



REPUBLIC OF KENYA



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In re Estate of Samson Obwombe Anyimo (Deceased) (Succession Cause 2 of 2024) [2025] KEHC 8706 (KLR) (18 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8706 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

SUCCESSION CAUSE 2 OF 2024

WM MUSYOKA, J

JUNE 18, 2025

IN THE MATTER OF THE ESTATE OF SAMSON OBWOMBE ANYIMO (DECEASED)

RULING

1. On 25th July 2012, Kimaru J determined a summons for revocation of grant, whose date is not indicated in the body of the ruling. It is not clear whether the grant sought to be revoked was indeed revoked; but it is clear that it was ordered that the estate, Samia/Wakhungu-Odiado/393, was to be shared equally between Winstone Elkana Madiang, Boaz Otieno Anyimo and Godfrey Wandera Anyimo.
2. The orders of 25th July 2012 were subsequently set aside, by a consent recorded on 17th June 2015, before Tuiyott J. A summons for revocation of grant, dated 5th May 2011, was reinstated. It was directed that it be heard de novo. Timelines were given, for the filing of further documents, on the distribution of the estate. No proceedings were ever conducted, thereafter, founded on the summons for revocation of grant, dated 25th May 2011, and that application remains pending to date.
3. I am called upon to determine three applications, dated 16th February 2021, 7th November 2023 and 10th February 2025.
4. That dated 16th February 2021 seeks cancellation of a certificate of confirmation of grant dated 26th November 2012, and any transmissions based on it, and reversion of the title to the name of the deceased, Samson Obwombe Anyimo, pending fresh distribution, registration of an inhibition on Samia/Wakhungu-Odiado/393, and injunctions against Boaz Otieno Obwombe and Godfrey Wandera Anyimo with respect to dealings, in anyway, with Samia/Wakhungu-Odiado/393. The gist of the application is that there had been transmission of the estate, vide the confirmation orders of 25th July 2012, which has not been reversed, despite the orders of 17th June 2015.
5. This cause had been transferred to the Chief Magistrate's Court sometimes in 2017, before it came back to the High Court in 2024. The application, dated 16th February 2021, was placed before Hon. PA Olengo, Principal Magistrate, on 12th May 2021, and the prayer for injunctions was granted.
6. Boaz Otieno Obwombe reacted to the application, dated 16th February 2021, by filing grounds of opposition, dated 11th June 2021, arguing that there was no jurisdiction to cancel a grant made and



confirmed by the High Court, the orders sought mirror those sought to be revoked or annulled, hence the whole exercise is a waste of time, that transmission had already happened based on the orders of 2012; the appellant had not established a basis for revocation of the grant, as he is not raising issues with the distribution of the estate; the applicant had always been aware of the orders of 25th July 2012, and had participated in subsequent proceedings with that awareness; the ruling of 26th February 2020 identified the applicant as a trespasser on the estate property; the application is designed to delay finalisation of the succession cause; and that it is an abuse of the court process.

7. The application, dated 7th November 2023, stands on similar premises as that dated 16th February 2021. It seeks cancellation of the transmission carried out on the basis of the certificate of confirmation of grant, dated 26th November 2012, and reversion of Samia/Wakhungu-Odiado/393 to the name of the deceased; the Busia County Land Registrar to file an inventory of all the subdivisions from Samia/Wakhungu-Odiado/393 and all other resultant subdivisions, and the present registered proprietors; the resultant title deed for Samia/Wakhungu-Odiado/393 be deposited in court, pending the hearing and disposal of the application dated 5th May 2011; and that further transactions on Samia/Wakhungu-Odiado/393 be prohibited.
8. The application dated 10th February 2025 seeks joinder of Livingstone Patroba Alukwe, to these succession proceedings, on the basis that he holds title to two parcels of land, which were hived off Samia/Wakhungu-Odiado/393, and he had bought them from Milton Nimrod Wandera. There is a reply to that application, by Milton Nimrod Wandera, where he essentially confirms the facts placed before the court by Livingstone Patroba Alukwe.
9. There was an understanding, amongst the Advocates representing the parties, that they could dispose of the three applications by way of written submissions. I have only seen written submissions by Philip Madiang'i, dated 12th May 2025.
10. This matter is incredibly messy. The mess arises from the non-implementation of the orders that Tuiyott J made on 17th June 2015, by consent or suggestion of the parties. Kimaru J had on 25th July 2012 not revoked the grant that was in force then, if I understand that ruling well. The only order Kimaru J made was with respect to distribution of Samia/Wakhungu-Odiado/393, between three named individuals. That then would mean that the consent order of 17th June 2015, which vacated the orders of 25th July 2012, only affected the sole order on distribution. The order of 17th June 2015 was by consent. Yet, after it was made, the parties continued to handle the succession cause and the estate as if that order of 17th June 2015 was never made, or did not exist.
11. The consent to vacate the orders of 25th July 2012, meant that the distribution ordered by Kimaru J was set aside. When a confirmation or distribution order is made, a certificate of confirmation of grant ought to be extracted and issued out of those orders. Upon the certificate of confirmation of grant being issued, the land legislation, that is to say the *Land Act*, Cap 280, Laws of Kenya, and the *Land Registration Act*, Cap 300, Laws of Kenya, requires that the same be placed before a land registrar, who should transmit the property in accordance with the distribution set out in the certificate of confirmation of grant. I have seen a copy of the sealed certificate of confirmation of grant, issued based on the orders of 25th July 2012, dated 26th November 2012. Transmission began in earnest, after 26th November 2012, and as the orders of 17th June 2015 were being made by consent, the said transmission was going on, and the parties did not stop the transmission process, for transmission went on despite the orders.
12. The position, as it is, is that the estate herein, of Samson Obwombe Anyimo, had previously been distributed. The initial distribution was by order made on 5th May 2009, by Muchemi J. A certificate of



- confirmation of grant was subsequently issued, bearing that date, distributing the estate amongst five individuals. I see a certificate of official search, on Samia/Wakhungu-Odiado/393, dated 21st October 2010, showing that transmission happened sometime in June 2009, to the five beneficiaries. The distribution of 2009 was upset by the orders of 25th July 2012. I cannot tell, from the record, whether the transmission of June 2009 was expressly cancelled, to facilitate a fresh transmission, in accordance with the orders of 25th July 2012. The orders of 25th July 2012 were upset by those of 17th June 2015. The orders of 17th June 2015, reinstated the summons for revocation of grant, dated 5th May 2011, which should, ostensibly, pave way for fresh orders on distribution of Samia/Wakhungu-Odiado/393.
13. I believe what I have stated above clarifies the matter on the status of the estate. From some of the filings, in respect of the applications, the subject of this ruling, there is the misinformation that the orders of 25th July 2012 are subsisting, and so is the transmission, if at all, based on them. Those orders are not subsisting. They were vacated on 17th June 2015, and any transmission, carried out based on them, should have gone with them.
 14. The confusion, as I understand the matter, is with respect to the transmission, based either on the orders of 5th May 2009 or 25th July 2012. These transmissions no longer stand. They cannot be valid, in view of the subsequent orders. The transmission carried out based on the orders of 5th May 2009 were rendered invalid, by the orders of 25th July 2012; and that carried out based on the orders of 25th July 2012, became invalid after the consent orders of 17th June 2015.
 15. The orders of 25th June 2012 and 17th June 2015 were silent on what was to happen to the certificates of confirmation of grant, issued based on the orders of 5th May 2009 and 25th July 2012. A certificate of confirmation of grant has no life of its own. It is a court paper extracted from the court orders on confirmation of a grant or distribution. The court order, on confirmation of a grant or distribution, is the foundation for the certificate of confirmation of grant, and once the distribution or confirmation orders are vacated or set aside, the certificate of confirmation of grant becomes a useless piece of paper.
 16. The certificate of confirmation of grant is the basis for the transmission of the estate. It is the document required by the *Land Act* and the *Land Registration Act*, for transmission purposes. Land legislation requires the Land Registrar to transmit the estate upon receipt of that certificate. Without it there can be no transmission. The transmission process becomes invalid, upon the distribution or confirmation orders being vacated, for it loses its foundation or legitimacy thereby. The consequence of vacating or setting aside of orders on distribution or confirmation is the invalidation of the certificate of confirmation of grant, and of the transmission of the estate based on it.
 17. The problem, in this matter, appears to be that the consent orders of 17th June 2015, vacating the orders of 25th July 2012, on distribution, left the transmission process unaffected. The court, on 17th June 2015, only adopted the consent orders proposed by the parties, to vacate the distribution orders, and reinstate the revocation application. Of course, the court was not required to make other orders beyond that. The order of 17th June 2015 should have been enough to have the Land Registrar reverse the transmissions. In the event of any difficulty, on the part of the Land Registrar, the parties should have come back to court for a formal order. It was the parties who were privy to what was on the ground, in terms of the transmission process, and it behoved them, not the court, to take appropriate steps to halt the transmission process, if it was in progress, or to obtain orders to have the certificates cancelled, if the transmission was yet to start.
 18. The process of transmission of the estate of a dead person is not a succession process. It is founded on the orders of the probate court on distribution, as detailed in the certificate of confirmation of grant, but that does not make it a succession process. The role of the probate court, under the



Law of Succession Act, Cap 160, Laws of Kenya, essentially ends with the orders on confirmation or distribution. The actual distribution is what is called transmission, which is provided for under the Land Act and the Land Registration Act. Transmission of land upon death is a land registration process, governed by land legislation, and it is subsequent upon completion of the succession process. The Law of Succession Act says nothing about transmission. Indeed, that word does not appear anywhere in the Law of Succession Act, nor in the Probate and Administration Rules. That should explain why the probate court does not, usually, make consequential orders, relating to the transmission process, once it sets aside its orders on confirmation or distribution.

19. As the distribution of Samia/Wakhungu-Odiado/393 is yet to happen, following the orders of 17th June 2015, it would be untenable to have sub-titles existing, from a transmission of that property, based on court orders that have since been vacated. Those subdivisions, whether done prior to or after 17th June 2015, are invalid. The property should be reinstated to the position prior to 5th May 2011, to facilitate a proper adjudication of the application bearing that date. There is merit, therefore, in the applications, dated 10th February 2021 and 7th November 2023.
20. Regarding the joinder of Livingstone Patroba Alukwe, I note that he benefited from one of the transmissions that I have discussed here above, which became invalid after the distribution orders were vacated. Section 93 of the Law of Succession Act protects him. He would be entitled to agitate his claim in the proceedings to be conducted under the application, dated 5th May 2011.
21. Consequently, I shall allow the three applications, dated 16th February 2021, 7th November 2023 and 10th February 2025. The orders to issue shall be in accordance with the prayers in the applications dated 7th November 2023 and 10th February 2025.
22. Perhaps I should say something about the transfer of this file to the Chief Magistrate's Court and the transfer back to the High Court. This back and forth is contributing to delay in the finalisation of the matter. There is this notion, in the minds of some Advocates and magistrates, that upon a matter being transferred to the magistrate's court, from the High Court, the magistrate would lack jurisdiction to review or set aside an order made by the High Court in that matter, and where a need arises for such review or setting aside, of the order by a Judge, the file has to be transferred back to the High Court. The transfer back to the High Court, of this file, was informed by that.
23. That is a misconception. Once a matter, which was previously at the High Court, is transferred to a magistrate's court, any orders made by the Judge, before the transfer, become orders of the magistrate. The transfer facilitates adoption of the orders of the High Court by the magistrate's court, and those orders become orders of the magistrate's court, for the magistrate's court would be the one seized of the matter. Should need arise for review or setting aside of those orders, the magistrate would have jurisdiction, and there would be no need to re-transfer the matter to the High Court.
24. The argument here is that the grant sought to be revoked, by the application, dated 5th May 2011, was made by a Judge of the High Court, Serгон J, and that being the case, the magistrate, after the transfer of the matter to the magistrate's court, has no jurisdiction to revoke that grant. I do not agree. Once the transfer was done, the grant became a grant issued by the magistrate's court; and should be available for revocation in proceedings at the magistrate's court. Ideally, upon the transfer, the magistrate's court should have re-issued the grant of 1st February 2005, under the hand of the magistrate. That would have made the matter easier, instead of transferring the matter back and forth. See Musine vs. Osamo (Sued as co-administrator of the Estate of Stephen Osamo (Deceased)) [2023] KEHC 20217 (KLR)(Musyoka, J).



25. This matter should have remained at the magistrate's court, for determination of the application, dated 5th May 2011. Anyhow, to avoid further wastage of time, I shall retain the matter here; and shall proceed to hear and determine that application.
26. To move the matter forward, I shall give the following directions:-
- a. that Livingstone Patroba Alukwe, and any other person interested in being heard in the application, dated 5th May 2011, shall file and serve responses to that application, in the next 21 days;
 - b. that the administrators have seven days, upon being served with those responses, to file supplementary affidavits, if need be, in rejoinder, on any new issues raised in the responses;
 - c. that application, dated 5th May 2011, shall be canvassed viva voce, based on the affidavits filed and to be filed, given the acrimony that has been prevailing; and
 - d. that the matter shall be mentioned on 22nd July 2025, for receipt of the new filings, for further directions and allocation of a date for the viva voce hearing.
27. It is so ordered.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA. ON THIS 18TH DAY OF JUNE 2025.

W.M. MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Maxwell Okeyo, instructed by Okeyo Ochiel & Company, Advocates for Boaz Otieno Obwombe.

Ms. Wakoli, instructed by Wakoli & Wakoli, Advocates for Philip Madiang'i.

Mr. F. Omondi, instructed by Omondi & Company, Advocates for Milton Nimrod Wandera.

Ms. Nabulindo, instructed by DK Nabulindo & Company, Advocates for Godfrey Anyimo Wandera.

Ms. Ouma, instructed by Siganga & Company, Advocates for Livingstone Patroba Alukwe.

