



REPUBLIC OF KENYA



**In re Estate of George Aboge (Deceased) (Succession Cause 2032 of 2011)  
[2025] KEHC 10853 (KLR) (Family) (8 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10853 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2032 OF 2011  
CJ KENDAGOR, J  
JULY 8, 2025  
IN THE MATTER OF THE ESTATE OF GEORGE ABOGE (DECEASED)**

**BETWEEN**

**MAURICE OURU OTHIWWO ALIAS OWAK OTHIWO ..... 1<sup>ST</sup> APPLICANT  
JOHN ODIYO ADERO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**PHELGONA AKINYI OKWACH ..... 1<sup>ST</sup> ADMINISTRATOR  
ANNA ASUMA OKWACH ..... 2<sup>ND</sup> ADMINISTRATOR**

**RULING**

1. This Ruling is on the application dated 20<sup>th</sup> December, 2025. The application seeks the following orders;
  - i. Spent
  - ii. That summons be issued to the District Land Registrar, Kisumu to attend this court and give evidence on the correct position of the green cards for land parcel Kisumu/Dago/250, including which one is a forgery/invalid;
  - iii. That upon hearing and determination of this application, the grant dated 8<sup>th</sup> October, 2013 issued to Phelgona Akinyi Okwach and Anna Asuma Okwach be revoked;
  - iv. That costs of the application be provided for.
2. The application is opposed and both parties filed submissions outlining arguments in support of their respective positions.



3. The background of this matter is that the Respondents were granted letters of administration intestate in this case, which were confirmed on 8<sup>th</sup> October, 2013. The grant pertains to several properties, including the parcel Kisumu/Dago/250, which is the subject of the current application. The grant vested the parcel in the name of the 1<sup>st</sup> Respondent absolutely.
4. The Applicants contend that the grant was obtained fraudulently through non-disclosure of material facts and details that the subject property does not form part of the estate.
5. The parties are involved in another case before the Environment and Land Court at Kisumu, ELC Case No. 522 of 2015, which was decided on 7<sup>th</sup> October, 2022 in favour of the Respondents. The ELC Court ordered the Applicants to vacate the suit property, and failure to do so would result in eviction. A permanent injunction was also issued against the Applicants from interfering with the Respondents' peaceful possession after the execution of the eviction order.
6. This Court struck out a previous application dated 11<sup>th</sup> September, 2024 seeking revocation of the grant.

### **The Applicants' case**

7. The Applicants assert that the property in question belongs to the 1<sup>st</sup> Applicant, who granted permission to the 2<sup>nd</sup> Applicant to occupy the land. They claim that the Respondents used a fake green card, and as a result, they urge the Court to revoke the grant issued to the Respondents.
8. The Applicants assert that, in light of the District Land Registrar's report, which raises concerns about the authenticity of the aforementioned green card, this Court should reconsider the case. They ask for orders that the Lands Registrar be summoned to appear in Court to present evidence clarifying the status of the green cards pertaining to the property in question.
9. Regarding the case before the Environment and Land Court, the Applicants submitted that the same is still active at the Court of Appeal, with the issue of the fraudulent transfer being the main subject.

### **The Respondents' case**

10. The Respondents argue that the application constitutes an abuse of the Court process as the Applicants are 'playing a game of lottery with the Court process'. They submitted that a similar application had been filed previously before the Environment and Land Court, which application was dismissed.
11. Further, they argue that the Applicants are using the present application to undermine the basis of the judgment delivered by the Environment and Land Court, while simultaneously seeking a stay of execution relief before the Court of Appeal regarding the Environment and Land Court matter.

### **Analysis and Determination**

12. The issues for determination are whether the Court should re-open the matter and summon the land registrar to give evidence, and whether the Applicant has established a case for revocation of the grant in this matter.
13. The law on revocation of grant is Section 76 of the [\*Law of Succession Act\*](#). The Section enumerates the several grounds under which a Court can revoke a grant and provides 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 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.”

14. The Court *in re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR expounded on the above provision in the following terms;

“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.”

15. The Applicants anchor the application on the ground that the grant was obtained fraudulently, as the subject property does not form part of the estate of the deceased.



16. The petition for the grant included the subject property, and given that there was no objection lodged, a grant was issued and subsequently confirmed. It is not in doubt that the subject property was in the name of the deceased at the time of the issuance of the grant and confirmation. The subject property was available for distribution as is considered as free propriety of the deceased as defined in Section 3 of the [Law of Succession Act](#).
17. From the pleadings, the history is that there was a case between the deceased and the 1<sup>st</sup> Applicant in Kisumu HCC 197 of 1994 regarding the same subject property. There are scant details available, and the Applicants claim that the file has not been traced at the Kisumu Law Courts. There is an order, though attached, that the 1<sup>st</sup> Applicant was restrained from disposing of the property.
18. Thereafter, the Respondents, as administrators of the present estate, sued the Applicants in the Kisumu ELC Court 522 of 2015 seeking orders for eviction and an order of permanent eviction. The Applicants filed a defence asserting that the 1<sup>st</sup> Applicant never executed the transfer documents favouring the deceased and that no consent was obtained from the Land Control Board. They also filed a counterclaim seeking a declaratory order that the name of the deceased was fraudulently inserted, and an order directing the Land Registrar to rectify the Register and replace the name with that of the 1<sup>st</sup> Applicant.
19. The case was heard and decided, with the judgment delivered on 7<sup>th</sup> October, 2022, favouring the Respondents and ruling against the Applicants.
20. The Applicants filed an application before the Environment and Land Court seeking an order requiring the land registrar to appear in Court as an expert witness to produce a report dated 2<sup>nd</sup> October, 2023 (prepared after the judgment was delivered) and for an order to review the judgment. The ruling delivered on 4<sup>th</sup> July 2024 dismissed the application with costs to the Respondents.
21. I agree with the submissions made by the Respondent that prayer 2 of the application now before this court is similar to the prayer in the application dated 27<sup>th</sup> November, 2023 that was determined before the Environment and Land Court.
22. The Applicants have acknowledged that the ongoing legal proceedings currently before the Environment and Land Court remain active at the Court of Appeal. The central issue being contested being the alleged fraudulent transfer of property. Given this status, the Applicants cannot re-characterize or initiate a new hearing of the issues that were before the Environment and Land Court before this Court.
23. The Environment and Land Court, established under Article 162 (2) (b) of the [Constitution](#), handles disputes related to the environment and land, including title, use, and occupation. The Succession Court focuses on matters of inheritance, including identifying beneficiaries, assets, and the distribution of the deceased's estate.
24. [In re Estate of Atibu Oronje Asioma \(Deceased\)](#) (Succession Cause 312 of 2008) [2022] KEHC 11046 (KLR) (22 July 2022) Musyoka, J. held as follows;  
  
“The design of the [Law of Succession Act](#) is that the mandate of the probate court is limited to distribution of the assets, and where a dispute arises on ownership of any asset, then the same should be placed in another forum, and not the succession cause, for litigation and determination.”
25. As it stands, the property was duly registered in the name of the deceased when the grant was made, and further, the decision by the Environment and Land Court upholds the ownership in favour of the



estate of the deceased. The Succession Court cannot revoke a grant unless there is substantial evidence presented to justify such an action.

26. If the Applicants achieve a favourable outcome at the Court of Appeal, they are entitled to approach the Succession Court based on the findings of the appellate Court.
27. The application dated 20<sup>th</sup> December 2024 lacks merit and is an abuse of the Court process. It is dismissed with costs to the Respondents.
28. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 8<sup>TH</sup> DAY OF JULY, 2025.**

**C. KENDAGOR**

**JUDGE**

In the presence of:-

Court Assistant: Beryl

Mr. Sala Advocate for the Applicants

Mr. Ragot Advocate for the Respondents

