



REPUBLIC OF KENYA



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**In re Estate of Peter Oluoch Odero (Deceased) (Succession Cause  
147 of 2007) [2024] KEHC 12584 (KLR) (22 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12584 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 147 OF 2007  
WM MUSYOKA, J  
OCTOBER 22, 2024**

**IN THE MATTER OF THE ESTATE OF PETER OLUOCH ODERO (DECEASED)**

**RULING**

1. This cause relates to the estate of the late Peter Oluoch Odero, who, according to certificate of death, serial number 978673, of 2<sup>nd</sup> August 2007, died on 11<sup>th</sup> March 2006. There is a letter, on the record, from the Chief of Bujumba Location, dated 2<sup>nd</sup> August 2007, which indicates that the deceased died single, without a wife and children. His parents had predeceased him, and, according to the Chief, he was taken care of by a Mama Domitila Apio Angoya, and her daughter, Agnes Akinyi Oketch, since 1984. The relationship between the 3 is not disclosed in the letter. The deceased was said to have had also sold a portion of the land, Marachi/Bujumba/1367, to Rose Aluoch Mulokwa. Agnes Akinyi Oketch is proposed by the chief to be the administratrix.
2. Representation, in intestacy, was sought by Agnes Akinyi Oketch, vide a petition filed herein on 6<sup>th</sup> August 2007, in her purported capacity as niece of the deceased. The deceased was said to have been survived by 2 individuals, being Agnes Akinyi Oketch and Domitila Apiyo Angoya. The deceased was said to have had died possessed of Marachi/Bujumba/1367. Rose Aluoch Mulokwa was listed as a liability. Letters of administration intestate were made, on 30<sup>th</sup> October 2007, to Agnes Akinyi Oketch, and a grant was duly issued on 31<sup>st</sup> October 2007. I shall refer to Agnes Akinyi Oketch hereafter as the administratrix.
3. The administratrix filed a summons for confirmation of grant, dated 15<sup>th</sup> April 2008. She listed herself and Rose Aluoch Mulokwa as the beneficiaries, with Marachi/Bujumba/1367 being shared disproportionately between them. The confirmation happened on 30<sup>th</sup> September 2008, the estate was devolved in the manner proposed. A certificate of confirmation of grant, in those terms, was issued, on even date.
4. I am tasked with determining a summons for revocation of grant, dated 23<sup>rd</sup> August 2023. It is at the instance of Daniel Ogola Nyanya, who I shall refer to hereafter as the applicant. He claims that his father, the father of the administratrix and the deceased were all children of the late Odero Odero. He identifies his father as the late Nyanya Odero, and the father of the administratrix as the late



Joseph Angoya Odero. He states that the deceased and the late Joseph Angoya Odero died single, without spouses or children, while his own father had only 1 child, himself. He says that Marachi/Bujumba/1367 was held in trust by the deceased for his own father and the late Joseph Angoya Nyatuga, all from the 1<sup>st</sup> house of the late Odero Odero. He avers that the administratrix was entitled to separate pieces of land, being Marachi/Bumala/1477, 1957 and 1959, belonging to Angoya Odero Angoya alias John Angoya, which were compulsorily acquired by the government, vide Gazette Notice No. 3915. He asserts that as his 2 late uncles died without wives and children, he was the only one entitled to inherit Marachi/Bujumba/1367. He refers to Busia ELC Civil Appeal No. 7 of 2020, arising from Busia CMCCC No. 742 of 1996, where the court had ordered that the land be reverted to the name of the deceased. He argues that the grant held by the administratrix had become useless and inoperative. He claims that the administratrix did not involve him in the process of obtaining the grant, yet he ranked higher in priority. He also accuses her of concealing material from the court. There are also accusations that she had never filed accounts.

5. The applicant has attached certificates of death in respect of the deceased herein, Joseph Angoya Odero and Nyanya Odero. He has also attached a copy of what he calls the family tree. There is also a certificate of official search for Marachi/Bujumba/1367, indicating that it was registered in the name of the deceased, on 30<sup>th</sup> January 1995. There is also a copy of Gazette Notice No. 3915 of 29<sup>th</sup> May 2015, in respect of the property compulsorily acquired by the Government, from Angoya Odero Angoya. Finally, there is a decree in Busia ELC Civil Appeal No. 7 of 2020, reverting Marachi/Bujumba/1367 to the name of the deceased.
6. The administratrix swore an affidavit, on 31<sup>st</sup> January 2024, in reply. She avers that the applicant did not rank in consanguinity over her, as he was not a biological child of the late Nyanya Odero, but of Julius Akoth Oyango, who had inherited his mother, a widow of the late Nyanya Odero. The said Julius Akoth Oyango was a cousin of the late Nyanya Odero. She discloses that the applicant had always been aware of the cause, as he was the one who had sued the deceased in Busia CMCCC No. 745 of 1996, over Marachi/Bujumba/1367, and even after the deceased died, he did not withdraw the suit, and initiate succession proceedings instead. She then goes on to give a detailed history of the family, and its property. She asserts that her father was John Angoya Odero, who had 2 wives. She states that her mother was settled on Marachi/Bujumba/1367, and was meant to be registered as proprietor together with the deceased, but the property ended up being registered in the sole name of the deceased. She asserts that she was the one who filed Busia ELC Civil Appeal No. 7 of 2020, and caused Marachi/Bujumba/1367 to be reverted to the name of the deceased. She asserts entitlement to Marachi/Bujumba/1367 on the basis that her mother had been settled there, and her father was a step-sibling of the deceased. She denied obtaining letters in this cause by fraud, arguing that it was the applicant who had caused the land to be taken away from the estate. She goes on to assert that the land meant for the late Angoya Nyatuga and the late Nyanya Odero was still in the hands of Julius Akoth Oyanga. She argues that the applicant is merely seeking to continue the fight in Busia CMCCC No. 745 of 1996, through these proceedings.
7. I will now narrate the various documents annexed to the affidavit in reply. There is a family tree. The administratrix has also attached a bundle of mutation forms, to demonstrate how the larger family land was subdivided and shared out by Julius Akoth Oyanga. There are pleadings, orders and decree in Busia CMCCC No. 745 of 1996. There is also a certificate of official search, in respect of Marachi/Bujumba/1367. There are also pleadings and judgment in Busia ELC Civil Appeal No. 7 of 2020.
8. The reply provoked the filing of a supplementary affidavit by the applicant, sworn on 26<sup>th</sup> February 2024. He asserts that the reversion of Marachi/Bujumba/1367, to the name of the deceased, had rendered the grant made to the administratrix useless and inoperative. He asserts that the father of the



- administratrix was John Angoya Odero, and further denies that Julius Akoth Oyanga was his father. He argues that his father Nyanya died during his lifetime, and, therefore, the issue of being sired by another man, who had allegedly inherited his mother, did not arise.
9. The administratrix filed a further replying affidavit, on 9<sup>th</sup> May 2024. She asserts that Nyanya Odero died in 1976, and not in 1980, as alleged by the applicant. She further asserts that the applicant was born in 1979, after the late Nyanya Odero had died in 1976. She has attached a document, to show court proceedings, where the applicant had allegedly testified that he was born in 1979.
  10. The application was canvassed by viva voce evidence, following directions given on 26<sup>th</sup> October 2023. The hearing happened on 22<sup>nd</sup> May 2024.
  11. The administratrix, Agnes Akinyi Oketch, was the first on the witness stand. Her testimony largely breathed life to her filings. She dwelt mainly on who, between her and the applicant was closely related to the deceased. She testified that the applicant had variously indicated that he was born in 1977 and 1979, to create the impression that he was born during the lifetime of Anyanya Odera, his alleged father. She disclosed that the deceased had other relatives, from his mother's side of the family, who would be closer to the deceased than her.
  12. Gregory Omondi Angayo testified next. He too dwelt on the blood relations between the applicant and the administratrix. He stated that the deceased had brothers, saying all died, and that only 1 of them had offspring, 1 child. He also mentioned that he also had sisters, some of whom got children. He said that he knew Nyanya Odera, who died in 1976, although the certificate of death, availed by the applicant, indicated that he died in 1980. He said that the applicant was born in 1979, by which date his mother had been inherited by Julius Akoth. He said that the court, which had ruled that the applicant was born in 1979, was right. He said that the national identity card held by the applicant indicated that he was born in 1977. He said that the documents that he saw from the national identification bureau did not have the name of Julius Akoth. He stated that the person entitled to the land was the administratrix, for the applicant had already been given land by Julius Akoth. He said that Rose Aluoch Malupo was a purchase of a portion of the land, although he did not see the sale agreement.
  13. The applicant, Daniel Ogola Nyanya, testified next. He denied that Julius Akoth Oyanga was his father, describing him as a relative of his grandfather. He asserted that he was not raised by him, saying that he grew up at the home of his maternal grandmother. He said that he bought land of his own at Segga. He explained that he got a portion of Marachi/Bujumba/114, being Marachi/Bujumba/1336, which was a subdivision from Marachi/Bujumba/114. It measured 1.50 hectares, and it was sold by his mother. He said that Marachi/Bujumba/1335 was the other subdivision from Marachi/Bujumba/114, and it remained with Julius Akoth. He said that Nyanya Odero died in 1980, and he obtained a certificate of death to that effect. He denied telling the court that he was born in 1979, saying that it was Daniel Wafula Nyanya who said that he was born in 1979. He said that the court had given him Marachi/Bujumba/1367, which he then sold to Peter Omina Oyama. He said that Marachi/Bujumba/1367 was family land.
  14. Charles Oyang Akoth was the last witness. He was a son of Julius Akoth Oyanga. He described Gregory Omondi as a first cousin, being a son of a brother of his father. He stated that the administratrix and her mother lived on Marachi/Bujumba/1367, although the same was registered in the name of the deceased. He denied that his father had built a house for the mother of the applicant, but conceded that his father did take care of the mother of the applicant, after the father of the applicant died. He said that they never lived on his father's property, for they had their own.
  15. At the end of the oral hearings, both sides filed written submissions, where they have extensively analysed the facts presented in evidence.



16. The application, that I am called upon to determine, is for revocation of the grant made to the administratrix. The discretion granted by section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya, is for revocation, along 3 broad themes; where the process of obtaining the grant was beset by procedural and integrity challenges, where there was failure of administration, and where the grant had become useless and inoperative.
17. The applicant appears to hinge his case on 2 of those broad themes. The reason, given in the body of the application, is that the grant was obtained through a defective process, beleaguered by fraud and concealment of matter from the court. In his latter affidavit, he shifts ground, and begins to argue that the grant had become useless and inoperative, after the land court reverted the property to the estate of the deceased.
18. The first argument is hinged on the relationships between the applicant, the administratrix and the deceased. The applicant argues that he was closer by blood to the deceased, than the administratrix, for his own father was a blood-brother of the deceased, while the father of the administratrix was a stepbrother of the deceased. Based on that, he argues that the consanguinity rule favoured him. As he was the person closest to the deceased, and, therefore, the one entitled to the estate, he had priority to administration of the estate over the administratrix. That being the case, he implies that the administratrix ought to have complied with sections 51(2)(g) and 66 of the *Law of Succession Act*, and rules 7(7) and 26 of the *Probate and Administration Rules*, with respect to obtaining the consents or renunciations of those with prior right to administration, or issuing citations to them to take up representation.
19. The administratrix counters that by arguing that the applicant was not a son of Nyanya Odera, the brother of the deceased, but of a cousin of the deceased known as Julius Akoth Oyango. That would mean that, being a daughter of a half-brother of the deceased, made her closer to the deceased, than a child of a cousin of the deceased. She discloses that Julius Akoth Oyango inherited the mother of the applicant, upon the death of Nyanya Odera, her husband, and the applicant was born out of that widow-inheritance arrangement.
20. Whether I should revoke the said grant, on that first broad ground, should depend on whether adequate evidence has been placed before me, on the paternity of the applicant. Was he a son of Nyanya Odera or Julius Akoth Oyanga? There was a dispute on the exact date of the death of Nyanya Odera. The administratrix argues that Nyanya Odera died in 1976, while the applicant argues that the date of death was in 1980. There is also a dispute on the date of birth of the applicant. The administratrix says that he was born in 1979, while the applicant asserts that he was born in 1977. Those dates are critical, for, if the deceased died in 1976, and the applicant was born thereafter, it would mean that he was not his biological child; but if he died in 1980, after the birth of the applicant, there would be a realistic chance that the applicant was a biological child of the deceased.
21. So, what is the available evidence? The applicant produced a certificate of death, which indicates that the deceased died in 1980. He also produced a national identity card, which shows that he was born in 1977, and records from the national identification bureau, which identifies his parents, with Nyanya Odera indicated as the father. Against that evidence, on the death of the deceased, the administratrix called oral evidence, provided by a relative of the deceased, who asserted that that death happened in 1976. On the birth, she relied on court proceedings, where the applicant was alleged to have had told the court that he was born in 1979.
22. A document issued by the State carries more weight than an oral statement. It is trite that the contents of a written document cannot be contradicted orally. The contents of a national identity card or of a certificate of death, cannot be contradicted by an oral statement that they are not true. They can only



be impeached in proceedings that audit the process through which they were obtained. That would mean that the oral statement, by the administratrix, or her witness, which contradicts the contents of a national identity card or a certificate of death, cannot stand against those documents. With regard to the court proceedings, where the applicant is alleged to have had stated that he was born in 1979, the contents of the national identity card would hold sway, and the court record would be taken as inaccurate, on the basis that the court either mis-recorded the statement by the applicant, which is wont to happen, for judicial officers are human, or the applicant was mistaken or misled the court.

23. Based on the above, it would mean that the weight of the available evidence would tilt in favour of the applicant, in the sense that it points to his father having died in 1980, and the applicant being born in 1977. That would make him a child of the said Nyanya Odera, and the closest relative of the deceased, as between him and the administratrix. That would then mean that he had priority over her, with respect entitlement to administration, and he should have been notified of the proceedings, or his consent should have been sought. However, at the time the succession proceedings were being initiated he had an active suit in court against the deceased, which he did not discontinue after his death, and which was pursued by the administratrix, as personal representative of the deceased until the estate asset, which the applicant had caused to be registered in his name, was reverted to the estate. The applicant was fighting the estate, hence there was no room for him to be involved in the succession or to be cited to file the cause. In any event, the administratrix did not believe him to be entitled to the estate, as she took him to be a child of a cousin of the deceased, rather than a nephew of the deceased.
24. Of course, the most effective way to prove paternity is through a deoxyribonucleic (DNA) test. It should be the way to go, should the administratrix feel strongly that the applicant was not a nephew of the deceased, but a son of Julius Akoth Oyango. There should be liberty for the administratrix to make an appropriate application in that regard.
25. On the second argument, that the grant had become useless and inoperative, on account of subsequent circumstances, in this case the order made by the Environment and Land Court restoring the estate to the name of the deceased, I do not think that that order had that effect. The grant could only be rendered useless and inoperative where the sole administratrix had died, the administratrix in this case is very much alive. Or where the sole administratrix is adjudged bankrupt, so that she is unable to hold an office of trust, including that of a personal representative, the current administratrix has not been adjudged bankrupt. Or where the administratrix has been rendered physically or mentally infirm, to the extent of being unable to discharge the duties of her office as personal representative, there is no evidence that the administratrix herein cannot discharge the duties of her office on account of infirmity of body or mind. Or where the estate is established to have no assets, which would require administration, in this case the court restored the only asset of the estate to the estate, it having been previously been registered in the name of another person in other court proceedings, meaning that the estate has assets for the administratrix to administer. There is no merit in the claim that the grant has become useless and inoperative.
26. Does the administratrix have an interest in Marachi/Bujumba/1367, in any other capacity, other than as a survivor of the deceased? There was the argument that the administratrix and her mother had an interest in that property which went beyond inheritance rights. It was argued that the parcel of land was intended for both the deceased and the administratrix and her family, but it ended up being registered in the sole name of the deceased. Not much evidence was led on this. However, it emerged, from the proceedings, that the administratrix and her mother were in occupation of a portion of it, and lived within it with the deceased. That could lend some credence to their claim of entitlement to it, for it would appear that no one made an attempt to get them out of the land, suggesting that they had some basis of entitlement to it. I would, therefore, find that the administratrix and her mother had



an interest in that property, which was independent of inheritance. To that extent, she was entitled to administration of the estate.

27. The application before me is for revocation of the grant, not confirmation. I have only addressed the proprietary interests of the administratrix and her family, to the extent that it assists me determine her entitlement to administration of the estate. That would mean that I should not venture to address the issue as to whether Rose Aluoch Malukwa had bought a portion of the land from the deceased, and was, therefore, entitled to a share in the estate. That should be an issue at confirmation of the grant.
28. As it is my finding and holding that the administratrix is also entitled to a share in the said land, and the applicant was initially hostile to the estate, by way of engaging in active litigation with it, I shall not revoke the grant herein, instead, I shall direct that the same be amended, to include the applicant as a co-administrator, as I hereby appoint him as such. The said grant had been confirmed. It would appear that the estate was not transmitted in the terms of those confirmation orders, given that the land was subject to litigation. Indeed it had been transferred into names of other individuals, but has now been restored to the estate, vide the order of the Environment and Land Court. The administratrix would have gone ahead to transmit the estate, as per the confirmation orders, however, in view of my finding that the applicant has an interest in the estate, I shall set aside the orders made confirming that grant, and order cancellation of the certificate of confirmation of the grant, dated 30<sup>th</sup> September 2008.
29. Upon an amended grant of letters of administration intestate being issued to the administratrix and the applicant, the 2 shall apply for confirmation of their grant, within the next 45 days. This matter shall be mentioned on 17<sup>th</sup> December 2024 for compliance, and further directions. The application for revocation of grant, dated 23<sup>rd</sup> August 2023, is disposed of in those terms. Any party aggrieved by the said orders has leave of 30 days, to move to the Court of Appeal. It is so ordered.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 22<sup>ND</sup> DAY OF OCTOBER 2024.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Were, instructed by Fwaya Masakhwe Were & Company, Advocates for the applicant.

Mr. Wanyama, instructed by Wanyama & Company, Advocates for the administratrix.

