



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Bunde Odongo (Deceased) (Succession Cause
3 of 2018) [2023] KEHC 20119 (KLR) (12 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20119 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
SUCCESSION CAUSE 3 OF 2018**

KW KIARIE, J

JULY 12, 2023

IN THE MATTER OF THE ESTATE OF: BUNDE ODONGO.....DECEASED

BETWEEN

MARGARET ADHIAMBO ONYANYI APPLICANT

AND

JOSEPH ODHIAMBO BUNDE RESPONDENT

RULING

1. Margaret Adhiambo Onyanyi, the applicant herein, moved the court by summons for revocation or annulment of grant dated 3rd May, 2022. It was brought under section 76 of the *Law of Succession Act*, Rules 36 (3), 44, and 73 of Probate and Administration Rules. She is seeking the following orders:
 - a. The grant of representation issued to the respondent/petitioner vide Homa Bay SRM Succession Cause No.56 of 1994 on the 12th October, 1994 be annulled/revoked.
 - b. The honorable court be pleased to make a declaration that the applicant is entitled and best suited to administer the estate of the deceased and to issue such grant of representation to the applicant.
 - c. The costs of this application be provided for and the same be paid by the respondent.
2. The application was premised on the following grounds:
 - a. The proceedings to obtain the grant were defective in substance.
 - b. That the petitioner obtained the grant through fraud, concealment and misrepresentation of facts.
 - c. That the respondent obtained the grant by concealing from the court the full and active beneficiaries of the estate.



- d. The respondent has transferred land parcel No. Kanyada/Kotieno/Katuma A/2511 in his name.
 - e. The respondent has since demonstrated his will and intention to deny the applicant and other beneficiaries use of any portion of the said.
 - f. That the applicant is a beneficiary to the deceased's estate being the deceased's biological daughter and therefore most suited to administer the estate.
3. The respondent in opposing the application raised the following grounds:
- a. That the applicant herein is the respondent's sister and a daughter of the deceased.
 - b. That respondent did not deem it fit for the applicant to be listed as a beneficiary as she had already been married.
 - c. That the respondent did not conceal anything from the court for he was the only son of the deceased who was at home and deemed it fit to list himself as the only beneficiary in order to safe guard the deceased's estate.
4. Section 38 of the *Law of Succession Act* provides as follows:
- Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.
- This section is blind to two issues namely; whether the child is male or female and whether the child is married or not.
5. For the respondent to contend that he left his sister out as a beneficiary for she was married was therefore contrary to the provisions of this section. The law equally does not provide that it is only the male child who can inherit.
 6. I therefore find that the application has merits. The grant is hereby annulled and both the applicant and the respondent are appointed administrators of their father's estate. I order that the two file a schedule of distribution of the estate within 30 days of this ruling failure to which the grant will automatically be revoked.
 7. Costs to the applicant.

DELIVERED AND SIGNED AT HOMA BAY THIS 12TH DAY OF JULY, 2023

KIARIE WAWERU KIARIE

JUDGE

