



**In re Estate of Francis Andabwa Nabwangu (Deceased) (Succession Cause 20 of 2019) [2024] KEHC 2711 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2711 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 20 OF 2019**

**SC CHIRCHIR, J**

**MARCH 14, 2024**

**IN THE MATTER OF THE STATE OF FRANCIS  
ANDABWA NABWANGU – (DECEASED)**

**BETWEEN**

**PIUS NANBWANGU ANDABWA ..... 1<sup>ST</sup> OBJECTOR**

**BENARDINAH NABWANGU MUTSEMBI ..... 2<sup>ND</sup> OBJECTOR**

**AND**

**PUBLIC TRUSTEE ..... 1<sup>ST</sup> RESPONDENT**

**EFFIE OWOUR ALIAS JUSTICE EFFIE OWOUR ..... 2<sup>ND</sup> RESPONDENT**

**BEATRICE LWOSI ONGOMA ..... 3<sup>RD</sup> RESPONDENT**

**JAMES NABWANGU ..... 4<sup>TH</sup> RESPONDENT**

**CHARLES ESALAMBO NABWANGU ..... 5<sup>TH</sup> RESPONDENT**

**RAIDON NANBWANGU ANDABWA ..... 6<sup>TH</sup> RESPONDENT**

**AND**

**NAYAN LIMITED & 164 OTHERS ..... INTENDED INTERESTED PARTY**

**RULING**

1. There are two Applications coming up for determination. The first is dated 4<sup>th</sup> October 2022. It is brought by Nayan Limited (1<sup>st</sup> interested party). It seeks admission to the suit as an interested party. It further seeks for a review of the court order of 24<sup>th</sup> June 2022, and the reversal of Title No. Kakamega/ Municipality/block 1/163 ( 1<sup>st</sup> suit property) to the proposed 1<sup>st</sup> interested party. For purposes of this Ruling this Applicant will be referred to as the or 1<sup>st</sup> Applicant or 1<sup>st</sup> interested party.



2. The 2<sup>nd</sup> Application is dated 23.01.2023. It is brought by Charles Bisho Yano and 163 others. The Applicants seeks to participate in the proceedings as interested parties. They also want the court to recognize their interests as bona fide purchasers for value without Notice of land parcel L.R Musoli farm/ Transzoia NO. 6614/11 ( 2<sup>nd</sup> suit property). Finally, they want the court to ascertain their interest and allocate the shares due to them. For purposes of this ruling these Applicants will be referred to as the 2<sup>nd</sup> to the 164<sup>th</sup> Applicants or 2<sup>nd</sup> to the 165<sup>th</sup> interested parties.
3. Any reference to the other parties in this suit will be as per the heading of this cause

#### **The Application dated 4<sup>th</sup> October 2022**

4. It is the 1<sup>st</sup> Applicant's case that it purchased the 1<sup>st</sup> suit property from the 2<sup>nd</sup> and 3<sup>rd</sup> respondents on 24<sup>th</sup> August, 2016. The two were then the registered proprietors. And as a result, they argue, they have acquired purchaser's interested on suit property. It further argues that it has therefore demonstrated that it has an identifiable interest in the suit property to warrant its admission to this cause as an interested party.
5. On the prayer for review, this Applicant argues that it was not served with the Application dated 8<sup>th</sup> October, 2021 which gave rise to the orders of 24<sup>th</sup> June, 2022; that this was a violation of the Rules of natural justice, as they were condemned unheard. It further argues that their grounds for seeking review falls fall under "Sufficient reasons" within the context of order 45 rule 1 of the Civil Procedure Rules.
6. Finally, on whether the suit property should revert to the Applicant, the Applicant contends that the property should revert to it as it was an innocent purchaser for value without notice'; that they purchased the suit property from the 2<sup>nd</sup> and 3<sup>rd</sup> respondents who were the registered owners at the material time; That in any event ,the grant was confirmed in 1991 and the respondents only sought for revocation in May 2018. Finally it is submitted that prior to cancellation by this court , the 1<sup>st</sup> interested party had a valid title to the property
7. The 2<sup>nd</sup> objector , who is one of the Administrators, following an appointment by the court vide its ruling dated 24<sup>th</sup> June 2022, objected to the Application. The 2<sup>nd</sup> objector argues that this court has no jurisdiction to entertain this matter, as the prayers being sought fall under the purview of the Environment and Land Court. He further argues that the Applicant was a mere intermeddler in the deceased's estate; that in any event the applicant's interest had been disclosed by 2<sup>nd</sup> and 3<sup>rd</sup> respondents during the hearing of the Application that gave rise to the Ruling of 24<sup>th</sup> June 2022.
8. According to the Objector for all intends and purposes, the interested party herein is representative of the then 2<sup>nd</sup> and 3<sup>rd</sup> respondents, who had fully participated in the aforesaid proceedings.
9. The respondent further argues that the acquisition of the 1<sup>st</sup> suit property by the Applicant was illegal and the Applicant not only knew, but was part of the fraud that was allegedly committed by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. He further states that there was no valid interest acquired in the 1<sup>st</sup> suit property, and if it was acquired , then it was a bad title. In the words of the objector " once a bad Title always a bad Title" .
10. The respondent further states that prior to the purchase the Applicant was a tenant on the 1<sup>st</sup> suit property and was therefore aware that those who later sold out the land were not the legal owners of the property.



11. He further points out that the Applicant has not attached a certificate of confirmation of grant to show that, as at the time of the purported purchase , the property had devolved upon the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
12. It is further argued that this court has adjudicated on the same issues before, and therefore this matter is resjudicata and the only recourse for the Applicant is to seek redress against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
13. The objector finally contends that the Applicant is late, as the Title of 1<sup>st</sup> suit property has already reverted to the name of the Deceased.

### **The Application dated 20.1.2023**

14. In the Application dated 20.1.2023 It is the Applicants' case that they purchased their respective portions in 2<sup>nd</sup> suit property at different times . They have attached copies of various sales agreements, and evidence of monies paid, in exchange. They accuse the objectors of going to court to seek cancellation of their Titles without involving them. They argue that they are innocent purchasers for value without notice. It is further stated that the sale transactions had progressed well and the only remaining item, was the actual transfer of the properties.
15. On whether they have met the prerequisite conditions for admission to the suit as interested parties, they argue that to the extent that they were purchasers of value without notice and have have carried out substantive development in the property then they have demonstrated that they have identifiable stake in the cause.
16. They further argue that that their interested was protected under section 93(1) of the [Law of Succession Act](#).
17. In response, the 2<sup>nd</sup> objector argues that this court has no jurisdiction to determine this Application ; that much as the Applicants have a right to be heard , they can only exercise that right before the Environment and land court, and not this court.
18. The objector further denies that the Applicants have ever purchased any land from the estate as there is no evidence of such transfer .
19. He further points out that the Applicants knew that the certificate of confirmation of grant had not been issued and therefore, they were not innocent purchasers.
20. The objector further argues that he 2<sup>nd</sup> respondent had no capacity to transfer the land..

### **Determination**

21. The applicant's in the two applications are different , but the orders sought are fairly similar. Thus, I propose to deal with the broad issues at one go.

### **Background**

22. The proceedings herein relative to the Estate of Francis Andabwa Nabwanga (Deceased). Pius Nabwangu Andabwa is the 2<sup>nd</sup> objector and one of the 4 Administrators of the Estate . Benardinah Nabwangi Mutsembi the 1<sup>st</sup> objector is reported to have died in the course of these proceedings . The public trustee Effie Owuor alias Justice Effie Owuor, Beatrice L Onyoma, James Nabwangi Charels , E Nambwangu, Raiden N. Andabwa are described as the 1<sup>st</sup> to the 6<sup>th</sup> Respondent respectively.
23. From the record , it emerges that the objectors and the 2<sup>nd</sup> to 6<sup>th</sup> Respondents are all children of the deceased.



24. Following the demise of the deceased a grant of representation was issued to the 1<sup>st</sup> respondent on 13.11.1991. The same was confirmed on 25.11.1991. The objectors through the application dated 26.11.2017 sought for revocation of grant. The application for revocation was allowed on 6.8.2021 by Justice Musyoka.
25. The court then gave the heirs a chance to identify the new Administrators. The court also made a specific order in respect to the 1<sup>st</sup> suit property. It directed as follows. “The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents to account for the disposal of Kakamega Municipality/Block1/163, and for the restoration of the said property, or its value in monetary terms to the estate”. This specific order was not complied with and the 2<sup>nd</sup> objector went back to court seeking for cancellation of all entries made in the register in respect of Kakamega Municipality Block 1/163 pursuant to the grant made on 13.11.1991 and confirmed on 25.11.1991 and its restoration to the deceased
26. The court in its ruling dated 24<sup>th</sup> June 2022 made the following orders:
  - a. “That I hereby appoint Pius Nabwangu Andabwa, Ezra Andabwa, John Nabwangu and BeatriceLwosi Ongoma Administrators of the estate herein
  - b. That a grant of letters of Administration with will annexed shall issue to the administrators appointed under (a) above, accordingly.
  - c. That I hereby direct the land registrar, responsible for Kakamega County to cancel the current registration of Kakamega Municipality Block 1/163 and revert it to the proprietorship of the deceased herein Francis Andabwa Nabwangu
    - a. ...
    - b. ...
    - c. ... “
27. It is these orders that the applicants in both applications seek to review.
28. I have perused the record, the two rulings made by Justice Musyoka on 6<sup>th</sup> August 2021 and 24<sup>th</sup> June 2022 respectively, the pleadings, the submissions and considered the authorities by the parties . I have identified the following issues for determination:
  - a). whether this court has jurisdiction to determine this matter
  - b). Whether the Applicants should be allowed to join the cause as interested parties.
  - c) Whether the Applicants are entitled to orders of review.

### **Whether this court has jurisdiction to entertain this Application**

29. The objector has submitted that this court has no jurisdiction, as the issues raised fall within the jurisdiction of the Environment and Land court. However I disagree with that submission. The orders against which review is being sought were issued by this court, and a review Application can only be determine by the court which issued the said orders. Further the cancellation of Titles , which prompted the Applicants to come to court was done by this court following an Application by the objector. Finally the question of whether or not the interested parties 'Rights should be determine by this court depends on whether or not the Applicants' claims against the estate had crystallized by the time the deceased passed on.



## Whether the Applicants should be allowed to join the cause as interested parties

30. Who is an interested party? The black Law Dictionary (10<sup>th</sup> Edition on pg 298) defines an interested party as a “a party who has a recognizable stake (and therefore standing) in the matter”..... a party may be said to have a recognizable interest in a matter if the out come of such matter of proceedings are likely to adversely affect their interest.”
31. *The constitution* of Kenya (protection of rights and fundamental freedoms practice and procedure rules 2013 (Mutunga Rules) defines an interested party as “means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in litigation”
32. In “Trusted society of Huma Rights Alliance vs. Mumo muthemu (2014) eKLR. The supreme court defined interested party as “ one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made either way. Such a person feels that his or her interest will not be well articulated unless he himself or herself appears in the proceedings and champions his or her cause”.
33. Thus the stake of a party seeking to join the proceedings must be identifiable.
34. The reasons for admitting such a party were set out in the case of Meme vs. Republic (2004), 1EA 124 where the court stated that the reason for such a party joining would be if his/ her presence will result in complete disposal of all the issues in the case, for protection of rights of a party whose rights would otherwise be adversely affected and finally, and finally to prevent a likely course of escalated litigation
35. The Applicant in the application dated 4.10.2022 state that it purchased the 2<sup>nd</sup> suit property from the 2<sup>nd</sup> and 3<sup>rd</sup> respondents after the confirmation of grant; that by then the property had devolved to the two, and that they had a valid Title which the court erroneously cancelled. It further contends that they were not notified about the proceedings giving rise to the cancellation of their Title. The stake in my view is out there in the open. They have a stake by virtue of their plea that until the cancellation , they were the registered owners of Kakamega Municipality/ Block 1/ 163. They have met the required threshold
36. The 2<sup>nd</sup> to the 164<sup>th</sup> Applicants have also submitted that they were purchasers for value without Notice in respect to the 2<sup>nd</sup> suit property; that the transactions were at an advance stage and that what was pending was only the transfer of the said suit property. They want the Administrators to cede their share to them . They have attached Sale Agreements signed at various times . It is premature , at this stage to delve into the validity of these agreements. It suffices that they have documents showing that they carried out transactions in respect to the said suit property. Am satisfied therefore that these Applicants too have demonstrated identifiable stake in this cause.
37. The findings in Meme case (supra) and Mumo matemu,( supra) not only give reasons for joining a party but it also presupposes that the case is pending in court.
38. In the present case, the last step taken by the court was the appointment of new Administrators. The next stage of the suit as per the probate and Administration Rules and procedures is for the Administrators to apply for confirmation of grant .In effect, the proceeding are still pending.



## Are the Applicants entitled to orders of Review

39. Though the Law of succession Act has no provision for review , courts have traditionally resorted to the civil procedure Act , when faced with such Applications. The courts are also exhorted to render justice without undue regard to technicalities ( Article 159(2) (d) of the Constitution).
40. Review is founded on section 80 of the civil Procedure Act and order 45 of the Civil Procedure Rules. Order 45 provides as follows: “1. Any person considering himself himself aggrieved -
  - a. By a decree or order from which an Appeal is allowed by this Act , but from which no Appeal has been preferred ; or
  - b. By a decree or order from which no Appeal is hereby allowed,  
And who from the discovery of new and important matter or evidence , which after due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made , or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason , desires to obtain a review of the decree or order, may apply for a review of the judgment to the court which passed the decree or made the order without unreasonable delay” .
41. The wording order 45, presupposes that the party seeking review was a party to the proceedings in which it he/she seeks review. Review is about bringing in new evidence which was not within your reach at the time of the hearing; it is about an error that is apparent in the proceedings in which the party seeking review had taken part in ; and finally it is about coming back to court without unreasonable delay ( Emphasis added).
42. It is my considered view that If any one was allowed to “walk in “ and seek a review on any matter before court then order 45 of the civil procedure Rules will need some rewording . Further there will be no end to litigation, especially on public interest litigation for example.
43. I find support in the supreme court decision in the case of Okiya Omtatak Okota -& another va. AC & another (Petition NO. 29 of 2020 )(2021) KESC 28(KESC 28 (CIV) (3 December 2021) where the Applicants were seeking for review of orders given on a case in which they were not a party to. The court held : “ we also note that the applicants were not parties to the proceedings in advisory opinion No. 2 of 2012 and as such they lack the locus stand to approach this court to review and/or vary its orders therein”.
44. The applicants in both applications were not parties to the proceedings which gave rise to the orders of 24.6.2022 and as such it is my finding that they do not have the locus standi to seek a review of the said orders.
45. However let me mention briefly that the issue of third parties’ rights within the context of section 93 of the law of succession Act was , in any event, addressed by Justice Musyoka. A perusal of the ruling, dated 24<sup>th</sup> June 2022 shows that he addressed himself in detail to the purchasers of value without notice and he did so because the respondents then, had brought to the attention of the court the existence of these purchasers. Thus even if the applicants herein were found to have a locus standi ,this court would be functus officio in as far as this particular issue is concerned. It would amount to the court sitting on Appeal on its own judgment. That , it can not do.
46. In conclusion, I hereby proceed to make the following orders:



- a. The Applicant in the Application dated 4<sup>th</sup> October 2022 is hereby granted leave to join this cause as an interested party and will be referred to as the 1<sup>st</sup> interested party
- b. Leave is hereby granted to the applicants in the Application dated 23.1.2023 to join this cause as interested parties. They will be described as the 2<sup>nd</sup> to 164<sup>th</sup> interested parties.
- d. The order for review in respect to both Applications is hereby disallowed.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 14<sup>TH</sup> DAY OF MARCH, 2024**

**S. CHIRCHIR**

**JUDGE**

**In the presence of;-**

Godwin – court Assistant;

