



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Boniface Opondo Ongeru (Deceased) (Succession Cause
63 of 1990) [2025] KEHC 10758 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10758 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 63 OF 1990
RN NYAKUNDI, J
JULY 23, 2025**

BETWEEN

BEATRICE AKOTH OGENDO APPLICANT

AND

EDWARD OPONDO RESPONDENT

RULING

1. The deceased herein died on 19th July, 1987 at the age of 55. The surviving widow one Selina Awuor Opondo petitioned for letters of administration of the estate of the deceased which was confirmed on 21st July, 1992. Unfortunately, Selina Owuor Opondo passed on 13th January, 2013 necessitating a change of the administrator to one Edward Opondo, being a son to the deceased. The same was confirmed yet again on 16th July, 2015, with the only property indicated as L.R. NO. 2116/VI/52 being given to Edward Opondo. All this while, there was no indication as to whether there existed other beneficiaries or any other property belonging to the deceased.
2. On 20th February, 2020, Edward Opondo lodged chamber summons in which he sought orders as follows:
 - a. The Grant issued herein on 12th September, 1991 and confirmed be rectified by including Land Parcel number Siaya/Nyalgunga/2088 as an asset of the Estate of Boniface Opondo and also Land Parcel number Trans Nzoia/Kipsoen/568 as assets of the same estate.
 - b. The certificate of confirmation dated 16th July, 2015 be accordingly amended to include in the schedule land parcel no. Siaya/Nyalgunga/2088 and Trans Nzoia/Kipsoen/568
3. This court considered the said application and it was allowed by including the said properties and they were distributed solely to the said Edward Opondo vide a certificate of confirmation of Grant dated 17th October, 2022.



4. At present, what the court is called to determine is summons for revocation dated 30th October, 2024 in which the objector seeks orders as follows:
 - a. That this Honorable Court be pleased to grant an order revoking and/or annulling Grant of Letters of Administration Intestate issued to the Respondent/Petitioner herein Edward Opondo on 16th July, 2015.
 - b. That the Honorable Court be pleased to revoke the amended Grant subsequently issued to him on 16th October, 2022.
 - c. That the Honorable Court be pleased to revoke the registration of the Respondent/Petitioner's name from the titles of land parcels number Central Alego/Nyalgunga/2088, L.R NO. 2116/VI/52 and L.R NO. Transzoia/Kipsoen/568 which were fraudulently obtained by the Respondent/Petitioner using the Grant issued to him on 16th July, 2015 and confirmed on the same day, the 16th July, 2015.
 - d. That the title of Land parcel Number Central Alego/Nyalgunga/2088, L.R NO. 2116/VI/52 and L.R NO. Transzoia/Kipsoen/568 be reverted to the deceased Boniface Opondo Ongeru upon revocation of the said title.
 - e. That the costs of the application be borne by the Respondent/Petitioner.
5. The application is anchored on grounds that:
 - a. The applicant is a daughter in-law of the deceased.
 - b. That the deceased died intestate on 19th July, 1987 leaving behind dependents being his wife and children.
 - c. That his wife filed for succession and Grant of Letters of Administration intestate and certificate of confirmation of Grant were issued to her on 12th September, 1991 and confirmed on 9th June 1992 respectively at the High Court of Kenya at Eldoret vide High Court Succession Cause No. 63 of 1990.
 - d. That the wife later died and her son, EDWARD OPONDO surreptitiously moved the court and substituted her without involving others.
 - e. That as such the Grant of Letters of Administration Intestate was fraudulently obtained by the Respondent/Petitioner as he is not the only dependent/beneficiary of the deceased.
 - f. That the deceased had six (6) children in total and the rest, apart from the Respondent/Petitioner were left out.
6. In response to the summons for revocation, the Respondent deposed a replying affidavit stating as follows:
 - a. That I am the Administrator of the Estate of Bonface Opondo Ongeru (Deceased) and the Respondent herein in respect of the application dated 30th October 2024 filed by Onyango Otunga & Company Advocates on behalf of the Applicant and her witnesses;
 - b. That it has become necessary, in adherence to the court's directions, to comprehensively address all the issues raised, provide a detailed account of the management of the estate in question, and propose a way forward.



- c. That on the advice of counsel, which I believe to be truthful and well-founded, I have resolved to address each and every allegation raised against my management of the estate, propose a way forward, and respectfully beseech this Honorable Court to render its ruling on the objection proceedings seeking revocation.
- d. That in response to Simon's Odhiambo's affidavit, the assertion that the deponent is a surveyor by profession without providing any supporting evidence I put the deponent to the strictest proof thereof, as the affidavit presented is bare and unsupported by any documentation upon which this Honorable Court can rely;
- e. That in response to the deponent's allegation that he received instructions to render professional services to myself, Regina, and Paul Odhiambo Opondo, I contend that the same remains wholly unsubstantiated. A duly licensed and competent professional, recognized by the Institution of Surveyors of Kenya, would be expected to produce an instruction note, a letter of engagement, or proof of payment. The absence of such fundamental documentation calls into serious question the veracity and professionalism of the said deponent, and renders the claim devoid of evidentiary value;
- f. That in response to paragraphs 4, 5, and 6 of the deponent's affidavit, I put the deponent to the strictest proof thereof. The affidavit presented is bare, lacking any supporting documentation, and should be disregarded in its entirety. The deponent's conduct raises serious concerns, suggesting he is a mere gun for hire, and his false assertions may amount to perjury. The Petitioner reserves all her legal rights and has already commenced appropriate legal proceedings against the said deponent.
- g. That to place the matter in proper perspective, and as per the contents of the deponent's affidavit, it is alleged that my late sister, Regina Opondo, and the Objector herein approached the deponent to provide the said services;
 - i. That their actions were conducted in an unprocedural, unlawful, and criminal manner, contrary to the provisions of the *Law of Succession Act*. The purported demarcation and subdivision of the property constituted clear intermeddling with the estate of the late Boniface Opondo Onger.
 - ii. That upon learning of these irregular activities, I proceeded to the Land Registry to inquire into how the subdivision had been effected and titles issued without adherence to the requisite legal process;
 - iii. That upon being apprised of the situation, the Land Registry officials, upon review, proceeded to cancel the said titles on the basis that they had been unlawfully and irregularly obtained.
- h. That the deponent's unsubstantiated and bare affidavit should be disregarded in toto, having no probative value before this Honorable Court. The Court is urged to take judicial notice of the Objector's implicit admissions to acts of intermeddling with the estate, the utterance of false documents, and to further pierce the veil of these objection proceedings, which are nothing more than a veiled attempt to legitimize an illegality under the guise of constructing a so-called "family home" more than 31 years after the demise of the deceased.
- i. That in response to the entirety of Nahashon Okoth's bare and unsubstantiated affidavit, it is noteworthy that no evidence whatsoever has been adduced to prove that the alleged meeting ever took place. For clarity, the purported meeting did not materialize as claimed, as Philip



was rejected by the family and left embarrassed upon being denied recognition or acceptance therein.

- j. That in response to the assertions that the Petitioner attended the Objector's family funerals and other events, the same is put to the strictest proof. Without conceding, and if indeed such attendance occurred, it can only be interpreted as a gesture of goodwill and an attempt by the family to reconcile outstanding issues and extend a measure of inclusion to the Objector, not as evidence of any legal entitlement or recognition.
- k. That in response to the affidavit sworn by Arthur Zephaniah Odera Ogendo, it is evident that no credible proof in the forms minutes or any evidence has been presented similar to the affidavit sworn by Nahashon Okoth Ochieng, who, as a brother to the Objector, bears a heightened duty to be truthful. He must not perjure himself before this Honorable Court by making false or misleading statements under oath.
- l. That in response to the allegations that the Objector singlehandedly raised the children, the same is a glaring contradiction of her own assertions. On one hand, she claims that traditional courtesies were exchanged implying mutual recognition and a harmonious relationship while on the other hand, she alleges that she raised the minors alone, without any support from Philip. It defies logic and credibility that Philip would allegedly abandon the children after such traditional formalities had been performed, which would ordinarily signify a cordial relationship. The truth of the matter is that the Objector and her family never accepted Philip. Indeed, the Objector went so far as to deny the paternity of the children and even unilaterally changed their names, thereby repudiating any association with him.
- m. That in response to the affidavit by Boniface Opondo and Ogendo and Eunice Akinyi, it is evident from the affidavits on record that I have conducted myself with transparency, diligence, and in full compliance with the law in my capacity as the administrator who substituted the late Selina Awour Opondo;
- n. That I acknowledge and join issue with the two (Boniface Opondo Ogendo and Eunice Akinyi Obath) to the extent that I have accommodated and supported them to the best of my ability, in accordance with the wishes and instructions of my late mother, Selina Awour, who was their grandmother. Despite the pain and embarrassment that she and her son Philip endured, the late Selina Awour, whom I substituted as administrator, nonetheless considered them part of the family and extended to them her goodwill and blessings.
- o. That in response to the allegations concerning the transfer of Parcel No. 2088 – Central Nyalgunga into my name, I state that the same is not false. The said parcel was lawfully transferred into my name solely in my capacity as the administrator of the estate, and strictly for the purpose of facilitating the further distribution of the estate to the rightful beneficiaries and dependents, in accordance with the law and the wishes of the deceased;
- p. That the allegations that I caused immense psychological distress and insecurity to the minors are wholly unfounded and devoid of truth. It is inconceivable that I would subject them to such treatment, having accommodated them in my own home, welcomed them into the family, and even allocated them land as we awaited the conclusion of the succession process. The unfortunate reality is that the Objector has systematically alienated the minors from our family, poisoning their perception and turning them against us. This estrangement can be traced back to the disrespectful and dismissive treatment accorded to my late mother, Selina Awour, who was twice denied an audience at Ng'iya High School, and the humiliating treatment suffered by my brother, the children's father at the hands of the Objector's family.



- q. That to put matters into proper perspective, I personally invited the Objector and the minors to the estate upon learning that they were residing in a rental house in Siaya town, in an effort to offer them support and integrate them into the family environment.
- r. That in adherence to the wishes of the late administrator, I welcomed the Objector and the minors to the family home and identified for them a specific portion of land where they could settle. The allegation that I referred to them as squatters is utterly baseless and farfetched. They are indeed residing on the estate property in question, and the real dispute lies in their objection to the proposed mode of distribution a position which, if upheld, would unjustly deprive other rightful beneficiaries of their share of the estate;
- s. That I have instituted separate criminal proceedings against Boniface Opondo Ogendo under OB No. 05/09/06/2025 for malicious damage to a hedge situated on the estate property, notwithstanding his full knowledge of the ongoing succession petition and objection proceedings. His actions constitute a clear act of bad faith and disregard for the authority of this Honorable Court;
- t. That despite the numerous vile and unsubstantiated allegations, the Petitioner, together with the larger family, has made genuine efforts to pursue an amicable resolution of this matter. However, the Objector, her son Boniface Opondo Ogendo and other persons acting under their direction have persistently created a hostile and volatile environment within the estate, thereby frustrating any meaningful progress toward a peaceful settlement.
- u. That I humbly urge this Honorable Court to issue stern warnings, appropriate injunctive reliefs, and/or eviction orders against the Objector, her agents, and any other individuals engaging in acts that endanger the safety and wellbeing of the Petitioner and other beneficiaries. Such actions are not only a threat to personal security but also result in the destruction and devaluation of the very estate which the Objector now seeks to claim a share of;
- v. That upon the demise of Selina Awour Opondo, it became necessary to ensure the continued administration of the estate, as the law abhors a vacuum in succession matters. It was at this point that the family, through unanimous consensus, appointed me, the Petitioner herein, Edward Opondo as the administrator for the following purposes;
 - i. To conclude transactions that had been lawfully commenced by the late Selina Awour Opondo in her capacity as administrator; and
 - ii. To oversee the distribution of the remaining estate to the rightful beneficiaries in accordance with the law.
- w. That Land Reference No. 2116/6/52 was sold to Amon Mahindi Githinji; however, the transaction could not be finalized due to the demise of the then-administrator, Selina Awour. Consequently, and upon the advice of the Land Registrar in Kitale, it became necessary for me the Petitioner to obtain fresh letters of administration in substitution of the late Selina Awour, in order to lawfully conclude the transaction and effectively manage the remaining affairs of the estate;
- x. That indeed, as evidenced by the respective green cards, some of the properties still reflect the name of the late Selina Awour Opondo, whom I lawfully substituted as administrator. However, it is important to clarify that these properties had already been sold prior to her demise, and the transactions were pending formal transfer. The respective purchasers have been in occupation for over two (2) decades, with some having further transferred their interests to



third parties. No evidence has been presented to demonstrate that any delay or irregularity in effecting transfer was due to any omission or fault on my part. Rather, it stems from the actions of the previous administrator Selina Awour who, despite making genuine efforts to engage the Objector regarding the estate, was met with humiliation and outright rejection by the Objector and her late son, Philip;

- y. That unless credible and contrary proof is adduced, it stands that the only remaining property of the estate Parcel No. 2088, Central Nyalgunga is currently registered in my name solely in my capacity as administrator. This was done for the express purpose of facilitating the lawful and equitable transmission of the said parcel to the rightful beneficiaries of the estate, who are as follows:

| No. | Beneficiary | Share Description |
|-----|---------------------|--|
| A. | Selina Awuor Opondo | The properties in her name are for onward transfer to the beneficiaries as per the agreements attached. The Petitioner is ready and available to take the court and the objectors to the ground for fact finding of the pieces of land in Kitale |
| b. | Philip Otieno | The objector Boniface Opondo Ogendo and Eunice Akinyi Obath share falls under what their father was to acquire as per the scheme |
| c. | Regina Akinyi | Deceased and her beneficiaries shall receive this portion |
| d. | Paul O Opondo | Deceased, the family shall receive this portion |
| e. | Edward Opondo | The Petitioner shall receive his fair share just as the rest |
| f. | Anne Achieng | Shall receive her seventh just like the rest |
| g. | Caroline Aluoch | Shall receive her seventh just like the rest |

- z. That the allegations that I failed to obtain consent from my remaining siblings are unfounded and misleading. As indicated in our pleadings, the necessary consents were to be provided



at the appropriate and opportune stage of the proceedings. It is evident that the objection proceedings currently before this Honorable Court are riddled with half-truths and are driven by an ulterior motive to unjustly disinherit the other rightful beneficiaries by claiming a disproportionately large share of the estate, contrary to the principle of equal distribution. The witness statements of Anne Achieng and Caroline Aluoch, which are on record, are available to this Court for reference and further substantiation of this position;

- aa. That the objector herein cannot claim I failed to obtain consent, prior to Philip Otieno's death, they did not live together and even immediately after his death in 1995 – 25 years ago, she has been nowhere to be seen, ignored attempts from the then administrator Selina Awour and only came back when I welcomed them back after finding her in Siaya;
- ab. That while the existence of a marriage can only be conclusively proven through the production of a valid marriage certificate, I respectfully submit that the issue presently before this Honorable Court pertains to the distribution of the estate. As such, any declaration regarding the existence or non-existence of a marriage shall not, in and of itself, alter the lawful distribution scheme of the estate among the rightful beneficiaries;
- ac. That the Objector's case is riddled with material contradictions, which further undermine the credibility of her claims. While her own brother asserts that she singlehandedly raised the minors, the Objector claims she lived with the deceased as husband and wife, an assertion that is patently false. If indeed her assertions were truthful, she would have been actively involved in the administration of the estate from the outset, participated in family deliberations, and would not have needed an invitation to reside on the estate. The reality, however, is that she deserted the alleged matrimonial home and the deceased for over twenty-three (23) years, only reappearing briefly for his burial, after which she disappeared again until I later encountered her in Siaya and extended an invitation for her to return to the estate out of goodwill and respect for family;
- ad. That in response to the documentary evidence we have lawfully obtained from the Lands Registry, the Objector and her agents have continuously dismissed them as either fake or not genuine. However, during the last court mention, this Honorable Court directed them to present any documentary evidence in contradiction, if such exists. To date, they have failed to do so. Instead, they have assumed the unfounded role of 'authenticators-in-chief,' disputing documents that any competent professional or even their own counsel could have readily verified and obtained from the appropriate registry.
- ae. That this Honorable Court need not look beyond the objection proceedings themselves to appreciate the Objector's lack of bona fides. Initially, the Objector filed her objection without any legal standing (*locus standi*), as she had not obtained any form of grant authorizing her to act on behalf of the estate. It was only after my response to the objection that she belatedly procured a Limited Grant of Letters of Administration *Ad Litem* clearly a reactionary step aimed at retroactively anchoring herself to the estate and giving a semblance of legitimacy to an otherwise defective objection.
- af. That the objection proceedings instituted by the Objector were not made in good faith or with the intent of safeguarding the proper administration of the estate. Rather, they were filed in jest and amount to a deliberate attempt to undermine my authority as the duly appointed administrator. As clearly stated in her own pleadings, her primary motive is to secure a portion of the estate solely for the purpose of constructing a 'family house.' Notably, she undertook



this construction without obtaining leave of the Court, an act that may constitute unlawful intermeddling with the estate.

- ag. For clarity, the Objector had been shown and allowed to settle on a specific and clearly identified portion of the estate while the succession process was still ongoing this was a gesture of good faith on my part. However, in breach of that trust, she proceeded without my knowledge or consent to excise a larger portion of land, thereby jeopardizing the rightful shares of other beneficiaries. She commenced construction works only to be halted due to her failure to produce the necessary documentation and obtain development permits from the County Government of Siaya;
- ah. Her objection proceedings, therefore, are not only grounded in misrepresentations and deliberate untruths but also reek of ungratefulness and a desire to fracture family unity. I urge this Honorable Court to consider, with all seriousness, the broader implications of legitimizing such conduct; indeed, can the Court reasonably envision the Objector living as a neighbor to the rest of the family in such a hostile and divisive state?
- ai. That the allegations that I am in contempt of court for failing to organize a meeting with the Objector are false, misleading, and constitute yet another deliberate misrepresentation by the Objector and/or her agents on record. Through my counsel, I made genuine and demonstrable efforts to initiate a structured and meaningful engagement by formally reaching out to the Objector, requesting that she provide proposed talking points in advance. This request was made in good faith to ensure that any such meeting would be orderly, focused, and conducted with mutual respect, avoiding unnecessary confrontations or diversions.
- aj. To date, the Objector has not furnished any response, nor has she offered proposals or demonstrated any commitment to dialogue, despite repeated invitations and overtures made from our side. It is, therefore, both misleading and disingenuous for her to now allege that I have defied court orders or failed to engage in mandated discussions. I respectfully invite this Honorable Court to consider who, in truth, is in disregard of its directions and the spirit of amicable resolution as envisioned by its guidance.
- ak. That I respectfully pray that this Honorable Court be pleased to grant the following orders:
 - i. That I be permitted to proceed and finalize the administration of the estate of the late Boniface Onger Opondo in accordance with the law, so as to ensure an equitable and just distribution that adequately caters to all the rightful beneficiaries and/or dependents.
 - ii. That the objection proceedings instituted herein be dismissed with costs to the Objector, for being legally untenable, replete with half-truths, admissions, and self-incriminating statements on the part of the Objector, and for constituting an abuse of the court process. Who alleges has the duty to prove, the objector has failed to prove anything. Further and in the alternative, that this Honorable Court be pleased to issue any other appropriate orders in the interest of justice.
 - iii. That these objection proceedings have not proposed any viable solution as requested by the Court and therefore, the court should forthwith consider and grant the proposal by the family of Boniface Ong'er Opondo;
 - iv. That this Honorable Court be pleased to order that the estate be distributed equally among the issues of the late Boniface Onger Opondo, each being entitled to one-seventh (1/7) share of the remainder of the estate which is Parcel No. 2088 – Central Nyalgunga



- v. That the Objector, her son Boniface Ogendo Opondo, and/or any persons acting under her instructions or on her behalf, be restrained, warned, and barred from interfering with the estate in any manner whatsoever. In particular, the acts of Boniface Ogendo Opondo involving the malicious destruction of estate property, which are criminal in nature and currently under police investigation vide OB No. 05/09/06/2025, be condemned and brought to the attention of the Court.
7. In further response, the objector filed a further affidavit in which she deposed as follows:
- a. That in response to paragraph 3 of the Replying Affidavit, I wish to state that I am the wife of the late Philip John Otieno, the brother to the Respondent.
 - b. That my late husband, Philip John Otieno and I had two children, Boniface Opondo Ogendo and Eunice Akinyi Obath as indicated in the above mentioned Chief's letter and the birth certificates.
 - c. That in response to paragraph 7 of the Respondent's Replying Affidavit, I wish to state that I am the legal wife/widow of the late Philip John Otieno as per the Luo Customary Laws as was then recognized by the then Kenyan laws and the Law of Succession Act Cap 160 Laws of Kenya.
 - d. That I am the legal representative of my late husband, Philip John Otieno for purposes of prosecuting this application on behalf of myself and his children.
 - e. That my late husband, Philip John Otieno, being one of the sons of the deceased Boniface Opondo Ongeru had a share in his estate of his father who died intestate.
 - f. That subject to section 29 of the Law of Succession Act, being a spouse to my late husband, my children and I are the dependents of my late husband.
 - g. That among the property left behind by the deceased father in law, was the ancestral land, Central Alego/Nyalgunga/2088 on which each son had been allocated a portion.
 - h. That the Respondent has registered the entire land in his name in disregard of the interest of the other family members, more specifically my children and I.
 - i. That in response to paragraph 9, I reiterate that I was not aware that the Respondent had embarked on succeeding the estate of my late father in law, neither did I consent to any petition or an application for him to substitute my late mother in law as an administrator to the deceased estate.
 - j. That in response to paragraph 11 of the Replying Affidavit, the Respondent's intention to deny the dependants of his late brother, Philip John Otieno their share is evident and condescending, as he refers to the Applicant objector as a trespasser or squatter on the estate of her father in law.
 - k. That in response to paragraph 12 of the Replying Affidavit, the Respondent has conceded that I have a right to the estate, as the children that he has alluded to, are my children, born of the Respondent's brother Philip John Otieno.
 - l. That it is for the said children that I am seeking for their father's share of the property to continue building a house that would make a home for them.
 - m. That in response to paragraph 13 of the Replying Affidavit, I state that constructing a house on the portion of land parcel number Central Alego/Nyalgunga/2088 is not unlawful nor do



I need to seek consent, license or any legal authority from anyone as I am constructing a house on the portion that was allocated to my late husband and by extension to his family, being my children and I.

- n. That in response to the same paragraph 13 of the Replying Affidavit, the Respondent is misadvised as I do not qualify to be an intermeddler as the said land is no longer registered in the name of the deceased father in law but, the name of the Respondent who is alive hence nobody can intermeddle with his property.
- o. That in response to paragraph 13 of the Replying Affidavit, categorically state that I am not engaged in forum shopping as this Succession cause was filed in this court, therefore I could not file the application for revocation anywhere else other than in this very court. I filed it in any other court other than the Eldoret High Court, then I would be accused of forum shopping.
- p. That in response to paragraph 13 of the Replying Affidavit, I wish to state that I am not manipulating the court nor presenting half-truths, or fabricating falsehoods as alleged by the Respondent, and the Respondent should substantiate how I intend to sow discord among the rightful beneficiaries of the estate and how I am masquerading as a victim under the guise of law.
- q. That the Respondent should prove the allegations made in paragraph 14 of the Replying Affidavit, that I have previously lodged unfounded and trumped up criminal allegations against him, his wife and other members of his family.
- r. That in response to paragraph 15 of the Replying Affidavit, the Respondent has made clear his intentions of evicting the Applicant who has a legitimate claim on the land, and if not for herself, then for her children. The court should not take these allegations lightly as the Applicant and her children are under risk of being disinherited by the Respondent who has no regard for our rights.
- s. That I deny the contents of paragraph 18 of the Replying Affidavit, in toto as I have not excised off any portion of Central Alego/Nyalgunga/2088 save for attempting to build on my allocated portion of the land an action that has been frustrated by the Respondent's actions of intimidation and calling NEMA to come to the ground and halt my construction works.
- t. That in response to paragraph 18 of the Replying Affidavit, I reiterate that I have not interfered with any beneficiary nor acted in contravention of the [Law of Succession Act](#).
- u. That in response to paragraph 22 of the Replying Affidavit, it is not true that the properties, namely L.R. NO. Transnzoia/Kipsoen/586 and I.R NO. 2116/VI/52 were sold during the administration of my late mother in law as the said properties were devolved to the Respondent's name first. If at all they were sold, then the sales were done without involving the entire family in the transactions.

Applicant's written submissions

- 8. Learned counsel Ms. Onyango, appearing for the applicant, submitted that the applicant, Beatrice Akoth Ogendero, possesses the requisite locus standi to bring this application. Learned counsel submitted that the applicant is the daughter-in-law of the deceased, having been lawfully married to the late Philip John Otieno, son of the deceased, under customary law prior to the enactment of the [Marriage Act](#) 2014. Counsel emphasized that this marriage is duly recognized under the Laws of Kenya.



9. Counsel further argued that the applicant's standing is fortified by documentary evidence, specifically a chief's letter which clearly lists her deceased husband as a beneficiary to the estate of Bonface Opondo Ongeru. It is submitted for the applicant that she subsequently obtained a grant of letters of administration ad litem on behalf of the Estate of Philip John Otieno (deceased).
10. Learned counsel relied on the case of *In re Estate of Malakwen Kipsugut (Deceased)* [2020] eKLR to support the position that only a lawfully appointed personal representative can agitate an interest in connection with the estate of a deceased person. Counsel cited the case of *Trouistik Union International & Another vs. Jane Mbeyu & Another* (supra) where the Court of Appeal held that to determine who may agitate by suit any cause of action vested in a deceased at the time of death, one must turn to section 82(a) of the *Law of Succession Act*.
11. It is counsel's submission that while the applicant had not obtained letters of administration ad litem at the time of filing the application for revocation, this constitutes a mere technicality that should not defeat the application under the spirit of Article 159(2)(d) of the *Constitution* of Kenya 2010. Counsel argued that the constitutional principle mandates that courts shall be guided by the principle that justice shall not be administered without undue regard to procedural technicalities.
12. Learned counsel further cited the case of *Rajesh Pranjivan Chudasama vs Sailesh Pranjivan Chudasama* (2014) eKLR where the Court addressed itself on the issue of locus standi in succession matters, establishing that a litigant is clothed with locus standi upon obtaining a limited grant or a full grant of Letters of Administration in cases of intestate succession.
13. On the substantive issue of revocation, learned counsel submitted that the respondent, Edward Opondo, obtained the amended grant of letters of administration through a process that was clandestine and excluded the applicant despite her being a dependant and beneficiary of the estate as prescribed under the *Law of Succession Act*. It is submitted for the applicant that the respondent proceeded to exclude the applicant and her children from the inheritance of the deceased's estate, purporting to determine beneficiaries unilaterally and unlawfully.
14. It is counsel's position that the application for revocation finds its foundation in Section 76 of the *Law of Succession Act*, which provides comprehensive grounds for revocation or annulment of grants. Counsel submitted that the respondent's conduct falls squarely within the provisions of Section 76(b), which permits revocation where the grant was obtained fraudulently by making false statements or by concealing material facts from the court.
15. Learned counsel relied extensively on the case of *In re Estate of Peter Alusiola Mulamula (Deceased)* [2020] eKLR, where Justice W. Musyoka outlined three general grounds for revocation of grants of representation. Counsel argued that the first ground, relating to fraudulent processes in obtaining the grant, is directly applicable to the present case, particularly where certain facts required under the law have not been disclosed or are concealed from the court or misrepresented.
16. It is counsel's humble submission that the respondent concealed material facts from the Honorable Court by deliberately and willfully excluding the applicant from the list of beneficiaries. Counsel argued that any succession cause must adhere strictly with the law, and no individual can arbitrarily exclude another from inheritance, as inheritance is dictated by law, not personal discretion.

Determination

17. This court is called upon to determine an application for revocation of letters of administration in a succession matter that has spanned over three decades, marked by familial discord and allegations of procedural impropriety. The central question before the court is whether the grant of letters of



administration issued to the respondent, Edward Opondo, should be revoked on grounds that it was obtained through concealment of material facts and fraudulent exclusion of rightful beneficiaries. The application, brought by Beatrice Akoth Ogendo as applicant/objector, challenges both the substantive validity of the grant and raises fundamental questions about locus standi, due process in succession proceedings, and the equitable distribution of intestate estates.

18. Grounds for revocation or annulment of grant of Letters of Administration are set out in Section 76 of the Law of Succession thus:

“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.”

19. 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.”

20. The court has carefully considered the evidence before it, the comprehensive affidavits filed by both parties, and the applicable law. The central issue requiring determination is whether the amended grant of letters of administration issued to Edward Opondo on 17th October 2022 should be revoked on the grounds articulated in the applicant’s summons.
21. The law is unequivocal in its demand for transparency and candour in succession proceedings. Section 76(b) of the *Law of Succession Act* provides a clear remedy where grants are tainted by fraud, deception, or the deliberate withholding of material information from the court. The legislature’s wisdom in crafting this provision recognizes that the administration of estates touches the very core of family relationships and inheritance rights, areas where the temptation to conceal inconvenient truths may be overwhelming. This court finds that the circumstances before it present a textbook illustration of the mischief that Section 76(b) was designed to address; a grant procured not through honest disclosure, but through the calculated suppression of facts that would have fundamentally altered the court’s decision.
22. In the present case, the evidence paints a picture of systematic deception. The respondent, Edward Opondo, had multiple opportunities to make full disclosure to this court. First during his application for rectification on 20th February 2020, and later when the amended certificate was issued on 17th October 2022. At each point, he possessed full knowledge of the existence of his deceased brother’s family, yet chose silence over truth. This was not mere oversight or inadvertent omission; it was a deliberate and calculated decision to present an incomplete picture to the court, knowing full well that complete disclosure would have necessitated a very different outcome. Such conduct strikes at the very foundation of judicial proceedings, which depend entirely upon the honesty and good faith of those who seek the court’s intervention.
23. The respondent’s own affidavit acknowledges the existence of dependents who were excluded from the succession process. The evidence establishes that Philip John Otieno, being a son of the deceased, was entitled to inherit from his father’s estate. His widow, Beatrice Akoth Ogenndo, and their children, Boniface Opondo Ogenndo and Eunice Akinyi Obath, constitute dependents within the meaning of the *Law of Succession Act*.
24. Beyond the fraudulent concealment, this court finds that the respondent has failed to proceed diligently with the administration of the estate as required under Section 76(d)(ii) of the *Law of Succession Act*. The evidence reveals that the respondent has registered the entire ancestral land parcel number Central Alego/Nyalgunga/2088 in his name, effectively appropriating the entire estate to himself without regard for other rightful beneficiaries.
25. Regarding the question of locus standi, this court finds merit in the applicant’s counsel’s submission that the constitutional principle in Article 159(2)(d) mandates that courts shall be guided by the principle that justice shall not be administered with undue regard to procedural technicalities. The applicant has since obtained a Limited Grant of Letters of Administration Ad Litem, thereby curing any initial defect in standing.



26. In light of the foregoing analysis and in exercise of the inherent powers of this court and Section 76 of the Law of Succession Act, this court makes the following orders:
- a. The Grant of Letters of Administration Intestate issued to Edward Opondo on 16th July 2015 and the amended Grant subsequently issued to him on 17th October 2022 are hereby revoked and set aside on the grounds that they were obtained fraudulently by concealment from this court of material facts relating to the existence of other rightful beneficiaries of the estate.
 - b. This court hereby orders and directs that the remaining estate property, being land parcel number Central Alego/Nyalgunga/2088, shall be subdivided and distributed equally among the six (6) children of the deceased, each entitled to an equal one-sixth (1/6) share thereof.
 - c. To ensure proper demarcation and to prevent future disputes, this court further orders that the County Surveyor of Siaya County shall, within ninety (90) days of this order, conduct a comprehensive survey and demarcation of the said land parcel, clearly delineating the boundaries of each beneficiary's portion. The surveyor shall prepare subdivision plans and lodge the same with the relevant authorities for approval and issuance of individual title deeds to each beneficiary.
 - d. Edward Opondo, and any persons acting under his instructions, are hereby RESTRAINED from interfering with or dealing with the estate property in any manner whatsoever pending the proper distribution of the estate.
 - e. Edward Opondo is hereby directed within thirty (30) days from the date of this order, to file a comprehensive executive summary detailing the status of the other estate properties, namely Land Reference No. 2116/VI/52 (Kitale) and Land Parcel No. Transnzoia/Kipsoen/568. The said summary shall include complete documentation evidencing the sale transactions, copies of all sale agreements, transfer documents, and evidence of current occupation by the respective purchasers or their successors in title.
 - f. I make no orders as to costs given the nature of the proceedings

27. Orders accordingly.

DATED AND SIGNED AT ELDORET THIS 23RD DAY OF JULY, 2025

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R. NYAKUNDI
JUDGE

