



In re Estate of Gumbe Omwanda alias Tobias Otieno Omwanda (Deceased) (Civil Appeal E037 of 2022) [2023] KEHC 18497 (KLR) (13 June 2023) (Judgment)

Neutral citation: [2023] KEHC 18497 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E037 OF 2022**

KW KIARIE, J

JUNE 13, 2023

**IN THE ESTATE OF: GUMBE OMWANDA ALIAS
TOBIAS OTIENO OMWANDA- DECEASED**

BETWEEN

LAUDENSIA AOKO OSORE APPELLANT

AND

TABITHA AOKO OTIENO RESPONDENT

(Being an Appeal from the ruling in Oyugis Senior Principal Magistrate's SPMC Succession Cause No. 248 of 2018 by Hon. Celesa Okore – Principal Magistrate)

JUDGMENT

1. Laudensia Aoko Osore, the appellant herein, was aggrieved by the ruling of the trial court dated 16th June 2022. The appellant was, by an application dated 1st November 2021, seeking the revocation of the grant which had been confirmed on 5th July 2019. Her application was dismissed.
2. The appellant was aggrieved and filed this appeal. She raised grounds of appeal as follows:
 - a. The learned trial magistrate erred in law and fact by failing to appreciate that the appellant herein had a purchaser's interest and was therefore an interested party in the estate of the deceased Tobias Otieno Omwanda, and hence had a right and expectancy in the said estate.
 - b. The learned trial magistrate erred in law and fact by finding that the appellant herein lacked locus standi in the succession cause in presenting the application for revocation of grant.
 - c. The learned trial magistrate erred in law and fact by failing to find that the appellant herein was an interested party in terms of the provision of Section 79 of the *Law of Succession Act*, with standing to challenge the grant as issued and confirmed in this succession cause.



- d. The learned trial magistrate erred in failing to consider the documentary evidence and the submissions presented by the appellant in support of her prayers, which would have otherwise made the trial magistrate to reach a different finding.
3. The appeal was opposed by the respondent through the firm of Kisaka & Associates Advocates. The respondent raised the following grounds:
 - a. That the agreement relied on by the appellant was a nullity.
 - b. That the appellant lacked locus standi.
 - c. That the appeal lacks merit.
4. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of *Selle vs. Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.
5. Otieno Omwanda, the deceased herein died on 27th July 1995. The appellant contended that there were a series of sale agreements dated 4th December 1991, 9th July 1992, 28th November 1995 and 2nd July 2015.
6. The appellant claimed that the purchases were made by Joseph Osore Wambia, her deceased husband. She was issued with a letter of limited grant of letters of administration ad litem dated 19th November 2021 on behalf of her deceased husband's estate.
7. In the agreement of 4th December 1991, the owner of the land subject of the agreement though not described, is Benson Omwanda. In the agreement of 9th July 1992 the issue was the payment of balance to Benson Omwanda. On 9th July 1992 Benson Omwanda added two acres to Joseph Osore Wambia.
8. On 28th November 1995, some payment was made towards the purchase of land whose owner is described as Edward Tei Omwanda and finally the document dated 4th April 1997 the owner of the land is described as Benson Omwanda.
9. In all these transactions, the land parcel has not been described and nowhere does Gumbe Omwanda Alias Tobias Otieno Omwanda, the deceased herein, feature.
10. The appellant herein did not establish that her deceased husband's estate has a claim against the estate of Gumbe Omwanda Alias Tobias Otieno Omwanda, the deceased herein.
11. I accordingly find that her appeal lacks merit and dismiss it with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 13TH DAY OF JUNE, 2023

KIARIE WAWERU KIARIE

JUDGE

