



REPUBLIC OF KENYA



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In re Estate of Bakari Yamboko alias Yamboko Oranga (Deceased) (Succession Cause 98 of 1989) [2023] KEHC 19772 (KLR) (7 July 2023) (Ruling)

Neutral citation: [2023] KEHC 19772 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 98 OF 1989**

PJO OTIENO, J

JULY 7, 2023

**IN THE MATTER OF THE ESTATE OF BAKARI YAMBOKO ALIAS
YAMBOKO ORANGA (DECEASED)**

BETWEEN

MOURICE BARASA ORANGA OBJECTOR

AND

JOHN BARAZA OMUNANDI PETITIONER

RULING

1. Before me is the applicants summons for revocation of a grant dated December 14, 2022 brought pursuant to section 76 of the *Law of Succession Act* and rules 55(1) -(5), 49 & 47 of the *Probate and Administration Rules* seeking the orders that: -
 - a. That the grant of letters of administration issued to John Barasa alias John Barasa Omunandi on June 29, 1989 and confirmed on May 2, 1990 herein be revoked and/or annulled and a fresh grant do issue in the names of the objector/applicant (Maurice Barasa Oranga).
 - b. That the costs be provided for.”
2. The application is supported by the affidavit of Mourice Baraza Oranga, a grandchild to the deceased, sworn on December 14, 2022 in which he avers that the petitioner is not a family member of the deceased and thus has no locus standi to administer the estate of the deceased. He claims that the petitioner fraudulently and deliberately carried out the succession process secretly and without the knowledge of family members with the intent to disinherit them.
3. The application was opposed by the replying affidavit sworn by John Baraza Omunandi on March 7, 2023 in which he contends that when the deceased died on August 19, 1986, he left behind a son by the name if Baraza Yamboko Oranga and two daughters. He claims that the son inherited parcel of



land known as East/Wanga/Eluche/815 which he sold to him without any objection from the sisters. The deceased's left for him the estate land and went to settled his family in East/Wanga/Eluche/816. He states that it was the son who asked him to file this cause in his capacity as the purchaser which he did and the property subsequently being registered in his name. he reiterates that the cause was filed with the consent of the son to the deceased who not only encouraged him but also released to him the title deed for purposes of transfer. On the need to get the consent of the objector, the administrator contends that by that time he might not have been born or was a minor whose consent could not be sought and obtained. To the administrator therefore the objection is belated and merely intended to deprive him the property which has become the ancestral land for him, his children, grandchildren and great grandchildren. It is stressed that in presenting the petition, he did not make any false statement nor conceal his interests as a purchaser of the estate land and then exhibited the documents of purchase and transmission to demonstrate that he hid nothing and that the process was transparent and not fraudulent.

Issue for determination

4. I have perused the application as well as the replying affidavit as the only documents filed by parties and discern that the only issue that arises for my determination is whether the summons for Revocation Meets the Threshold Set by Section 76 Of The Act.
5. Section 76 of the *Law of Succession Act* allows application for revocation of grant to made at any tile and sets out the grounds upon which a grant may be revoked to include; substantive defects in the proceedings leading to obtaining the grant, fraud by making of false statement or concealment of material fact or untrue allegations, failure by the administrator after due notice and without reasonable cause to either apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; to proceed diligently with the administration of the estate; to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the law or that the grant has become useless and inoperative through subsequent circumstances.
6. *In Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR the court interpreted the provision on revocation of the grant and said: -

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason



or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

7. Here, it is the contention of the objector that the petitioner obtained the grant for the deceased’s estate fraudulently in that he failed to inform the family of the deceased. The petitioner on the other hand argues that he was given the go ahead to file this petition by the son of the deceased since he was a bona fide purchaser for value for parcel of land known as East/Wanga/Eluche/816 (hereinafter referred to as “the suit property”).
8. While it is clear to me that the petitioner made no untrue statement as to suggest an impropriety on his part, it is also of interest to the court that the assertion by the petitioner that the only son to the deceased consented to him administering the estate having sold to him the only land with the concurrence of the sisters has not been controverted by the objector. It is equally of interest to the court that the allegation that as at the time the grant was issued and transmission affected the objector was not born or if born was a minor whose consent could not be sought nor obtained has not been challenged. Those fact when viewed against the fact that the objectors father never resisted the administrators occupation till his death and the fact that the objector waited till his father and aunts died to bring the application, leads the court to make an inference that, the actions by the administrator was sanctioned or approved by those three children of the deceased and the objector knew that any challenge would be resisted by those children of the deceased hence his tact to raise the matter when all have died.
9. It is noted that the grant was confirmed on May 2, 1990 whereas the application for revocation was instituted January 17, 2023 almost 33 years later. The reason for the inordinate delay has not been explained at all. The court is however alive to the fact that the law of succession does not have a time limitation and the *Limitation of Actions Act* does not apply. However, that permissive position of the law should not be applied mechanically so that every descendant wakes up at own time and leisure to stir the hornet his predecessors dared not stir. This case presents to the court the clearest of instances that delay definitely defeats justice. I see no justice to be served by revoking the grant and therefore resurrecting this 34 years old litigation to start only for parties to go before another court to establish whether or not the petition went into the land with the authority of the objector’s father.
10. The petitioner has indicated that following the confirmation of the grant he proceeded and procured a title deed for the suit property and has produced a certificate of official search which depicts him as the registered proprietor of the suit property. The primary function of a probate court is the distribution of the deceased’s estate and it becomes functus officio once the estate gets transmitted even though the matter may be revisited where an inequity is disclosed. Here I see no undoing by the petitioner to merit undoing the gains made so far. Litigation must be brought to an end.
11. Accordingly, for the reasons set out above, this court finds no merit in the applicant’s application dated December 14, 2022 and the same is thus dismissed with no order as to costs. Let the Court file be closed.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 7TH DAY OF JULY 2023.

PATRICK J. O. OTIENO

JUDGE

In the presence of:-

Objector/Applicant in person

Ms. Khatshi for the Petitioner/Respondent

Court Assistant: Polycap

