



REPUBLIC OF KENYA



**In re Estate of Nyambane Orindo (Deceased) (Probate & Administration  
E001 of 2024) [2025] KEHC 10426 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10426 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
PROBATE & ADMINISTRATION E001 OF 2024**

**WA OKWANY, J**

**JULY 3, 2025**

**IN THE MATTER OF THE ESTATE OF NYAMBANE ORINDO (DECEASED)**

**BETWEEN**

**DANIEL MOKAYA NYAMBANE ..... PETITIONER**

**AND**

**DANIEL NYANGARESI ORINDO ..... 1<sup>ST</sup> OBJECTOR**

**JACKSON NDEGE KEBANDE ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. The Applicants/Objectors herein filed the Application dated 24<sup>th</sup> June 2024 seeking the following Orders: -
  1. Spent
  2. That the interim Grant of Letters of Administration intestate issued to Danel Mokaya Nyambane, the Respondent, on 22<sup>nd</sup> April 2024 be revoked as it was fraudulently obtained by the Petitioner/Respondent by the concealing of material facts.
  3. Spent
  4. Spent
  5. That this Honourable Court be pleased to issue an order of temporary injunction against the Respondent/agents/ representatives from dealing with disposing off, alienating, leasing and in any manner intermeddling with the Estate of Nyambane Orindo pending the hearing and determination of the suit herein.



6. That this Honourable Court be pleased to issue a fresh Grant of Letters of Administration intestate in the names of the Maria Mokeira, Daniel Nyangaresi Orindo and Jackson Ndege KEBANDE.
  7. That the OCS Keroka Police Station ensures compliance and enforcement of such orders.
  8. That the costs of the Application be provided for.
2. The Application is brought under Section 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules. It is supported by the grounds on the face of the Application and the 1<sup>st</sup> Applicant's Affidavit wherein he states that the proceedings to obtain Grant were defective in substance as there was concealment of material facts by the Respondent/Petitioner. He states that the Respondent's intention was to disinherit other beneficiaries to the deceased's estate and in particular, LR. No. East Kitutu/Kebirichi/794 which is ancestral land held in trust for the said beneficiaries.
  3. The 1<sup>st</sup> Applicant states that the Petitioner did not inform the Court that he had already sold off a portion of the subject Estate to one Alfred Moffard Omundi Michira in a bid to disinherit the other beneficiaries. He averred that the Respondent/Petitioner was found to be unfit to administer the deceased's Estate in Keroka ELC 21 of 2020, Keroka ELC E031 of 2022 and Nyamira ELC 1 of 2021 where the court found him guilty for intermeddling with the said estate.
  4. The Petitioner/Respondent opposed the Application through his Replying Affidavit dated 24<sup>th</sup> September 2024 wherein he states that the Application is misleading, misconceived and an abuse of the court process as they lack the locus standi to challenge or seek a revocation of the Grant.
  5. The Application was canvassed by way of written submissions which I have considered.
  6. Section 76 of the Law of Succession Act provides for the revocation of Grant 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.

7. In the case of *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR it was held 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.”

8. The gist of the Applicants case is that the land parcel forming the Estate of the deceased did not belong to the deceased individually but was property held by him in trust or for the benefit of the surviving beneficiaries of his late grandfather. I note that the deceased's grandfather died intestate and was survived by two sons: Orindo Irobiro (first born) and Francis KEBANDE who each married two wives. The deceased was the first born and only son of one Orindo Irobiro. He was therefore the first born grandson of the deceased charged with the responsibility of holding the property in trust for other beneficiaries. According to the 1<sup>st</sup> Objector's Affidavit in support of the Application, all members of the families have been occupying the subject property where they have constructed homes and raised their children.

9. I also note that there are two court judgments from Keroka ELC 21 of 2020 which was upheld in Nyamira ELC Appeal No. 1 of 2021 wherein the courts found that the suit land parcel was property held by the deceased in trust for his father's surviving beneficiaries and uncle one Francis KEBANDE. I therefore find that it is not necessary to delve into determining whether the deceased held the property in trust or not as this is an issue that has already been settled by the two courts. Consequently, I find that in the circumstances of this case, anyone appointed as an administrator to distribute the deceased's Estate should have done so bearing in mind the fact that the deceased was merely a trustee and not the sole proprietor.

10. *In Re Estate of Ndiba Thande- (Deceased)* [2013] eKLR, the court stated:-

“When Esther Wambui Ndiba was appointed on 19th April, 2011 as the administrator and personal representative of the deceased, property Dagoretti/Kangemi/25 vested in her by virtue of Section 79, of the *Law of Succession Act*. She thereby assumed all the right that the deceased had over the property. She is the one who should sue or be sued over the said



property. She is the one who should enforce any cause of action, such as trespass, with respect to the said property. She is the one who should contract with third parties with respect to the property. This means that she should be the one letting out the property and collecting rents. She has also, by virtue of Section 79 of the *Law of Succession Act*, assumed all the duties of the deceased with relation to the said property. She should be the one paying all outgoing with respect to the property.”

11. I find that in similar fashion, the Petitioner herein, having been appointed an administrator of the Estate of his late father Nyambane Orindo, ought to have assumed the role of a trustee with respect to the said Estate. Order 37 Rule 1 of the *Civil Procedure Rules*, 2010 stipulates as follows: -

1. The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir, or legal representative of a deceased person, or as cestui que trust under the terms of any deed or instrument, or as claiming by assignment, or otherwise, under any such creditor or other person as aforesaid, may take out as of course, an originating summons, returnable before a judge sitting in chambers for such relief of the nature or kind following, as may by the summons be specified, and as circumstances of the case may require, that is to say, the determination, without the administration of the estate or trust, of any of the following questions.
  - a. any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or cestui que trust;
  - b. the ascertainment of any class of creditors, devisees, legatees, heirs, or others;
  - c. the furnishing of any particular accounts by the executors, administrators or trustees, and the vouching, when necessary, of such accounts;
  - d. the payment into court of any money in the hands of the executors, administrators or trustees;
  - e. directing the executors, administrators or trustees to do, or abstain from doing, any particular act in their character as executors, administrators or trustees;
  - f. the approval of a sale, purchase, compromise or other transaction;
  - g. the determination of any question arising directly out of the administration of the estate or trust.

12. *In Re Eunice Wanjeri Njenga* ELC Miscellaneous Civil Suit 62 of 2013 [2013] eKLR it was stated:-

“In summary the general duties of trustees in relation to the trust property are to safeguard the assets of the trust, to invest any trust money in his or her hands, and to distribute the assets to the beneficiaries and satisfy any claims of the beneficiaries. With relation to the beneficiaries, trustees are under a duty to maintain equality between beneficiaries and to provide accounts and information to the beneficiaries. ....”

13. From the facts of this case, I find that the Petitioner concealed material facts from this Court at the time he applied for the Grant. I note that the Petitioner listed only himself, his brothers and mother as the surviving beneficiaries of the deceased. This was evidently not the correct representation of the beneficiaries of the said estate as indicated in the Chief’s letter which shows that the Petitioner also had sisters who are the deceased daughters. The Petitioner was also fully aware that the deceased held the



land in trust for the benefit of the larger extended family, including step siblings and cousins of the deceased. It is my finding that the Petitioner should have assumed the role and duty of a trustee since he was acting on behalf of his deceased father who was a trustee over his late grandfather's property.

14. For the reasons that I have stated in this ruling, I find that there was material concealment of facts by the Petitioner when applying for the Grant.

15. I have also considered the claim that the Petitioner sold a portion of the suit land to one Alfred Moffard Omundi Michira an allegation which was not expressly controverted. Section 45 of the [Law of Succession Act](#) is clear on the offence of intermeddling with the Estate of a deceased person. The section stipulates as follows: -

45. No intermeddling with property of deceased person

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall-

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

16. [In Re Veronica Njoki Wakagoto \(Deceased\)](#) [2013] eKLR Musyoka J. held thus: -

“The effect of [section 45] ... is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by the Law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”

17. The import of the above provision is that any transaction conducted with respect to the suit property before the conclusion of the succession proceedings contravenes Section 45 of the Act and must be declared null and void for want of legality.

18. I have also considered the issue of whether the Objectors have established a case for the granting of a temporary injunction pending determination of the suit. I am guided by the principles established in the case of *Giella v. Cassman Brown & Co. Ltd* (1973) EA 358 where it was held that: -

“The conditions for the grant of an interlocutory injunction are well settled in East Africa. First, an Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”



19. In the circumstances of this case, I find that the Applicants have established that they stand to suffer irreparable loss that may not be adequately compensated by way of damages if the orders sought are not granted. I say so because it is apparent, from the pleadings filed herein, that the extended family members have lived in and occupied portions of the suit parcels which they have developed over time. I find that the Applicants have demonstrated that they have a prima facie case with a probability of success.
20. I am satisfied that the Applicants/Objectors have established the parameters set for the granting of an order of temporary injunction pending the hearing and determination of the suit.
21. In the premises, I find that the Application is merited and is hereby allow it in the following terms: -
  1. The Grant of Letters of Administration intestate issued to Danel Mokaya Nyambae, the Respondent on 22<sup>nd</sup> April 2024 are hereby revoked.
  2. A temporary injunction is hereby issued to restrain the Respondent/his agents/representatives from dealing with disposing off, alienating, leasing and in any manner intermeddling with the Estate of Nyambane Orindo pending the hearing and determination of the suit herein.
  3. Grant of Letters of Administration Intestate is hereby issued in the names of the Maria Mokeira, Daniel Nyangaresi Orindo and Jackson Ndege KEBANDE.
  4. The OCS Keroka Police Station is hereby directed to ensure compliance and enforcement of orders No (2) above.
  5. The Petitioner shall bear the costs of this Application.
22. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 3<sup>RD</sup> DAY OF JULY 2025.**

**W. A. OKWANY**

**JUDGE**

