



**In re Estate of Nyanchoka Maore ( Deceased) (Succession Cause  
159 of 2004) [2024] KEHC 8125 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 8125 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
SUCCESSION CAUSE 159 OF 2004  
REA OUGO, J  
JUNE 19, 2024**

**IN THE MATTER OF THE ESTATE OF NYANCHOKA MAORE ( DECEASED)**

**BETWEEN**

**FLORENCE OENGA ONYANGO ..... PETITIONER**

**AND**

**RICHARD MAORE ONYANGO ..... OBJECTOR**

**RULING**

1. On the 11. 6. 2019 Richard Maore Onyango filed an application seeking to revoke the letters of administration issued to Florence Oenga Onyango on 13.9.2004 and confirmed on June 20, 2005. He also seeks those costs of the application to be borne by the petitioner. The application is brought under sections 48, 76 & 78 of the Law of Succession Act as read with Rules 44,49,59, 63 & 73 of the Probate and Administration Rules.
2. The application is supported by the affidavit of Richard Maore Onyango (the Objector) dated 11.6.2019. He avers that the deceased died on the 9.8.1994 and a grant of letters of administration was issued to the petitioner on the 13.9.2004. That the said grant was obtained fraudulently or by a false statement by concealment from the court something material in that the objector and Geoffrey Onsarigo Onyango being grandchildren of the deceased representing their respective deceased mother household being co-wives to the petitioner who have or are entitled to a share in the estate of the deceased. That the grant was confirmed on 20/6/2005 without notice to the objector herein and/or objector Geoffrey Onserio Onyango and the petitioner herein is now intending to dispossess and/ or evict the objector and his family and the family of Geoffrey Onsongo Onyango from land parcel No. South Mugirango/Nyartaaro/1502 being the estate of the deceased.
3. The application was opposed. Florence Oenga Onyango (the petitioner), filed a replying affidavit on 17/12/2019. She depones as follows; that the application does not disclose reasonable grounds as to why it took the objector more than 15 years before he could file the objection. That the Objector's



- affidavit is full of deliberate falsehood with intent to mislead the court. That the Objector and the other purported beneficiary are strangers to the family of the deceased. That the Objector has a mother and a father staying elsewhere who are not parties to the proceedings and that the application is frivolous and lacks merit and ought to be dismissed.
4. The objection was canvassed by way of viva voce evidence. Richard Maore Onyango (Richard) testified that the deceased had one son called Lawrence Onyango Sebastiano (Lawrence) who is now deceased. The deceased is his grandmother. Lawrence had 3 wives. Florence Oenga (Florence) the petitioner was his 1<sup>st</sup> wife. The 2<sup>nd</sup> wife was Esther Moraa (Esther) she died. She left behind one child Julius Ondara Onyango (Julius). The 3<sup>rd</sup> wife was Consolata Nyanchoka (Consolata) his mother. Florence did not inform his family that she had petitioned for a grant for the estate. The grant was therefore obtained fraudulently by a false statement by concealment from the court something material that the objector and Geoffrey Onsarigo Onyango (Geoffrey) are grandchildren of the deceased representing their respective deceased mother's household of being co-wives with the petitioner. During cross-examination, he testified that his ID card No. XXXXXXXX01 was issued in 2016 in Makadara in Nairobi. That his original ID card got lost. He was born in 1983 and the deceased died in 1995. That he used a photocopy of his father's ID card to get his ID card. He has no birth certificate. His grandfather was Maore. His mother has a 3<sup>rd</sup> name Mauti which is not in her ID card. That his father's official name was Lawrence Onyango Maore. He denied that his mother was married to one Michael Auka. That they did not claim their father's benefits from TSC. He did not attend his father's burial. He was in Nairobi. He does not know if his mother attended his father's burial. In re-examination, he told the court that he was not informed of his father's death.
  5. Isaac Menya Sangore testified that he knows Richard. He is the son of his brother. The deceased was his aunt. Sebastiano Onyango Maore was her only son. Sebastiano had 3 wives Florence, Esther, and Consolata. The deceased's estate should be shared amongst the 3 widows. Richard is the son of Consolata. That Florence has failed/refused to distribute to the rightful beneficiaries. During cross-examination, he testified that he did not know if Consolata attended the burial of Nyanchoka. That Consolata was at the burial of Onyango. He does not know if Richard attended his father's burial. He does not know if Consolata sired 2 children with Michael Auka. His cousin was also known as Lawrence.
  6. Queen Pauline Abuya (Queen) testified that the deceased was her mother. Florence is his brother's wife. Richard is the son of Lawrence. Richard's mother is Consolata. Lawrence had 3 wives Florence, Esther, and Consolata. That each of the wives' interests should be catered for in land parcel no. South Mugirango/Nyataaro/1502 as each house has made various developments thereon. During cross-examination, she testified that Richard attended his father's burial. That she does not know Michael Auka. She does not know if Consolata married Michael Auka. Her brother and Consolata had 4 children. She did not attend her brother's burial as she was also burying her father-in-law at the same time of his burial. Richard lives in the land the subject of this cause.
  7. Consolata Nyanchoka testified that Florence is her co-wife and the late Esther too. That her husband was Onyango. The objector is her son. The estate of the deceased should be shared amongst the houses as their house held the land in trust for all of them. Florence did not obtain the consent of all the beneficiaries. During cross-examination, she told the court that her father's name was Mauti and that she had six children Richard being one of them. That she was sick when the succession cause was filed. She does not recall when she married Sebastian Onyango. That she did not get married elsewhere. She stays in the said land. She got children with Michael Auka, but the children were counted as the deceased's children. Richard is her firstborn. Richard was in Nairobi and did not the father's burial. In re-examination, she stated that she had 2 children with Sebastian, Richard, and a daughter.



8. Florence the petitioner relied on her replying affidavit filed on 17/12/2019. She testified that the application does not state why the objector took more than 15 years before he could file the objection. That the objector and the other purported beneficiary are strangers to the family. That the objector has a mother and a father staying elsewhere who are not parties to the proceedings. That she did not obtain the grant fraudulently nor has she dispossessed the objector and other beneficiaries of the estate of the deceased. Richard did not attend her husband's burial nor that of her mother-in-law, the deceased. Her husband indicated his next of kin and she was paid his dues. That she is the widow of Lawrence his only wife. Consolata admitted that she had 4 children with Michael Auka. During cross-examination, she admitted that Lawrence had sisters and Queen is one of them. That the other sisters died. That she did not involve the sisters because they were married. The only asset is the land parcel South Mugirango/Nyataaro/1502. That Consolata does not live in the said land. She does not know if Richard lives in the said land. She does not know Esther Moraa Onyango. She does not know Julius Ondara Onyango. She admitted that she went to the land's office to complain about a boundary. The land dispute was between her and Consolata over a common boundary. She does not know if Richard is the son of Consolata.
9. John Ezekiel Onyango (Dw2) testified that Consolata had 4 children with Michael Auka. That his father was the only son of the deceased and he is the son of Lawrence Onyango. Richard and his witnesses are lying. Richard and Consolata did not attend his father's burial as he is the one who commenced his father's grave according to their culture. The objector is the son to Consolata wife of Michael Auka, and he should demand his share from Michael Auka who married his mother. During cross-examination, he admitted that Queen was one of the daughters of his grandmother. That his mother occupies the land. Richard went to the land's office and part of what he wanted was to be given part of the land. In re-examination, he stated that Esther was alive and she did not question anything. That they did not have to involve anyone who was not in the land.
10. Andrew Ombiro Okundi (Dw3) testified that he knew the deceased Nyanchoka Maore, she was his aunt wife of Maore Osoro. They had one son Lawrence Onyango Maore. Lawrence had only wife Florence Oenga Onyango the petitioner and Lawrence died in 1995 leaving behind Florence and John Ezekiel Onyango (Dw2). The objector is son Consolata is the wife of Michael Auka whom they had 4 children. That the objectors are strangers. The objector and Consolata did not attend the burial of Lawrence. During cross-examination, he said that the one in occupation in the land is Florence. That Consolata has a house there and Richard too has a house there. That he does not know Julius Ondara. That he saw Esther Moraa but he did not attend her burial. That Julius has a house in the homestead.
11. Parties filed written submissions. The objector in his submissions summarized the evidence of both the objector and the petitioner. It was submitted that the petitioner being the daughter-in-law to the deceased under section 39 of the Law of Succession is not entitled to a share of the estate of the deceased. That petitioner did not obtain the consent of Queen (Pw3) who is one of the daughters of the deceased nor her other siblings 4 sisters. Under section 76 of the Law of Succession Act Cap 160 Laws of Kenya, the grant issued to the petitioner should be revoked for reasons that the petitioner concealed material facts from the court for failing to disclose that there were other beneficiaries. That the property of the deceased should be transmitted to the rightful heirs as the petitioner failed to do so.
12. The petitioner in her submissions are as follows; that the objector failed to file any objection proceedings when the cause was gazette and that it has taken the objector 14 years to come to court by way of objection. That there is no plausible explanation and or valid reasons given for the unreasonable/inordinate delay to file the objection. The objector gave a different name Richard Oenga Maore and in his submissions, its indicated as Richard Oenga Onyango. The name of the objector's mother is indicated as Consolata Nyanchoka Mauti yet in the submissions its indicated as Consolata



Nyachoka. That the objector is alleging to be the son of Sebastiano Onyango Maore yet the petitioner husband was called Lawrence Onyango Maore. That the objector did not attend the burial of Lawrence Onyango Maore nor that of Nyanchoke Maore whom he alleged is his grandmother. That the objector is an imposter who forged an identification in Nairobi. To enable him to inherit land from somebody whom he does not even know his correct name. The objector's location is called Getenga while the petitioner is from Nyansakia location the objector's mother is married to one Michael Auka Auka whom he has 4 children with and her ID card does not bear the name Onyango. That there is no concealment of material facts. That there is no existence of other beneficiaries.

13. Before delivering this ruling, I sought a surveyor's report to indicate who was in occupation of the land. The parties were informed of this decision and none of the parties nor their advocates objected. The said report was to help this court determine the issues raised by the parties. The report is dated 4.3. 2024. The court order of 27.9.2023 was for the surveyor to inform the court of the persons in occupation of the subject parcel of land and the portions occupied by each family on the ground. The report indicates that the deceased had 3 wives namely; Florence Oenga Onyango, Esther Moraa Onyango who is deceased but is survived by; Lydia Intinyari, daughter in law, Julius Ondara Maore-son and Isaac Orina-son. The 3<sup>rd</sup> wife is Consolata Nyanchoke Mauti. From the existing boundaries as per occupancy each wife and computing average, his findings were as follows; parcel South Mugirango/ Nyataaro/1502 measures 5.02Ha and is shared as follows on the ground;
- i. Florence Oenga Onyango occupies approximately 3.06Ha ( about 7. 6 acres) being part of the subject parcel.
  - ii. The survivors of Esther Moraa Onyango occupy 0.83 ha. They have also encroached into the neighboring parcel no. South Mugirango/ Nyataaro/ 1503 by 0.67Ha. This parcel of land 1503 is registered in the name of Arori Osoro and measures approximately 2.18 Ha.
  - iii. Consolata Nyanchoke Mauti occupies 0.04Ha and has encroached into parcel no. 1503 by 1.39Ha.
  - iv. A part of parcel no. 1502 measuring approximately 0.50Ha which has been cut off by a new 9M road is occupied by another party that is not family. The report was signed by Orangi T.O, for County Surveyor National Government of Kisii. None of the parties commented on this report.

### **Analysis and Determination**

14. The issue for determination in this matter is whether the grant that was issued to the petitioner on the 13<sup>th</sup> of September 2004 and confirmed on 20<sup>th</sup> of June 2005 should be revoked. There is no dispute that the deceased Nyanchoke Maore died leaving behind a son Lawrence and daughters one of them being Queen Pauline Abuya (Queen). Florence the petitioner claims that she was the only wife of the deceased (Lawrence) and that the objectors are strangers to the estate of the deceased. To determine whether I should revoke I need to determine who survived the deceased. In the petition filed by Florence, she indicates that she is the daughter-in-law of the deceased and only 2 persons survived her that is herself and John Ezekiel Onyango. There is no dispute that the deceased ( Nyanchoke Maore) was also survived by her son Lawrence who is now deceased and daughters, Queen being one of them.
15. There is a dispute that Lawrence had other wives. The objector called two witnesses who testified that the deceased Lawrence the husband of Florence had more than one wife. His 2<sup>nd</sup> wife was Esther and 3<sup>rd</sup> wife was Consolata. Esther is said to be deceased but was survived by a son Godfrey Onsarigo Onyango. Godfrey did not testify to confirm that Lawrence was his father. Andrew (Dw3) during cross-examination testified that the objector and Consolata have built in the parcel land No. 1502.



Florence admitted that she had a boundary dispute with Consolata in the land court. The question I ask myself is why have they been on this land all this time if they had no beneficial interest in the matter. Queen a sister of the deceased informed this court that her brother had 3 wives and that Richard is his son and therefore a grandson of the deceased. In my view, I find that the petitioner failed to disclose that the deceased had other children Queen being one of them. Being a daughter-in-law, she was not entitled to file a petition for letters of administration of the estate of the deceased.

16. Consolata who is the mother of Richard did not file an objection it has been filed by a grandson even though the mother is still alive and did testify in court.
17. Section 66 of the Law of Succession Act (LSA) Cap 160 provides for preference to be given to certain persons to administer where the deceased died intestate. It states as follows;

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V”.

This section shall guide me on my final orders in this matter.

18. The petitioner has taken issue with the fact that the objector has to come to court 15 years after the grant was confirmed. The current application was provoked by a boundary dispute that the parties appear to have on the ground. The Law of Succession Act Chapter 160 does not provide for any limitation period within which a party can file an objection. Under section 76 the law provides a grant may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion. 15 years is a long time however the Objector has come to court alleging that his mother was Lawrence’s wife and that she not invited to participate in the matter when the petition was filed and was therefore was not involved in the succession proceedings of the deceased’s estate. The surveyor’s report indicates that Lawrence had 3 wives that occupied the subject/ land and that Esther and Consolata occupy 0.83Ha and 0.50 Ha respectively. Florence was not truthful to this court when she testified that she did not know the Objector. Consolata testified that he was the deceased’s son, this evidence was corroborated by the evidence of Queen who is the deceased’s sister. From the above evidence, it is clear that when Florence filed a petition for a grant intestate she failed to disclose material facts or evidence to show that she was not the only wife of Lawrence and that the deceased also had a daughter Queen being one of them.

19. Section 76 (1) ( b) of LSA states 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—

- (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.

20. The petitioner failed to disclose that there were other legitimate beneficiaries of the deceased’s estate. The grant she obtained was obtained fraudulently by making a false statement plus she concealed material facts. The objector has a beneficial interest because his mother was the wife of Lawrence son of the deceased and they occupy a portion of the land the subject of this succession cause. The



orders sought in the application dated 11.6 2019 are merited. The letters of administration were made to Florence Oenga Onyango on 13.9.2004 and confirmed on 20.6.2005, are hereby revoked, and all subsequent orders.

21. Part V of LSA guides on who can inherit a deceased's estate who has died intestate. The deceased died intestate. She left behind a son the husband of the petitioner Lawrence who is now deceased, who had 2 other wives Esther and Consolata, and Queen is the deceased's daughter. The objector is a grandson. His mother is still alive. He only applied to revoke the grant, but did not seek to be an administrator. After considering the evidence and noting that Florence occupies quite a large portion of the land and considering the law as provided under part V of the Act, I appoint Florence Oenga Onyango and Queen Pauline Abuya to be administrators of the estate of Nyanchoka Maore. The two administrators shall apply for a confirmation of the grant within 30 days from the date of this Ruling. This being a family matter each party bears its costs.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA VIRTUALLY ON THE 19<sup>TH</sup> DAY OF JUNE 2024.**

**R.E.OUGO**

**JUDGE**

In the presence of;

Mr. Soire For the Objector

Petitioner- Absent

Mr. Nyachae for petitioner - Absent

Wilkister/ Diana - C/A

