Act, this court must order for the cancellation of the titles that have ensued from the flawed distribution of the estate of the deceased and that the same must revert into the name of the deceased for purposes of distribution by the beneficiaries.
12. Even though the Applicants have sought for revocation of grant, it is my view that the same is drastic as it will take the parties back to the drawing board. I find the appropriate order in the circumstances is to maintain the grant in the names of the Applicants but to order for the cancellation of the certificate of confirmation of grant dated 18/12/20X5 and issued on 18/1/2016 and to direct parties to file fresh summons for confirmation of grant.
13. In view of the foregoing observations, I find merit in the Applicants' summons for revocation of grant dated 26/6/2019. The same is allowed and that the following orders are issued:
  - a. The grant made to the Applicants herein remains undisturbed.
  - b. The certificate of confirmation of grant dated 18/12/20X5 and issued on 18/1/2016 is hereby cancelled.
  - c. All titles that have emanated from parcel No. Siaya/Ambira /X5 namely Siaya/Ambira/3XX3, 3XX5, 3XX6 and any others are hereby ordered cancelled and that the same shall revert back to Siaya/Ambira/X5 in the name of the deceased herein and be available for distribution among the beneficiaries.
  - d. The Applicants are ordered to file fresh summons for confirmation of grant within thirty (30) days from the date hereof.
  - e. The matter will be mentioned on 12/6/2025 for directions and further orders.
  - f. As parties are family members, I order each party to meet their own costs.

**DATED AND DELIVERED AT SIAYA THIS 16<sup>TH</sup> DAY OF MAY, 2025.**

**D. KEMEI**

**JUDGE**

