



In re Estate of Ounda Okendo alias Ounga Okendo (Deceased) (Succession Cause 281 of 2014) [2024] KEHC 4923 (KLR) (14 May 2024) (Ruling)

Neutral citation: [2024] KEHC 4923 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
SUCCESSION CAUSE 281 OF 2014**

KW KIARIE, J

MAY 14, 2024

IN THE MATTER OF THE ESTATE OF:

OUNDA OKENDO ALIAS OUNGA OKENDO.....DECEASED

BETWEEN

DIANAH HILDAH OPONDO APPLICANT

AND

BERNARD OTIENO OTAYE RESPONDENT

RULING

1. Dianah Hildah Opondo, the applicant, moved the court through a Notice of Motion dated the 12th day of February 2024 under section 93 (1) of the [Law of Succession Act](#), Rules 63, 66, 67 and 73 of the [Probate and Administration Rules](#) and Order 45 Rule 1 of the [Civil Procedure Rules](#). She is seeking the following orders:
 - a. The honourable court be pleased to make an order of declaration and confirmation that the title Kanyada/Kanyango/Kalanya/1143 measuring 0.060 Hectares transferred to the applicant by Joseph Ouma Ounda, the administrator of the estate of Ounda Okendo, deceased, is valid and her title is indefeasible notwithstanding the order of revocation of grant issued on the 31st day of July 2023 as provided by section 93(1) of The [Law of Succession Act](#).
 - b. The honourable court be pleased to review the order stating that the administrator, Joseph Ouma Ounda, acted fraudulently by non-disclosure of all material facts and declare that the said administrator acted on a mistaken belief that being the only son of the last widow of the deceased the land solely belonged to his mother.
 - c. The costs of the application be costs in the cause.
2. The application was premised on the following grounds:



- a. Joseph Ouma Ounda obtained a grant of letters of administration intestate of his father's estate, Ounda Okeno, in the above Succession Cause No. 281 of 2014 on the 7th day of May 2015.
 - b. On August 2nd, 2016, Joseph Ouma Ounda, as administrator of the deceased's estate, sold and transferred land parcel No.Kanyada/Kanyango/Kalanya/1143 to Diana Hilda Opondo.
 - c. On 13 July 2021, Bernard Ochieng Otaye applied for the revocation of the grant to Joseph Ouma Ounda. The same was revoked on the 31st day of July 2023 with an order that Land Parcel No.Kanyada/Kanyango/Kalanya/1143 revert to the name of the deceased, hence this application since Section 93(1) of The Laws of Succession Act states otherwise.
 - d. The deceased had three wives and had provided for his other wives and children inter vivos with large parcels of land, hearing only the portion measuring 0.6 hectares for himself and his last wife.
3. The application was opposed by the respondent on the following grounds:
 4. The interested party filed the following grounds of opposition:
 - a. That the applicant did not point at any error on the face of the record.
 - b. That there was no new and compelling evidence.
 - c. That the issues raised were comprehensively addressed in the impugned ruling.
 5. Section 93 (1) of the [Law of Succession Act](#) provides:

All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.

6. In [Jane Gachola Gathetha vs Priscilla Nyamira Gitungu and another](#) (2006) eKLR where a purchaser claimed that he was not aware of and was not a party to the fraudulent dealings with the title in issue and was therefore protected under not only Section 93(1) of the [Law of Succession Act](#) (Cap 66) but also Section 143 of the [Registered Land Act](#) the Court of Appeal in Nyeri stated this:-

We think with respect, that there is a fallacy in invoking and applying the provisions of Section 93(1) of the [Law of Succession Act](#) and the Superior Court fell into error in reliance of it. The section would only be applicable where firstly there is a transfer of any interest immovable or moveable property. Kabitau had no interest in plot 321 or any part thereof, and therefore, he could not transfer any. A thief acquires no right or interest which is transferable in stolen property. The transaction would be void ab initio and the property is traceable.

7. In [Re-Estate of Christopher Aide Adela \(Deceased\)](#) (2009) eKLR Rawal J, while addressing section 93(1) of the [Law of Succession Act](#), stated:

It shall be a very weak or unfair system of law if it gives a carte blanche of absolute immunity against challenges to transfer of immovable properties of estate by a personal representative, it shall be simply against all notions of fairness and justice. No court can encourage such interpretation while a personal representative will be protected even while undertaking



unethical or illegal actions prejudicing the interests and rights of the right beneficiaries of the estate.

8. The impugned ruling agrees with the two decisions cited above.
9. Order 45 Rule 1 provides as follows:
 - (1) Any person considering himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed, 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 the exercise of 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 judgment to the court which passed the decree or made the order without unreasonable delay.
 - (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.
10. The applicant has not demonstrated any error on the face of the record or the discovery of new and vital matters or evidence to warrant the review. The application is dismissed with costs for want of merits.

DELIVERED AND SIGNED AT HOMA BAY THIS 14TH DAY OF MAY 2024

KIARIE WAWERU KIARIE

JUDGE

High Court at Homa Bay Succession Cause No. 281 of 2014 Page 2

