



REPUBLIC OF KENYA



**In re Estate of Pamba Manyole (Deceased) (Succession Cause  
322 of 2010) [2024] KEHC 11914 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11914 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 322 OF 2010**

**WM MUSYOKA, J**

**OCTOBER 4, 2024**

**IN THE MATTER OF THE ESTATE OF PAMBA MANYOLE (DECEASED)**

**RULING**

1. This case relates to the estate of the late Pamba Manyole, who, according to certificate of death, serial number 542639, of 13<sup>th</sup> December 2000, died on 23<sup>rd</sup> July 1984. There is a letter, on the record, from the Assistant Chief of Sikinga Sub-Location, dated 1<sup>st</sup> November 2010, which indicates that “the rightful heirs” to his estate were his 4 sons and a buyer, being Andrew Chimau Masakhwe, Gideon Marka Masakhwe, Emmanuel Marka Masakhwe, Peter Chimau Masakhwe and Jacob Wabwire Wanzala. It is indicated that the family had settled on Andrew Chimau Masakhwe as the proposed administrator.
2. Representation, in intestacy, was sought by the said Andrew Chimau Masakhwe, *vide* a petition that he filed herein on 17<sup>th</sup> November 2010. The individuals mentioned in the petition, as survivors of the deceased, are the 4 sons listed in the Chief’s letter, to wit Andrew Chimau Masakhwe, Gideon Marka Masakhwe, Emmanuel Marka Masakhwe and Peter Chimau Masakhwe. The name of Jacob Wabwire Wanzala appears in the liabilities section. The deceased is said to have had died possessed of Bukhayo/Buyofu/566. Letters of administration intestate were made to Andrew Chimau Masakhwe, who I shall hereafter refer to as the administrator, on 1<sup>st</sup> February 2011, and a grant was duly issued on even date. The administrator filed a summons for confirmation of his grant, dated 23<sup>rd</sup> May 2011, proposing distribution of the estate amongst the 5 individuals named in the Chief’s letter and the petition. The confirmation happened on 26<sup>th</sup> September 2011, and a certificate of confirmation of grant issued, on even date, in those terms.
3. I am now called upon to determine a summons, dated 14<sup>th</sup> November 2023, seeking a variety of orders, being that restrictions be made against titles created from Bukhayo/Buyofu/566, the grant made on 1<sup>st</sup> February 2011 and confirmed on 26<sup>th</sup> September 2011 be revoked or annulled, the transmissions done on the basis of the certificate of confirmation of grant dated 26<sup>th</sup> September 2011 be cancelled and the estate be reverted to its original registration, a fresh certificate of confirmation of grant be issued re-distributing the estate in the manner proposed in the instant application, and the Busia County



Surveyor and Land Registrar be ordered to visit Bukhayo/Buyofu/566 to distribute it in the manner proposed in the application.

4. The said application is brought at the instance of Benard Barasa Wabwire, who I shall refer hereto after as the applicant. The grounds, upon which the application is founded, are set out on its face, while the factual background is given in the affidavit sworn in support by the applicant. The grounds are that the proceedings to obtain the grant were defective in substance, the grant was obtained fraudulently or by concealment of material facts from the court, and the grant was obtained by means of untrue allegations of fact.
5. In the affidavit in support, the applicant discloses that he was a son of Jacob Wabwire Wanzala, who had purchased a portion of the estate land from the deceased, on 27<sup>th</sup> May 1973, which purchase was concluded during the lifetime of the deceased, but the deceased died before the purchased portion was transferred to the name of the purchaser. He asserts that the purchaser, Jacob Wabwire Wanzala, by the fact of that purchase transaction, became a beneficiary of the estate of the deceased. It is asserted that there was mispresenting of facts, in P&A 5, that the purchaser had bought 1 acre, for the true fact was that he had bought 3½ acres. It is also asserted that the administrator had misrepresented that he was a son of the deceased, while the true fact was that he and his siblings were grandsons of the deceased. He asserts that the consent of the purchaser, to the distribution proposed at confirmation, was not obtained. He asserts that material facts were not disclosed, false statements were made and the proceedings were defective in substance.
6. Several documents have been attached to that affidavit. There is a certificate of death, in respect of the deceased herein, which I have recited in paragraph 1 of this ruling. There is a copy of the letter from the Assistant Chief of Sikinga Sub-Location, which I have also recited at paragraph 1 of this ruling. Copies of the petition, affidavit in support, the grant made herein and the certificate of confirmation of grant issued by this court, are also attached. He has, too, attached a copy of a certificate of death, in respect of Jacob Wabwire Wanzala, indicating that he died on 4<sup>th</sup> December 2014. There is also a letter from the Chief of Bukhayo East, dated 6<sup>th</sup> October 2023, on the relationship between the applicant and Jacob Wabwire Wanzala. There is also a copy of a grant of letters of administration ad litem, in respect of the estate of Jacob Wabwire Wanzala, for the purpose of prosecuting a civil suit. There is a copy of a document, dated 27<sup>th</sup> May 1973, presumably the sale agreement between the deceased and Jacob Wabwire Wanzala, in what I presume to be one of the dialects of the Luhya language. A copy of the green card for Bukhayo/Buyofu/566, and copies of certificates of official search in respect of the subtitles created following the confirmation of the grant herein.
7. The administrator was served with the said application, and he has responded to it, *vide* an affidavit he swore on 18<sup>th</sup> January 2024. He avers that the deceased was his grandfather, and he his grandson. He states that the deceased had shared out his land, amongst his children, before he died, and Jacob Wabwire Wanzala had been allocated 0.4 hectare. He asserts that he included Jacob Wabwire Wanzala in the petition, and he, Jacob Wabwire Wanzala, attended court when the grant was being confirmed. He further asserts that after confirmation of the grant, Jacob Wabwire Wanzala cooperated with him, during the transmission process, and specifically when the certificate of confirmation of grant was registered at the lands office on 26<sup>th</sup> October 2011. He states that an application for consent of the Land Control Board was sought and obtained, and thereafter the surveyor visited the land and partitioned it. He asserts that the matters raised in the application are outside the mandate of the succession or probate court.
8. A number of documents have been attached to the affidavit of the administrator. There is a copy of the certificate of confirmation of the grant. A certificate of official search, dated 15<sup>th</sup> February 2012, exhibits



the registration of the property in the names of the individuals listed in the certificate of confirmation of grant. There is a copy of the application for consent of the land control board, for partition of Bukhayo/Buyofu/566, to the 5 individuals named in the certificate of confirmation of grant. There is a mutation form, dated 21<sup>st</sup> February 2012, for the partition of Bukhayo/Buyofu/566, amongst the 5 individuals.

9. The applicant swore a supplementary affidavit, on 7<sup>th</sup> February 2024, to respond to the replying affidavit of the administrator. I will only recite the new averments. He states that, although Jacob Wabwire Wanzala was mentioned in the petition as a beneficiary, he was not involved in the succession process, for his consent was not obtained for the confirmation process, nor was he informed of the confirmation application. He further avers that the mutation form was not signed by Jacob Wabwire Wanzala. He refers to an alternative dispute resolution meeting held on 27<sup>th</sup> September 2023, where a resolution was passed, to the effect that the 3½ acres, bought by Jacob Wabwire Wanzala, from the deceased, be given to his family.
10. Directions were given, on 31<sup>st</sup> January 2024, for disposal of the application by viva voce evidence. Oral hearings were conducted on 28<sup>th</sup> February 2024 and 25<sup>th</sup> April 2024.
11. The applicant was the first on the stand. He stated that he was not related to the deceased, and that the only connection with the family of the deceased was that his late father bought land from the deceased in 1973. He referred to a document, which he described as a sale agreement, dated 27<sup>th</sup> May 1973. He stated that after the sale, his late father moved into the land, and co-existed peacefully with the deceased and his family, until after the deceased and his wives died. The sons who survived them were taken away and raised by aunts, and came back after reaching adulthood, and began to cause trouble, around 2012. He stated that he was approached by the administrator to contribute money towards the succession process, but when he raised the money the administrator declined to receive it, telling him to hold on. He said that due to the troubles, that he and the family of the deceased were having, he made reports to the local administration, who convened a meeting, in 2023, which resolved that his late father had bought land from the deceased. He mentioned that the administrator and one Gideon were not sons of the deceased, but his grandsons. He also mentioned that the deceased had 2 daughters, who were alive. He stated that the children of the deceased were not disclosed in the petition.
12. During cross-examination, the applicant conceded that the sale agreement of 27<sup>th</sup> May 1973 appeared to have been recorded in different inks: red, blue and dark blue. He mentioned that the portion talking about 3 ½ acres was in different ink, saying that he could not tell whether the same was added later. He said that he saw the document in 2014, after his father died. He said that the agreement did not bear the full names of his late father, although the name Pamba Manyole appeared at the end. He said that the instant succession proceedings commenced in 2010, when his late father was still alive. He said that his father did not go with the administrator to the Chief to obtain the letter of succession, asserting that his father was not involved, and that he did not sign the mutations. He denied that his late father had been settled on 1 acre of the land. He stated that he was born in 1974. He said that the acreage was established by sight, and was never ascertained by surveyors. He asserted that his family occupied 3½ acres on the ground, and complained that the boundaries were being interfered with. He stated that his late father objected to the use of the land by the family of the deceased in 2014, and reported the matter to the Chief. He said that it would be a lie to allege that all the children of the deceased had died, for 2 were still alive. He said that he was not aware that grandsons could inherit land.
13. Fredrick Andaki Amakando followed. He stated that the administrator was a grandson of the deceased, and that some daughters of the deceased were still alive. He testified that the deceased had only 1 son, who had died. He said that he was not involved in the sale transaction, the subject of the proceedings, but he was aware that the late father of the applicant bought the land. He stated that he had attended



- a meeting between the family of the deceased and that of the applicant. He averred that the meeting talked about raising money for the succession process. He described the portion in dispute as being  $\frac{3}{4}$  acre to 1 acre in acreage, adding that the acreage was reduced after the father of the applicant died.
14. Wycliffe Luvita Bisaho followed. He said that he was born at Sabatia, Vihiga County, and he came to Busia in 1990, initially to Nambale, before he moved to Sikinga, Bukhaya East. He said that he did not know the late father of the applicant. He said he got to know that the portion due to the applicant was 3 acres and above. He said that the family boma stood on less than 1 acre. He said that there was a case in 2023, where he sat as one of the elders, but the meeting did not resolve the problem.
  15. The administrator testified last. He stated that the late father of the applicant did not buy land from the deceased, instead the same had been given to him, for the 2 were related. He stated that the size of the land given out was 1 acre. He stated that the late father of the applicant was alive when the succession cause was initiated, and that he was involved in the confirmation process. He said that when the surveyor visited the land, during the transmission process, he, the late father of the applicant, was alive, and a title deed was issued in his name. He said that the late father of the applicant attended court, during the confirmation process, and had said that he did not have a sale agreement, and he expressed surprise at the one produced at the hearing by the applicant. He asserted that the deceased did not sign the agreement, dated 27<sup>th</sup> May 1973.
  16. During cross-examination, he stated that he was born in 1985, and that he was a child of Meshack Amaka Masakhwe. He stated that they had sat as a family, with his aunts, as his parents were dead, and agreed that the estate should be devolved directly from the grandfather to the grandsons. He explained that the deceased had only 1 son, his father. He stated that his aunts did not sign a consent letter, but asserted that he did not move to court without involving them. He said that his cousins, from his aunt's side, were not interested in the estate. He stated that the deceased had given the 1 acre of land to the late father of the applicant, to assist sort out a domestic issue between his wives. He said that the father of the applicant was a maternal nephew of the deceased. He said that only his second wife was settled on the land, otherwise he had another piece of land, where the other family was. He said that there was no agreement giving 1 acre of land to the late father of the applicant. He said that the late father of the applicant attended court, according to court records, and he also attended the land control board.
  17. At the close of the oral hearings, the parties filed written submissions, which I have read and noted the arguments made. I have noted too that the applicant has cited and relied on *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR (Mwita, J), *Antony Karakenya Njeri v Thomas M. Njeri* [2014] eKLR (JA Makau, J), In *re Estate of Ibrahim Likabo Mibeso (Deceased)* [2020] eKLR (Musyoka, J), *Grace Nzula Mutunga v Joyce Wanza Musila* [2017] eKLR (DK Kemei, J) and *Kaphiphe Ouma vs. Marie Stopes International* (K) Kisumu HCCC No. 68 of 2007 (Ali-Aroni, J), all of which I have read through.
  18. The application before me is for revocation of grant. The grounds upon which a grant may be revoked are set out in section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya. The grounds can be summarised into 3 thematic areas: where the process of obtaining the grant is attended by problems, where the administration process has issues, and where the grant has become useless or inoperative on account of emergent circumstances. See In *re Estate of Luka Modole (Deceased)* [2019] eKLR (Musyoka, J). It can even be summarised into just 2; the process of either obtaining the grant, or the inactive use of the grant after being lawfully obtained. See *Joyce Ngima Njeru & another v Ann Wambeti Njue* [2012] eKLR (Githinji, Nambuye & Maraga, JJA).
  19. The applicant herein has issues with the manner the grant was obtained. Is there material there upon which I can revoke the grant herein? I do not think so. The applicant argues 2 points around this. He



- says that the administrator and the other individuals, listed in the Chief's letter and the petition, as sons of the deceased, were not in fact sons of the deceased, but his grandsons. From what I see from the record, that is in fact true. The deceased had only 1 son, who died, and was survived by his 4 sons, listed in the Chief's letter and in the petition. There was, therefore, a misrepresentation. However, revocation of a grant is at the discretion of the court (see *In re Estate of Simon Mburu Gachuhi (Deceased)* [2019] eKLR (Muchelule, J), In *re Estate of Melitus Mugabe Were (Deceased)* [2020] eKLR (Muchelule, J) and In *re Estate of Peter Nzuki Ndeti (Deceased)* [2020] eKLR (DK Kemei, J), and it would mostly be exercised against the grant where the misrepresentation goes to the core of the matter.
20. The son of the deceased was not overlooked or bypassed by his sons, that is to say the grandsons of the deceased. He was dead, at the time representation was being sought, and that was why the grandsons moved to court in his place. Section 41 of the Law of Succession Act enables grandchildren of the deceased, whose own parents, being the children of the deceased, are dead, to step into the shoes of their dead parents. See *John Gitata Mwangi & 3 others vs. Jonathan Njuguna Mwangi & 4 others*, [1999] eKLR (Akiwumi, Shah & Bosire, JJA), In *re Estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR (Musyoka, J) and *Martin Munguti Mwonga vs. Damaris Katumbi Mutuku* [2016] eKLR (Thande, J), The administrator and his siblings did exactly that, with respect to their dead father, they stepped into his shoes. Their description, as sons of the deceased, was erroneous, and misleading, but it did not disadvantage anyone. There was no proof that that misdescription was intended to defraud the estate. It was, therefore, not consequential. The grandsons were entitled to access the estate directly, following the decease of their own father.
  21. The other argument is that the deceased had daughters, aunts of the administrator and his siblings, some of whom are alive. That is also true, from the record before me. The daughters, by virtue of sections 35(5), 38 and 66 of the *Law of Succession Act*, and rules 7(7) and 26 of the *Probate and Administration Rules*, have a prior right to administration over their nephews, although nephews whose own parents are dead, would stand on solid ground, to claim equal right, to administration with the daughters, their aunts. See *In re Estate of Peter Alusiola Mulamula (Deceased)* [2020] eKLR (Musyoka, J). What could be disconcerting is that the said daughters do not feature at all in the filings herein. They were not disclosed in the Chief's letter, nor in the petition, nor at confirmation. Would their exclusion be good ground to revoke the grant herein?
  22. Naturally, going by sections 35(5), 38 and 51 of the *Law of Succession Act* and of the relevant provisions in the *Probate and Administration Rules*, exclusion of any class of the children of a deceased person from the process, without their consent, would be fatal. Should that be the case here? I do not think so. Firstly, the deceased herein died in 1984, and the succession process did not commence until 2010. The grant was confirmed in 2011, and transmission happened in 2012. Since then the daughters of the deceased have not come forward to contest what transpired, 14 years after this matter came to court. Secondly, the applicant does not claim to speak on behalf of the said daughters, he has not exhibited any authority from them as evidence that he speaks for them, and when the matter came up for hearing he did not call them as his witnesses. Thirdly, it was the case by the applicant, that when the deceased, his wives and son died, the administrator and his siblings were taken away by the same said daughters, who raised them, only for the said grandsons to emerge, upon reaching majority age, to mount succession to their grandfather's estate. I doubt that the said daughters would have remained unaware of what their nephews were up to. I reiterate, that revocation is at the discretion of the court. I would not exercise discretion, to revoke the grant on grounds of exclusion of the daughters, where the daughters themselves have not come forth.
  23. The applicant also argues that his late father was not involved in the confirmation process, for he did not sign any consent to the administrator petitioning for representation, nor did he attend court at



- confirmation. The late father of the applicant was disclosed, in the Chief's letter and the petition, as having an interest in the estate of the deceased. That is an element of involvement. Should he have been involved in the process of obtaining the Chief's letter and the application for the grant? No. Firstly, the Chief's letter is not a requirement of the Law of Succession Act, nor the Probate and Administration Rules, hence there is no provision in the law for its production. See *Musa vs. Musa* [2002] 1 EA 182 (Ringera, J) and *Charity Mukwanyaga Mukungi & another v Esther Cianjoka M'Mantu* [2014] eKLR (JA Makau, J). That being the case, there are no guidelines on who should be involved in the process of obtaining it, and non-involvement in that process should have no impact whatsoever on the process of obtaining the grant. However, whatever I have said in the foregoing sentences should not be seen as diminishing the importance and utility of that letter. See In *Re Estate of Ambutu Mbogori* [2018] eKLR (Gikonyo, J) and In *re Estate of Mukhobi Namonya (Deceased)* [2020] eKLR (Musyoka, J).
24. Secondly, consents to a person to petition for representation is limited to cases where the person applying has an inferior or equal right to those not applying. That is according to rules 7(7) and 26 of the *Probate and Administration Rules*. Consent moves from the person with a superior or equal right to the person applying. See *ETR vs. JKR* [2015] eKLR (Kimondo, J) In *re Estate of Job Kibiwott Tanui (Deceased)* [2016] eKLR (Kimondo, J) and In *re Estate of Gamaliel Otieno Onyiego (Deceased)* [2018] eKLR (JA Makau, J). The late father of the applicant was not a child of the deceased. He was classified as a liability or a purchaser. Going by the classification of entitlement to a grant of representation, given in section 66 of the Law of Succession Act, a creditor, for a liability or purchaser would fall in that class, ranks at the bottom of the pile, after the surviving spouses, children, grandchildren and other relatives of the deceased. As a maternal relative of the deceased, the father of the applicant was not related to the deceased by consanguinity, for inheritance under intestacy is patrilineal. As a creditor he had no prior right to administration over the grandsons of the deceased, and as such, the said grandsons were not obliged, under rules 7(7) and 26, to obtain his consent before applying for representation. See In *re Estate of Dorcas Wanjiku* (Deceased) [2014] eKLR (Musyoka, J).
25. There is the issue of the late father of the applicant not attending court at confirmation. There could be a case there. Since he was disclosed, as a beneficiary, in the Chief's letter and in the petition, and even in the confirmation application, his involvement was called for. Rule 40 of the *Probate and Administration Rules* provides for the process of confirmation. Rule 40(6) provides for filing of affidavits of protest, obviously by individuals who are unhappy with the proposals on distribution made in the confirmation application. See In *re Estate of Eliza Isigi Asamba (Deceased)* [2020] eKLR (Musyoka, J). Such protests can only be mounted by beneficiaries who are aware of what is proposed. See In *re Estate of Robert Mungai Gichinji (Deceased)* [2016] eKLR (Musyoka, J). Rule 40(8) talks of a consent on distribution, accompanying the confirmation application, executed by beneficiaries who support, or are not opposed to, the proposals made in the confirmation application. See *Charles Mutua M'Anyoro v Maria Gatiria* [2009] eKLR (Ouko, J) and In *re Estate of James Muhoro Gichingiri (Deceased)* [2021] eKLR (Muchemi, J). Under rule 40(8), the court should proceed to confirm the grant, where such a consent on distribution is on record, and where affidavits of protest have not been filed. The court could, in such cases, proceed with confirmation, without conducting a formal hearing of the confirmation application. Under rule 41(1), the court is obligated to hear all the parties to the succession cause, including the administrator, the protestor and any other person beneficially entitled. See *Charles Mutua M'Anyoro v Maria Gatiria* [2009] eKLR (Ouko, J). Such a hearing can only be conducted where the beneficiaries are aware of it.
26. So, what happened here? There was no compliance with rule 40(8), for the confirmation application, dated 23<sup>rd</sup> May 2011, was not accompanied by a consent in Form 37. So, there can be no telling whether or not the late father of the applicant was agreeable to the proposals made in that application on distribution. The late father of the applicant did not file an affidavit of protest, to that application, for I



have not seen one in this record. As stated above, such an affidavit can only be filed by a beneficiary who has been made aware of the existence of the confirmation application. I cannot tell whether the late father of the applicant was aware of that application, to enable him file a protest to the confirmation, for I have not seen an affidavit of service, of the application, by the administrator, on the beneficiaries. So, I have nothing to demonstrate that he was aware of those proceedings.

27. Did he attend court, at the hearing of the confirmation application? The administrator asserts that he did. The applicant says that he did not. What does the court record say? The confirmation hearing was on 26<sup>th</sup> September 2011. The Coram names only 3 individuals as being present for that hearing, the Judge, his assistant and the Advocate for the administrator. It is silent on whether the administrator or the father of the applicant were present. It could be that they were, but the Judge did not find it necessary to record their attendance. It could be that they were not in court. The deduction that I ought to make is that the Judge recorded those who made up the Coram that day, and those individuals did not include the administrator and the late father of the applicant. The 2 were not in court, and whatever sentiments the late father of the applicant might have had, on the proposed distribution, were not voiced, and recorded. There is, therefore, nothing to indicate that he acceded to those proposals or not.
28. Is what happened at the confirmation hearing of consequence to the grant? It is not. Section 76 of the *Law of Succession Act* focuses only on the circumstances envisaged in paragraphs (a)(b)(c)(d) of the provision. A grant, according to the provision, should only be revoked on the 3 general grounds that I have mentioned above. Confirmation of grant is mentioned, in section 76(c) of the *Act*, and it is only of consequence where the administrator fails to apply for confirmation of grant within the timelines given in the Act. See In *re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR (Musyoka, J). Whatever happens at the confirmation hearing is of no consequence whatsoever to the grant, in the context of providing basis for its revocation. See In Re: *Maria Wanja Njaungiri Alias Wakabu Muthara (Deceased)* [2000] eKLR (Githinji, J), In *Re Estate of Gitau (Deceased)* [2002] 2 KLR 430 (Khamoni, J), In *Re Estate of Ngugi (Deceased)* [2002] 2 KLR 434 (Khamoni, J) and In *re Estate of Amos Njau Ng'ang'a (Deceased)* [2018] eKLR (Ndung'u, J). So, whether the late father of the applicant attended the hearing of the confirmation application or not, or did not sign the consent to the distribution proposed, or was not served with the application, cannot be an excuse to revoke the grant, for such would not fall among the grounds or reasons given under section 76 of the Law of Succession Act, for revocation of a grant. See In *re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR (Musyoka, J). Unhappiness or dissatisfaction with the confirmation process should attract an appeal, not a summons for revocation of the grant.
29. The principle argument, that the applicant is making, for the revocation of the grant, is that his late father had not bought 1 acre of Bukhayo/Buyofu/566, as allocated to him at confirmation, asserting that the land acquired from the deceased was actually 3½ acres. This argument is the foundation of the revocation sought. The application has been mounted, not because the family of the applicant did not get a share from the estate of the deceased, or because there were problems with the manner the grant was obtained, but rather because the family of the applicant got less than what it thought it was entitled to, 3½ acres of Bukhayo/Buyofu/566. The dispute is not around whether the father of the applicant was entitled to some land out of Bukhayo/Buyofu/566, on whatever basis, but rather what the size of that portion ought to have been, 1 acre or 3½ acres.
30. Is there justification for the family of the late father of the applicant to claim 3½ acres out of Bukhayo/Buyofu/566? The applicant relies on a 1973 document to prove his case, which he claims was the sale agreement, in respect of which his father bought from or was sold to 3½ acres of Bukhayo/Buyofu/566 by the deceased. The applicant did not call any of the persons who were present in 1973,



when that agreement was made, who could bespeak the contents of that document. He, himself, and the administrator, were not even born, when it was allegedly signed, and, therefore, none of them could speak, with any authority, of what it was all about. The said document does not bear the signature of the deceased, and there was no proof that it was handwritten by the deceased himself. Although the document does mention 3½ acres, the applicant said that that acreage was not scientific, for the figure was based on an estimate, worked out by merely looking at what was being sold. Surveyors were not involved in that process then, nor were they engaged thereafter, to ascertain whether the ground alleged to measure 3½ acres, according to estimates made by use of the eye, translated to 3½ acres in scientific terms. He asserts that the family occupies 3½ acres to date, despite the efforts by the administrator and his allies to diminish it. However, he did not present any document to support that assertion. Acreage is determined scientifically, and so a document from a scientist, in the field of determining acreage, would have helped ascertain and prove that the space occupied by the family of the applicant, within Bukhayo/Buyofu/566, was 3½ acres.

31. I find it curious, that the applicant is raising these issues after his father, who was privy to the alleged purchase of the 3½ acres, had died. The confirmation was done in 2011, when he was alive. The transmission was done in 2012, when he was still alive, for he died in 2014. Transmission involved survey works, and survey works cannot be done in secrecy. If he was on the ground, he would have seen the surveyors on the ground, and he would, if he had any objections, raised them then, inclusive of moving the court appropriately. However, he remained silent, until his death in 2014, and his family did not make any move until 2023, 9 years after his death. There was indolence. If the claim were genuine, the applicant, or his father, would have moved the court at the earliest time possible. Although there is no limitation period for filing revocation applications, the test of reasonableness applies, and I do not think that the applicant has met that test.
32. In view of everything that I have discussed above, I am not persuaded that a case has been made out, for revocation of the grant herein. The consequence shall be that the application, dated 14<sup>th</sup> November 2023, is dismissed, with costs. I shall give the applicant leave, of 30 days, to move to the Court of Appeal, should he be aggrieved by the outcome herein. It is so ordered.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA THIS 4TH DAY OF OCTOBER 2024**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Mr. Benard Barasa Wabwire, the applicant, in person.

Advocates

Mr. Bogonko, instructed by Bogonko Otanga & Company, Advocates for the administrator.

