



REPUBLIC OF KENYA



**Ongoro v Anyango (Succession Appeal E007 of 2024)  
[2025] KEHC 9520 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9520 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
SUCCESSION APPEAL E007 OF 2024**

**A MABEYA, J**

**JUNE 20, 2025**

**BETWEEN**

**ROMAN B OWINO ONGORO ..... APPELLANT**

**AND**

**MICHAEL OMUYA ANYANGO ..... RESPONDENT**

*(Being an appeal from the ruling and orders of Hon. J. Kimetto  
PM delivered on the 3/9/2024 in the Maseno Succession Cause No.  
38 of 2011, Roman B. Owino Ongoro v Michael Omuya Anyango)*

**JUDGMENT**

1. The appellant moved the trial court vide a Summons dated 18/7/2024 for the revocation of the grant of letters of administration issued to the respondent on the 19/6/2012. The grounds for the Summons were that the said grant in respect of the estate of James Omolo Omuya were procured through fraud, misrepresentation and material concealment.
2. There was no evidence that the respondent was served with the Summons for Revocation and correspondingly there was no response on record.
3. In its ruling delivered on the 3/9/2024, the trial court considered the Summons and proceeded to dismiss the same on the grounds that it was barred by the Limitation of Actions Act having been brought after the lapse of 12 years.
4. Being dissatisfied with the said ruling/order, the appellant lodged this appeal vide the Memorandum of Appeal dated 2/10/024 and raised two (2) grounds of appeal as follows: -
  - a. That the learned trial magistrate erred in fact and law by holding that the appellant's summons for revocation dated 18<sup>th</sup> July 2024 is barred by Limitation of Actions Act yet it is trite law that time starts running only after the discovery of fraud and in any case the Law of Limitations



Acts is inapplicable in Succession Cases; hence the decision to dismiss the appellant's summons for revocation of grant suo moto on that account alone was legally unjustifiable and ought to be set aside.

- b. That the learned trial magistrate erred in fact and in law by driving away the appellant from the temple of justice without being given an opportunity to heard contrary to the provisions of *the Constitution* and established precedents and the same ought to be heard.
5. The appeal was to be disposed of by written submissions but at the time of writing this judgment there are no submissions by either of the parties on record.
6. This being a first appeal, the Court is duty bound to evaluate the evidence before the trial court afresh and come to its own independent findings and conclusions. See *Selles & Anor vs. Associated Motor Boat Co Ltd & Others* [1968] EA 123.
7. The impugned ruling was in relation to the appellant's Summons for Revocation dated 18/7/2024 in which the appellant sought to have the grant issued to the respondent revoked on the grounds that it was procured through fraud and misrepresentation.
8. The trial magistrate in dismissing the Summons ruled that the application was barred by the *Limitation of Actions Act* as a period of 12 years had already lapsed since the time the grant was made.
9. Section 4 (4) of the *Limitation of Actions Act* which the trial magistrate relied on provides as follows;

“An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”
10. The Summons for revocation of grant is brought under s. 76 of the *Law of Succession Act* whose opening lines are; 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-. See *Musa Nyaribari Gekone & 2 others v Peter Miyienda & Another* [2015] eKLR.
11. In *Re Estate of Devchand Legdir Shah (Deceased)* (2018) eKLR, Muchelule J (as he then was) agreed with Musyoka J in *Re Josephine Magdalena* in the following words: -

“The *Limitation of Actions Act* prescribes periods for limitations of actions and arbitrations. The actions to which that statute applies do not include succession causes, or, at any rate, causes or actions governed by the *Law of Succession Act*. It covers such matters as actions founded on contracts and torts, actions to recover land and rent, actions to recover money, actions in respect of trust property or movable property of a deceased person, and related causes. In short, it envisages ordinary civil suits brought within the framework of the *Civil Procedure Act* and Rules. It does not envisage the special proceedings governed by such statutes as the *Law of Succession Act* (In re Estate of Josephine Magdalena Motion (Deceased) [2016] eKLR).

I find therefore that the substantive law governing succession cause under section 76 *Law of Succession Act* does not provide any limitation to the filing of a summons for revocation of the grant. Innocent parties who may have transacted with the personal representative appointed under the Act have a special protection under S. 93. That is a matter for evidence.



Obviously, there is a reason for not providing the limitation. If fraud is discovered, should it be limited by time? If the parties lied to court, should they benefit from their lies because of the lapse of time? If some minor was disinherited should that be stamped with okayness by the lapse of time? If the estate is never administered or the grant becomes imperative, should the estate be left in limbo because of time? Time may clarify issues, facts etc, but time cannot cover up some things...

It is clear that the act provides no limitation and hence the Cap 22 is not applicable to the Summons for Revocation of Grant.”

12. I am persuaded by the above decision and hereby hold that the *Limitation of Actions Act* is not applicable in a matter for revocation of grant. It would apply if it was a judgment entered and made in the knowledge and presence of a party.
13. The upshot is that I find the appeal to be meritorious and I allow the same. Accordingly, the ruling dated 3/9/2024 by the trial court is hereby set aside and direct that the matter be heard by a different Court. Each party to bear their own costs.

It is hereby decreed.

**DATED AND DELIVERED AT KISUMU THIS 20<sup>TH</sup> DAY OF JUNE, 2025.**

**A. MABEYA, FCI ARB**

**JUDGE**

