



**In re Estate of Owade Oriema (Deceased) (Succession Cause
71 of 2014) [2023] KEHC 22466 (KLR) (18 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22466 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 71 OF 2014
RE ABURILI, J
SEPTEMBER 18, 2023
IN THE MATTER OF ESTATE OF OWADE ORIEMA (DECEASED)
AND
IN THE MATTER OF APPLICATION FOR REVOCATION OF GRANT**

BETWEEN

MAGDALINA OLAL APPLICANT

AND

BENTER OGADA OWADE RESPONDENT

AND

DOUGLAS MOMANYI MAKORI INTERESTED PARTY

RULING

1. This Succession Cause is in respect of the estate of the late Awade Oriema who died on 27th January 1987 as per the annexed death certificate No. C.259939 issued on 2nd August 2012.
2. From the Chief's letter dated 10th June 2013, the deceased died intestate leaving behind a wife who also died and so did the rest of the children of the deceased, leaving the petitioner Benta Ogada Owade the only surviving daughter and a granddaughter Agnes Ajwang Oriwa.
3. The Petitioner is Benta Ogada Owade. In her Petition for grant dated 30th January 2014, she listed herself and Agnes Ajwang Oriwa a granddaughter as the only surviving beneficiary and the estate property as comprising LP. Nos. N. Nyakach/Kabodho West/2058 and 2069 respectively.
4. A grant was issued to her on 25th August 2014 after gazettelement on 28th February 2014 vide Gazette Notice No. 1366 Vol CXVI-31.



5. On 27th July 2015, the court issued a Notice under Section 73 of the *Law of Succession Act* for the Petitioner to apply for confirmation of grant. One 19th August 2015, summons for confirmation of grant were filed and in the schedule of distribution, as per the affidavit sworn by Benter Ogada Ohowa on 24th June 2015, she was to get the whole property of the estate. A document in the name of Agnes Ajwang Oriwa as a consent to the certificate of confirmation of grant, signed on 14th August 2015 is also filed.
6. The grant was confirmed on 2nd February 2015 and amended on 30th October 2015.
7. From the green card for land Parcel No. 2016, on 10th February 2016, the administrator Benta Ogada Owade had the land transferred into her name upon which she sold and transferred the same to Douglas Momanyi Makori on 15th October 2019.
8. On 18th May 2023, one Magdalena Olal the applicant/objector herein filed summons for revocation of grant issued to Benta Ogada Owade claiming that she is the daughter in-law to the deceased and that she was totally disinherited as no provision was made for her. That she had learnt that the Administrator had sold parcel No. 2069 where the applicant's house stands and where the remains of her husband were interred, a decision which would leave her homeless. That she is of advanced age and fears that she will be evicted from the suit land.
9. Despite service of the summons for revocation of grant upon the Respondent Administrator, she never appeared or file any document to challenge the summons. In the intervening period, vide an application dated 5th June 2023, one Douglas Momanyi Makori filed an application seeking to be enjoined to this cause as an interested party on the ground that he purchased land parcel No. Kisumu/Kabodho West/2029 on 5th July 2019 from the administratix after the grant was confirmed.
10. With no objection from the administrator Benter Ogada or the applicant's counsel, on 20th June 2023, this court granted leave for Douglas Momanyi Makori to be enjoined to this cause an interested party. The court also gave directions on the disposal of the summons for revocation of grant.
11. As at 3rd July 2023 when the file was before the Deputy Registrar to confirm compliance with the directions of 20th June 2023, only the applicant herein had complied and filed written submissions dated 27th June 2023. The Deputy Registrar reserved the matter for Ruling on 18th September 2023 and placed the file before me on 3rd July 2023 to enable me write the ruling and that is exactly what I have done, with full knowledge that all parties were given the opportunity to file their submissions on record to advance their respective positions.

Determination

12. I have carefully considered the summons for revocation of the grant issued to the petitioner, the submissions in support and what the Interested Party introduced in his application to be enjoined as an interested party on account that he purchased the land from the petitioner/administrator after the grant was confirmed and that the objector herein was a witness for him in the sale agreement to which she had no objection to the administratix selling the land to the interested party. Further, that the Objector had her own portion of land as evidenced by the search certificate for Kisumu/Kabodho/West/2053 dated 15th August 2019 measuring 0.32 Ha.
13. On the other hand, the Objector/Applicant swore an affidavit in support of her summons for revocation of grant asserting that she resides on land parcel No. Kisumu/Kabodho West/2069 where her house stands and which land was sold by the Respondent/Petitioner to the Interested Party herein and where the remains of her husband were interred hence she stands to be disinherited.



14. In the supporting affidavit filed by the Interested Party Mr. Douglas Momanyi Makori, he deposed that he bought land parcel No. Kisumu/Kabodho West/2069 from the Petitioner vide an agreement dated 5th July 2019 and that the Objector herein Magdalena Olal was a witness to the said Agreement.
15. The Sale Agreement dated 5th July 2019 and annexed to the interested party's affidavit indeed shows that Benter Ogada Ohowa sold the subject parcel of land to the Interested Party at Kshs.1,120,000. The land is said to be measuring five (5) acres and one of the witnesses for the purchaser is listed as Magdalena Olal and she is said to have signed with a name "MADA".
16. On 15th October 2019, the interested party was registered as proprietor of the suit land and a title deed issued to him. In a letter written by the Assistant Chief, West Kabodho Location and dated 22nd August 2019, it is stated therein that Benter Ogada Ohowa wanted to sell the suit land to Douglas Momanyi Makori and that Benter and Magdalena had agreed over the deal and that the search certificate annexed for land parcel No. Kisumu/Kabodho West/2053 showed that Magdalena was not landless. Magdalena also signed on the said letter and so did Benter and Douglas.
17. Magdalena did not respond to the above issues raised by Douglas. I observe that Land Parcel No. Kisumu/Kabodho West 2053 was registered in the name of Magdalena Alal Oriema on 1st February 1977. The estate of the deceased comprised parcel Nos. N. Nyakach/Kabodho West 2058 and N. Nyakach/Kabodho West/2069 which parcels were to be taken up by the administrator herein Benter Ogada Ohowa in whole.
18. From the letter dated 27th January 2023 by chief Kabodho West Location, the deceased was married to only one wife and had children who died leaving the petitioner Benter Ogada Ohowa as the only surviving child as all her siblings died. However, the Objector herein is named as the daughter-in-law.
19. Section 39 of the *Law of Succession Act* provides that where the intestate has left no spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority:-
 - a. Father or if dead;
 - b. Mother; or if dead;
 - c. Brothers and sisters and any child or children of deceased brothers and sisters, in equal shares or if none;
 - d. Half-brothers and half-sisters and any child or children of the deceased half-brothers and half-sisters, in equal shares; or if none,
 - e. The relative who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.
20. Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the state, and be paid into the consolidated fund.
21. In the instant case, the applicant is a daughter-in-law of the deceased. Her husband who was the son to the deceased is since deceased. They were not blessed with any child. It is not clear whether he predeceased his father. The applicant has not disclosed these facts to the court. However, it is clear that she has no blood consanguine relation with the deceased. There is evidence that she has her own parcel of land registered in her name and she has not disputed the facts deposed that when the Petitioner/ Respondent obtained the grant, she had it confirmed before negotiating to sell the said land to the interested party herein, which land was already registered in the administrator's name after the grant was confirmed in her favour. In addition, there are undisputed facts that the applicant herein was part



- of the deal to dispose of the said land as she signed on the sale agreement as a witness for the purchaser during the sale of the said land.
22. It was also at that same time that the applicant confirmed that she had her own parcel of land hence she was not being rendered homeless or landless. An official search Certificate from the lands office was available at the time of the said sale confirming that the applicant had her own land hence she was not homeless.
 23. In my view, this application coming for revocation of grant confirmed 9 years ago and the land in question having been sold in her presence and full view with her consent and acknowledgment that she had her own land, which depositions on oath she has not controverted at all, is an afterthought and as seen from the letter written by some persons who are not parties to this cause, the third parties in the name of the family of the applicant's husband want to claim for the land which never belonged to them as communal land in the first instance. If that were not to be the case, nothing prevented them from seeking to be enjoined to these proceedings as interested parties. As stated above, the deceased was survived by his daughter the petitioner/administratrix who was in the first degree of consanguinity and who was entitled to inherit his estate as a matter of right. If that were not to be the case, one wonders what these so called family members of the deceased have been doing since his demise. They would not have watched the land being sold to a stranger.
 24. In addition, the applicant has not disclosed to this court why if at all, she is not residing on her own parcel of land which was registered in her own names at the same time that her deceased intestate father in-law became the registered proprietor of his own parcel of land subject of these succession proceedings.
 25. The Respondent/petitioner/administrator was the daughter of the deceased. Although she did not list the applicant as one of the beneficiaries, I am unable to find evidence that the applicant was a dependant of the deceased or that she resided on this specific suit parcel of land and not on the other parcel of land which was also registered in the deceased's name which she has not mentioned or on her own parcel of land which is registered in her own name.
 26. The applicant has not demonstrated that she ought to be recognized as one of the beneficiaries of the estate of the deceased by virtue of her marriage to the deceased's son, which son died leaving no child and where the applicant has land registered in her sole name, exclusive of what the deceased owned.
 27. In my view, whereas a daughter in-law can be recognized as a dependant of the deceased by virtue of her marriage to the deceased's son or where she was found to be living on the suit land, I find that that circumstances of this case are different because the applicant has her own parcel of land, and has selectively with the apparent push from third parties, chosen to challenge the transfer of only one parcel of land, leaving out the other.
 28. The applicant has also not come to court with clean hands as she was party to the sale and transfer of the land in question to a third party for whom she acted as his witness, a deposed fact which she has not controverted. The sale and transfer was, to say the least, long after the respondent had the grant confirmed in her favour.
 29. No doubt, this court has discretion to determine the relatives of the deceased based on the nearest degree of consanguinity and affinity. Consanguinity relations take precedence over affinity. The applicant is in the latter category and there is no evidence that she was dependant of the deceased.
 30. Whereas the applicant would be entitled to benefit from the estate, she has not proved her dependency or that she lived on the land subject of succession proceedings giving rise to the transfer by way of sale to



the interested party herein, considering that she has her own separate piece of land registered in her own name, which land was registered at the same time as the land subject of these objection proceedings.

31. In my view, the applicant has not proved any of the conditions for revocation of grant as set out in section 76 of the [Law of Succession Act](#), on a balance of probabilities. I find the summons for revocation of grant filed on 18th May 2023 not merited. The same is hereby declined and dismissed with no orders at to costs.
32. I so order
33. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 18TH DAY OF SEPTEMBER, 2023

R. E. ABURILI

JUDGE

