



**Oringe v Oringe (Miscellaneous Succession Cause E001 of 2023)
[2024] KEHC 314 (KLR) (23 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 314 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS SUCCESSION CAUSE E001 OF 2023
RE ABURILI, J
JANUARY 23, 2024
IN THE MATTER OF THE ESTATE OF EDWARD ORINGE ORUNGO (DECEASED)
AND
IN THE MATTER OF APPLICATION BY TOBIAS MACKSALLAH
ORINGE, FRANCIS OBIERO ORINGE AND ANNA ADHIAMBO
ORINGE –PETITIONERS
AND
IN THE MATTER OF AUSTINE ODUOR ORINGE.....OBJECTOR
BETWEEN
TOBIAS MACKSALLAH ORINGE, FRANCIS OBIERO ORINGE AND ANNA
ADHIAMBO ORINGE PETITIONER
AND
IN THE MATTER OF AUSTINE ODUOR ORINGE OBJECTOR**

RULING

1. This Succession Cause was filed way back on 16th December 2013, 10 years ago. The initial Petitioner was Tobias Macksallah Oringe, one of the sons of the deceased Edward Oringe Orungo. From the Chief’s letter dated 14th March 2012, the deceased Edward Oringe Orungo was a polygamous man and had five (5) wives. Each wife had children except Jane Atogo Oringe.
2. As at the time of filing the Petition in 2013, which petition is being challenged, two of the widows had died. The Petitioner is a son of one of the widows, Maria Ochieng Oringe who had died. Jane Agawo Oringe too died.
3. Only Wilkister Amolo Oringe and Mary Atieno Oringe were alive at the time of the filing of the Petition.



4. The Petition was gazetted on 28th February 2014 vide Gazette Notice No. Vol. CXVI No. 31 and on 2nd April 2014, a grant was issued to the initial Petitioner Tobias Macksallah Oringe to administer the estate of the deceased.
5. Soon thereafter, some of the beneficiaries of the estate of the deceased reported to the CID that the Petitioner had filed the Succession cause without involving them and that he had even forged their signatures indicating that they had consented to the filing of the Succession Cause, to the contrary.
6. The CID investigated the case and preferred charges of forgery against the Petitioner herein. In the intervening period, there was concerted efforts to resolve the matter amicably with the beneficiaries as a family but there was no agreement reached hence the criminal case which proceeded to full trial with the complainants who alleged that the Petitioner had forged their signatures to procure the grant testifying against the Petitioner. One of the complainants, from the court proceedings, became a hostile witness and supported the Petitioner. Other witnesses gave contradictory testimonies in chief and in cross examination which left doubt in the mind of the criminal court as to whether the Petitioner forged the signatures of the complainant.
7. The criminal court eventually found the Petitioner not guilty of the offence of forgery and acquitted him under Section 215 of the Criminal Procedure Code. No appeal was preferred to challenge the acquittal
8. While the criminal case was going on, the Succession Cause herein, ofcourse, remained dormant. The estate is vast, from the list of Assets. No summons for confirmation of grant was ever filed with proposals on how to distribute the estate of the deceased amongst beneficiaries, during the time that Tobias Macksallah Oringe was the sole administrator.
9. From the proceedings of the court for 8th October 2018, the parties who were represented by advocates did inform the court that they had agreed to have 3 administrators to be appointed. This matter was mentioned severally for the parties to agree on the 3 administrators and it was not until 22nd July 2019 when the parties did provide the court with the names of:-
 1. Tobias Macksallah Oringe
 2. Francis Obiero Oringe
 3. Benson Orungo Oringeas the proposed administrators of the estate.
10. Consequently, a fresh grant of letters of administration intestate was reissued on 27th July 2020 by T.W. Cherere J in the names of the above three administrators. The joint administrators were then granted 30 days within which to file summons for confirmation of grant.
11. The matter was slated for confirmation on 7th October 2019. The administrators never filed any summons for confirmation of grant and on 7th October 2019, the court extended the period for filing for 14 more days.
12. The case was slated for mention on 4th November 2019. Come 4th November 2019, it was reported that the 3rd Administrator Benson Orungo Oringe had died hence the parties consented to have Anna Adhiambo Waswa to be the substitute of Benson Orungo Oringe and this was effected.
13. The court then set the 9th December 2019 for mention to confirm gazettement. The court did on 9th December 2019 issue another grant in terms of the order of 4th November 2019 substituting the



- deceased administrator. The matter was set for mention on 17th February 2020 to confirm compliance with the orders that summons for confirmation be filed.
14. Again, the matter kept coming up for mention until 15th July 2020, to confirm filing of summons for confirmation of grant. To date, no such summons for confirmation of grant have ever been filed by the administrators as appointed by the court with consent of the parties.
 15. On 5th October 2020, again, the court issued an order that summons for confirmation of the grant be filed within 30 days. Come 28th September 2020, an application was filed seeking to inhibit any transaction on Land Parcel Fort Tenan/068/99 pending hearing and determination of the cause.
 16. An order of inhibition was issued on 5th October 2020. A similar application was filed on 7th October 2020. It turned out that in 2019, some beneficiaries of the estate which had nonetheless not been distributed as no summons for confirmation of grant had ever been filed and prosecuted, begun disposing off the portions of land parcel No. 068/99 Fort Tenan and receiving consideration from various buyers.
 17. Off course, this conduct of disposing off the estate of a deceased person without authority from the court is what the Law of Succession Act at Section 45 calls intermeddling with the estate of the deceased, which is also a criminal offence. The sellers from the annexed sale of agreements include Tabitha Achieng Oringe, witnesses by Austine Oduor Oringe, the Objector herein, Milka Atieno Oringe witnessed by Tabitha Achieng Oringe, Anna Adhiambo Waswa, Wilkister Amolo Oringe witnessed by the now deceased administrator and beneficiary, Benson Orungo Oringe.
 18. Again, for non-compliance with orders of T.W. Cherere J, and those of J. Kamau J made on 26th April 2022 reiterating the orders of Cherere J made on 5th October 2020, the Succession Cause was dismissed by this Court.
 19. Through an application dated 16th May 2023, the orders of dismissal were vacated on 26th June 2023 and time extended for compliance with the orders of J. Kamau J and T.W. Cherere J by 60 days. Still there was no compliance.
 20. On 26th September 2023, Mr. Obuli Advocate for the Applicant informed the court that they had served orders upon the Land Registrar but that they had learnt that the Land Registry at Nyando was burnt earlier in the year hence there were no records and as such, a Search Certificate could not be obtained hence they were to file an application for revocation of grant.
 21. The court granted 10 days within which to file the appropriate application hence the application dated 3rd October 2023 which was struck out as it was on Originating Summons. A fresh application was then filed dated 12th October 2023 seeking for revocation of grant made on 27th July 2020 and the grounds being that it was procured fraudulently by making false statement and concealment of facts material to the case before court that signatures of the surviving beneficiaries Austine Oduor Oringe, George Odhiambo Oringe, Benson Orungo Oringe, George Odhiambo Oringe, Francis Otieno Oringe, Wilkister Amollo Oringe and Mary Atieno Oringe were all forgeries hence making the proceedings leading to grant substantially defective; that the administrators had gone beyond the scope of the grant by selling part of the estate property and also misappropriated the estate and failed to produce to court accounts of full and accurate inventory of the assets and dealings in the deceased's estate.
 22. The summons are supported by the affidavit of Austine Oduor Oringe reiterating the grounds above and annexing documents including court proceedings and judgment in Tamu SRM Criminal Case No. 189 of 2015 where Tobias Macksallah Oringe, the 1st Administrator was charged with the offence



of forgery but was acquitted by the court on 20th August 2019 after a long protracted hearing, by P. K. Rugut, Principal Magistrate.

23. The application was heard orally on 30th November 2023 with Mr. M. M. Omondi and Mr. Obuli appearing for their respective clients. Mr. Obuli reiterated the prayers, grounds and depositions by the Objector Austine Oringe while Mr. Munuangwo submitted that due to the Lands Registry burning, the Administrators cannot do anything and that allegations of intermeddling had not been substantiated.
24. Counsel relied on the detailed affidavit filed in the original Succession Cause No. 1342 of 2013 demonstrating how other people intermeddled with the estate and that indeed, there were real divisions in the polygamous family hence administrators should be given a chance to sit as a family and manage the estate prudently to ensure each beneficiary gets a rightful share since parties had agreed on how to share the estate. He conceded that the estate had not been distributed.
25. In a rejoinder, Mr. Obuli submitted that the grant was obtained fraudulently as per the proceedings, from the Magistrate's court where the 1st Administrator was charged with forgery.

Determination

26. Having considered the summons for revocation of grant, the grounds, deposition as well as the annexures thereto, and the oral submissions by both parties' counsel, the main issue for determination is whether the application has merit.
27. Section 76 of the *Law of Succession Act* provides for situations that can lead to revocation of grant. The Section provides:

“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.”

28. In this case, the Objectors are leveraging on the Criminal case wherein the 1st Administrator was charged. However, after a full and protracted hearing, he was acquitted of the charge in 2019. No appeal was filed challenging the acquittal.
29. I have perused the criminal proceedings and judgment and I observe that there were material contradictions in the evidence of witnesses who were the complainants and the handwriting expert. One witness turned hostile; supporting the accused’s case. The trial court was unable to find evidence of forgery.
30. I am aware of the standard of proof required in criminal cases is higher than that in civil cases. In the former, the standard is beyond reasonable doubt whereas in the latter, it is on a balance of probabilities. Having said that, I observe that even after that case, the family of the deceased comprising all beneficiaries did reach a compromise and recorded a consent before this court as stated above, appointing 3 Administrators to administer the estate until one of them, Benson, died then Anna became his substitute. As at that time of recording the consent, the issue of forgery had been resolved between the parties hence the consent file. That consent had not been set aside and therefore for this court to reopen proceedings which were settled would in my view be acting contrary to the law.
31. I say so because no application for setting aside of that consent appointing the 1st administrator was ever filed or considered. In addition, the grant which was issued to the 1st administrator alone in 2015 is no longer the grant that is in place, following the consent which appointed 3 administrators and still retained the 1st administrator herein as a co-administrator. It would be unfair and unjust for this court to reopen the forgery proceedings which were closed and determined in the 1st Administrator’s favour, now that other administrators who were not parties to the criminal case were appointed to be co-administrators. Further, as the grant which was issued to the 1st administrator herein who was charged with forgery is no longer in place, it would be wrong for this court to attempt to annul that which is non-existent.
32. Having said that, I observe that from 2020 when the fresh grant was issued to the now 3 administrators, with orders that gave timelines for filing of summons for confirmation of grant, there has been no compliance with those orders despite enlargement of time for them to comply.
33. The excuse given that some Land Registry was burnt early last year is an afterthought defence since no court or party requires the whole Land Registry to accept summons for confirmation of grant to be filed and or to be confirmed.
34. The administrators should have filed summons for confirmation of grant as ordered by the court and once the grant is confirmed, they wait for the lands Registry to be reconstructed before submitting any documents for registration. They did not have to wait for this long until the Land Registry was burnt. That excuse is too elusive and not persuasive at all.
35. In addition, I observe that the estate of the deceased is being intermeddled with by some beneficiaries and the Objector Austin Oduor herein is one of the witnesses to the sale agreements wherein the Fort Tenan land was being disposed of undeterred without the authority of the court and before confirmation of the grant, contrary to Section 45 of the *Law of Succession Act*.
36. Essentially, what that means is that the grant which was issued to the three Administrators jointly in 2020 has never been operational. It is useless and is only but a piece of paper. That grant which is useless and inoperative must be revoked by this court even if there was no application for revocation so that



the parties can go back to the drawing board and comply with not only the law but court orders which are not mere papers.

37. There is absolutely no reason why no summons for confirmation of grant were filed so that any beneficiary could as well have filed a protest or propose an alternative mode of distribution of the estate in the event that any of them was not satisfied with what the administrators propose. That aside, all beneficiaries should always consult and agree on the mode of distribution of the estate. Infightings only waste the estate.
38. The court is also not satisfied with the Objector herein Austine, who endorsed the process of intermeddling with the estate as a witness to the illegal and illegitimate transactions by some of the family members, then he now emerges as Angel Gabriel from heaven to seek for revocation of the grant and accusing the 1st administrator of forgery, a matter that was long settled.
39. He is already soiled with unclean hands and the court cannot be a place where he will be allowed to wash his dirty hands.
40. Accordingly, whereas the reasons advanced by the Objectors are devoid of merit for purposes of revocation of the grant in this case as above stated, I find that the grant as obtained in 2020 has become useless and inoperational, it is hereby revoked and annulled.
41. The beneficiaries of the estate to now select a minimum and maximum of four (4) Administrators to petition for a grant of letters of administration to administer the estate of the deceased Edward Oringe Orungo, which Administrators shall be selected from each house. It should however not be forgotten that past administrators will have to give an account of the estate during the period they were administrators.
42. The grant revoked is recalled for cancellation.
43. This file is therefore closed.
44. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 23RD DAY OF JANUARY, 2024

R. E. ABURILI

JUDGE

