



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Iren Amakobe Oludanga (Deceased) (Succession Cause
84 of 2004) [2025] KEHC 11195 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11195 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 84 OF 2004**

S MBUNGI, J

JULY 24, 2025

IN THE MATTER OF IREN AMAKOBÉ OLUDANGA (DECEASED)

BETWEEN

JACKSON SIKHOLO SISA APPLICANT

AND

SARAH OWINJO BARASA PETITIONER

AND

ROSEMARY SHISIA OMUSOTSI 1ST RESPONDENT

JAMES JOAB OKOKO 2ND RESPONDENT

RULING

1. The applicant vide summons dated 22nd of November 2024 brought under Section 76(a), (b) and (e) of the *Law of Succession Act* and rule 63 and 73 of the *Probate and Administration Rules* seek for orders:
 - i. That the grant of letters of administration issued herein on 18/4/2013 and the certificate of confirmation of grant dated 26/11/2013 and all consequential orders be revoked, set aside and or otherwise reviewed.
 - ii. The Applicant be appointed the administrator of the estate of Iren Amakobe Oludanga the deceased above named and LR No Butsotso/Esumeyia/1622 constituting the estate of the deceased be transferred to the Applicant.
2. The Summons is on the grounds set out in the application and supported by an Affidavit of Jackson Sikholo Sisa, sworn on the 22nd day of November 2024. He deponed that he is the grandson to the deceased, and the son to the deceased's eldest child Leonida Omuronji, who predeceased the deceased on the 10th of December 1978.



3. That the Petitioner and the first Respondent herein are thus my aunties by virtue of being sisters to my late mother.
4. That it is within the applicant's knowledge that at the time of her demise the deceased was survived by the children namely Ruth Andaye, Sarah Owinjo Barasa, the Petitioner and Rosemary Shisia the 1st Respondent herein, and it is within his knowledge that subsequently Ruth Andaye passed on.
5. That the estate parcel of land is a resultant subdivision of a bigger land that the deceased owned and that he is aware that during her lifetime the deceased subdivided the bigger land and allocated some of it to the widow of Wilson Omurunga the deceased's late son, the petitioner, the first Respondent and their sister Ruth Andaye.
6. That it is within the applicant's knowledge that after allocating the bigger land the deceased remained with the suit parcel, and owing to the fact that the deceased took care of the applicant as her own son following the demise of his mother, after sharing out her bigger land she decided to give him the remaining land.
7. The applicant further avers that sometimes in 2000 the deceased summoned him in the presence of his older brother one Wycliffe Nambale and other relatives and indicated her desire to give the land as a gift.
8. That on 20.1.2000, the applicant and deceased went to the Land Control Board at Eshisiru and as a result she obtained consent to transfer the whole of Land Parcel No Butso/Esameyia/1622 (the estate herein) to the applicant. I attach copies of the application for consent to transfer and the consent respectively marked as annexure 'JSS-2 (a) and 2 (b)' respectively.
9. That the fact of the above land being given to the applicant as a gift is even well known to the Assistant chief, Esameyia sub location as evidenced by a letter authored on 22.1.2000 a copy of which I obtained from him attached hereto and marked 'JSS-3 and after consent the deceased and the applicant executed a transfer of the land by thumb printing the same however owing to sickness of the deceased and lack of money and ignorance the applicant failed to register the same and shortly after that the deceased died on 6/12/2001 without the suit property being transferred to him.
10. That when the applicant managed to be financially stable he sought legal advice and his advocates on record conducted a search of the land that surfaced a discovery on how the land had been succeeded in the name of the second Respondent.
11. That the applicant discovered that the petitioner herein filed the succession cause herein without disclosing that he had been gifted the suit parcel, and that his consent was neither sought or obtained prior to filing the cause herein and even upon the distribution of the estate.
12. That the honorable court premises the entire proceedings are a nullity and it would be fair and just that the property be restored and transferred to the applicant as the lawful owner.
13. On the 22nd of November the applicant based his application for the summons for revocation of grant on the following grounds:
 - a. The petitioner herein is deceased and as such the grant issued has been rendered inoperative and or absolute.
 - b. The proceedings to obtain the grant were defective in substance as:
 - i. No consent of all family members was obtained and filed.



- ii. The Applicant was not included and or deliberately omitted from the list of beneficiaries/dependants of the deceased.
- c. The grant was obtained fraudulently and by making false statement or by concealment from the court of something material to the case in that:-
 - i. The Applicant was deliberately not informed and or involved in the filing of the cause The Applicant's consent regarding distribution of the estate of the deceased was not sought and obtained
 - ii. The Petitioner deliberately concealed from the court the fact that the deceased had gifted the whole land under distribution to the Applicant.
 - iii. The Petitioner and her sibling involved a purchaser in the distribution of the estate of the deceased with knowledge that the estate of the deceased was not available for sell and distribution in that manner
 - iv. The Applicant has discovered that the estate is registered in the name of the second Respondent yet the same had been gifted to the Applicant during the lifetime of the deceased.
 - v. The Applicant has discovered that the second Respondent was sold the estate and involved in the proceedings contrary to the law of succession.
 - vi. The Petitioner and the first Respondent failed to disclose to court that they had previously benefited from land given to them by the deceased and that is why the deceased gifted the Applicant the remainder of the land as her grandson whose mother Leonida Omuronji the eldest daughter and child to the deceased died before being given land.
 - vii. It will serve the interest of justice to restrict dealings on the suit property

Issues For Determination

14. The issues which fall for determination in this matter are:-
- I. Whether the grant of letters of administration made on the 16/11/2020 should be revoked.
 - II. What orders may the court grant?

Analysis And Determination

Whether the grant of letters of administration made on the 26/11/2013 should be revoked.

15. Section 76 of the *Law of Succession Act* states as follows:

“76. Revocation or annulment of grant

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

16. Section 76 was clearly expounded on by the court *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds.

The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons.

The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required.

The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable



to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

It is my view that the petitioner failed to undertake the responsibilities required of her when she was applying for administration of the estate by faltering on the first and third grounds as aforementioned.

17. As for the first ground, under section 76 (b) of the [Law of Succession Act](#), a grant can also be revoked if a party concealed material information from the court. The applicant herein has accused the respondents for failing to disclose all beneficiaries to the court. The applicant has demonstrated that he was the grandson of the deceased. This is supported by his unopposed declaration that he is the Late Leonida Omukonji’s son, daughter to the deceased. The failure of the petitioner to include the applicant’s name was contrary to Section 66 of the [Law of Succession Act](#) which states that:

66. Preference to be given to certain persons to administer where deceased died intestate

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;

Following this guideline, it is clear that the applicant should have been the amongst the first in priority to be listed as a beneficiary during the process of obtaining the grant of letters of administration.

18. With regard to the alleged concealment of beneficiaries, the applicant has established his relationship to the deceased as her grandson. Section 51(2) (g) of the [Law of Succession Act](#) requires the petitioner to disclose all the surviving spouses and children of the deceased. The provision is in mandatory terms. The administrator herein *prima facie* failed to disclose all the rightful beneficiaries in compliance with section 51(2) (g). It is trite law that obtaining of grant of letters of administration through material non-disclosure and concealment of facts constitutes ground for revocation of a grant under Section 76(b) of the [Law of Succession Act](#). The same was asserted in the case of [Re: Estate of Wahome Mwenje Ngongoro \(deceased\)](#) [2016] eKLR.

19. As for the third ground the question seeking answer is whether this grant is inoperative and absolute. The following conditions are laid out to confirm the same in Section 76 of the [Law of Succession Act](#). Where a single Executor/Administrator dies then the grant is rendered both useless and inoperative. This is because a Grant of representation is issued to a particular person or persons. It is given ‘in personam’ and cannot be transferred to a third party under any circumstances. In this case, the late Sarah Owinjo Barasa was the sole confirmed administrator and is thus the effect of the grant ought to be nullified as per the law.

20. The same is reiterated *in RE Estate of Mwangi Mugwe Alias Elieza Ngware (Deceased)* [2003] eKLR, where the Court in considering the situation where the sole Executor/Administrator of an estate had passed away stated as follows:-

“...the operative word is substitution.” The law of Succession has no provision talking about substitution of a deceased single administrator. In the circumstances therefore it is my considered view that the proper provisions of the law to apply is Section 76 (e) of the [Law of](#)



Succession Act and Rule 44 of the Probate and Administration Rules whereby the Applicant would apply for revocation or annulment of a grant on the ground “that the grant has become useless and inoperative through subsequent circumstances.”

21. Owing to these grounds, there is no doubt as to the nullity of this grant in accordance to the law. In that regard and pursuant to the provisions of Rule 73 of the Probate & Administration Rules, the summons of revocation of grant dated 22nd of November 2024 is hereby allowed. As a result, I revoke this grant with immediate effect.

What orders may the court grant?

22. Pursuant to the provisions of Section 66 of the Law of Succession Act and in the best interests of all the beneficiaries of the estate of the deceased and/or any other party who may be concerned with the estate, a fresh grant shall forthwith issue to the applicant, Mr. Jackson Sikholo Sisa and respondents Rosemary Shisia and James Joab Okoko as joint administrators. It is important to note that the issuing of this grant does not amount to its confirmation, and until then none of the parties have distributive powers over this parcel of land.
23. I recommend that the parties amicably resolve their issues and agree how they shall distribute the property through a mediation process- in the interest of averting animosity within the family and unnecessary delay-and subsequently file a joint confirmation of grant within thirty days. In the event the parties fail to agree, they can separately file for confirmation of grant, also within thirty days, with their proposed apportionments .
24. No costs ordered for it is a family matter.
25. Mention 18.9.2025 for further directions.
26. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT OF KAKAEMGA THIS 24TH DAY OF JULY, 2025.

S. N MBUNGI

JUDGE

Court Assistant-Elizabeth Angong'a

Ms. Amasakha for the applicant present online.

Ms. Repha for the respondent present online.

