



REPUBLIC OF KENYA



**In re Estate of Musa Rengo Nabiswa (Deceased) (Succession Cause  
3 of 2023) [2023] KEHC 23449 (KLR) (6 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 23449 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 3 OF 2023**

**PJO OTIENO, J**

**OCTOBER 6, 2023**

**IN THE MATTER OF THE ESTATE OF MUSA RENGU NABISWA  
(DECEASED)**

**BETWEEN**

**JOSEPH K. RENGU (DECEASED AND SUBSTITUTED BY LAWRENCE  
RENGO KAPCHENGA ..... 1<sup>ST</sup> RESPONDENT**

**THE CHAIRMAN, BOARD OF MANAGEMENT LUGARI TOWNSHIP  
PRIMARY SCHOOL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**TOM WANJALA ..... OBJECTOR**

**JUDGMENT**

1. Musa Rengo Nabiswa (“the Deceased”) died on February 15, 1999 and according to the Petition for Grant of Letters of Administration Intestate dated December 18, 2002, the deceased was survived by seven sons namely;
  - a. Joseph K. Rengo
  - b. Peter Sante
  - c. Patrick Nalianya Rengo
  - d. Lawrence Kapachanga Rengo
  - e. Tom wanjala Rengo
  - f. Daniel Khaoya Rengo
  - g. Edward Rengo



2. According to the petition, the estate of the deceased comprised of properties known as Kakamega/lugari/1721 And Kakamega/lugari/1722.
3. In the Certificate of Confirmation of Grant dated December 14, 2005, the court decreed that parcel of land known as Kakamega/lugari/1722 be distributed amongst Joseph K Rengo, Patrick Nalianya Rengo, Lawrence Kapchnaga Rengo and Peter Sanda in equal shares whereas Tom Wanjala was to inherit Kakamega/lugari/1721 in whole.
4. By way of summons for revocation of grant dated November 7, 2016, the objector moved this court to have the grant revoked on the grounds that he was not involved in the proceedings leading to its issuance and confirmation of grant and that he has established a home in Kakamega/lugari/1721, whose share he is entitled to, and to which he came to learn had been disposed to Lugari Township Primary School without his knowledge or consent.
5. He further stated in his affidavit in support of the summons for revocation that the deceased was survived by eight sons namely a) Edward Kimungui; b) Musumba; c) Daniel Khaoya; d) Tom Wanjala; e) Musa Rengo (deceased); f) Joseph Rengo; g) Lawrence K Rengo and h) Peter Kitunyi and that the estate of the deceased comprised of parcels of land known as Kakamega/lugari/52; Kakamega/lugari/1721,1722,1723,1724 & 1725 And Kakamega/chekalini/66,68 and 54.
6. By its ruling dated March 18, 2021, the court directed that parties do avail official land searches for the properties listed by the objector before giving further directions.
7. In compliance with the orders, the 2<sup>nd</sup> respondent in the affidavit sworn by Shaban Musumba Haji on June 5, 2023, in his capacity as the chairperson of the 2<sup>nd</sup> respondent has indicated through the production of searches that Kakamega/lugari/1721 is registered in the name of Lugari Township Primary School; Kakamega/lugari/1722 in registered in the name of Musa Rengo Nabiswa; Kakamega/lugari/1723 is registered in the name of Edward Ali Rengo; Kakamega/lugari/1724 is registered in the name of Paulus Barack Munyankho Musumba; Kakamega/lugari/1725 is registered in the name of Wanjala Rengo Daniel whereas the green cards to Kakamega/chekalini/68,66 & 54 appear to show that the properties were registered in the names of Josiah Mukabane Induswe, Christopher Akhoma Ashibila and Peter Kituyi Rengo.
8. With the objector not having provided a history of the ownership of the properties they cite to have been owned by the deceased and with the production of the official searches showing the ownership of the different parcels, and it being that the property of a deceased can only be transferred by way of a confirmed grant, the Court can arrive at the conclusion that the estate of the deceased comprised of the properties listed in the confirmed grant.
9. Regardless, the objector only appears to contest the disposal of Kakamega/lugari/1721. He claims he was not involved in the succession proceedings. A perusal of the court file shows that the objector was involved in the proceedings because he swore an affidavit on October 25, 2004 and further signed a letter consent in support of the mode of distribution of the estate of the deceased as depicted in the confirmed grant. The objector has not alleged nor proved his signature was forged. In the absence of such proof the record points to the fact that he was aware and was involved in the succession proceedings. The application for revocation thus cannot succeed but is dismissed.
10. When this matter came before court on 15/3/2023, Mr. Wanjala, the Objector, indicated to the court that the deceased died after sharing out his land and he wished that he inherits Kakamega/lugari/1721 and 1722, which notably, was the entire estate of the deceased according to the official searches.



11. Mr. Ondieki counsel for the Petitioner takes the position that the grant was confirmed in the presence of the Objector in which he was given Kakamega/lugari/1722 which measures 1.6Ha while his brothers were to share equally Kakamega/lugari/1721 measuring 1.5Ha and since Kakamega/lugari/1722 was too small to be shared among the four brothers, they opted to sell it to Lugari Township Primary School.
12. Kakamega/lugari/1721 was disposed after the confirmation of the grant vide a sale agreement dated November 7, 2016 and it was sold by Joseph K Rengo, the administrator at the time who is since deceased, on behalf of and with the consent of the beneficiaries of the parcel. There is no contention to this fact.
13. By dint of section 93 of the *Law of Succession Act*, that all transfers of any interest in immovable property made to a purchaser by a person to whom representation has been granted shall be valid, the 2<sup>nd</sup> respondent is considered a purchaser for value for Kakamega/lugari/1721.
14. The application of section 93 of *Law of Succession Act* was explained by the court of appeal in *Jacinta Wanja Kamau vs Rosemary Wanjiru Wanyoike and Another* (2013) eKLR where the court stated;  

“ Before the appellant could seek protection as a purchaser under Section 93 of the Act, she had first to prove that she is a purchaser. In this case, there was no prima facie evidence that she was a purchaser. In any case and as provided by Section 82(b) (11) of the Act it would have been illegal for Beatrice Njeri Mugondu to sell the land before the confirmation of the grant.”
15. Accordingly, for the reasons set out above, this court orders that: -The Objector’s/Applicant’s application for revocation of grant dated 7/11/2016 lacks merit and is thus dismissed. It is hereby further directed that the Land Registrar does cancel the registration of Joseph K. Rengo as the proprietor of Kakamega/lugari/1722 and the same be registered in the name of Tom Wanjala as per the Certificate of Confirmation of Grant dated December 14, 2005.
16. This being a family matter, I make no order as to costs.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 6<sup>TH</sup> DAY OF OCTOBER 2023.**

**PATRICK J. O. OTIENO**

**JUDGE**

**IN THE PRESENCE OF:**

**MR. ONDIEKI FOR THE PETITIONER/1<sup>ST</sup> RESPONDENT AND HOLDING BRIEF FOR MR. TARUS FOR THE INTERESTED PARTY**

**THE OBJECTOR/APPLICANT PRESENT IN PERSON**

**COURT ASSISTANT: POLYCAP MUKABWA**

