



REPUBLIC OF KENYA



In re Estate of Joseph Akunda Okwabikha alias Joseph Akunda (Deceased) (Succession Cause 55 of 1984) [2024] KEHC 14641 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14641 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 55 OF 1984
SC CHIRCHIR, J
NOVEMBER 14, 2024
IN THE MATTER OF THE ESTATE OF JOSEPH AKUNDA
OKWABIKHA ALIAS JOSEPH AKUNDA (DECEASED)**

BETWEEN

NAOMY MITEKAH ORENI APPLICANT

AND

ALICE ONDECHE CHIMASIA AND ALBERT OBADIAH AS PERSONAL REPRESENTATIVE OF THE ESTATE OF OBADIAH SYLVESTER ONGADA (DECEASED) RESPONDENT

RULING

1. This cause relates to the Estate of Joseph Akunda Okwabikha who died on 13th November 1983. His estate comprised of E/Bunyore/ Ebungwe/2275.(suit property)
2. The respondent’s father ,Obadiah Sylvester Onganda applied for grant of letters of administration presenting himself as the son , and the only person to inherit the estate of the deceased.
3. On 16th March 2012, the daughter-in-law to the deceased filled summons for revocation of the grant accusing the respondent’s father of making a false statement of fact, by claiming that he was the son of the deceased. Those summons were dismissed.
4. The present Application is brought by one Naomi Mitekah Oreni who identified herself as the daughter of the deceased. The application seeks orders that:
 - a. (spent)
 - b. (spent)



- c. That this honourable court revokes the letters of administration intestate issued on 5th May 1984 appointing the Respondent's father as the administrator of the land parcel E/Bunyore/Ebunagwe/2275 and appoint the Applicant herein as the administrator of the estate of the deceased herein.
5. The application is supported by the affidavit of the applicant sworn on 12th February 2024. she states that the respondent's father made a false statement and concealed from the court material facts when he petitioned for the Grant.
6. The Applicant goes on to state that respondent's father obtained forged documents which he then used to petition for letters of administration intestate , back in the year 1984. She claims that the respondent's father was arrested and charged for the forgery but he died before the case was concluded.
7. The Application was canvassed by way of written submissions

Applicant's submissions

8. It is the Applicant's submissions that she has satisfied the conditions for revoking a Grant. She reiterates that the petitioner's father used forged documents to apply for the grant; that he misrepresented himself as the son of the deceased when he was not; that at the time of his demise he was on trial on forgery charges in criminal case No. E843 of 2021 ; and that the grant that the respondent's father used was forged.
9. The Applicant further points out that the deceased Administrator applied for the grant in his alleged capacity as the son of the deceased , while at the same time claiming a purchaser's interest in land parcel No. E/Bunyore/Ebunagwe/2275; that in any event the sale agreement that was used to allegedly prove the sale was just a copy, not an original.
10. It is further submitted that the deceased's Administrator was simply an intermeddler with the deceased's estate.
11. Finally, on the respondent's assertion that the Application is resjudicata, the Applicant submits that the Application dated 16/3/2012 was in respect of separate facts and the Applicant was different .

Respondent's submissions

12. The Respondent submits that there is no estate to be administered as the deceased had shared out his property at the time of his demise; that the suit property had been sold to his late father and who had equally sold it to another person; that the respondent's family was no longer in possession of the land.
13. The respondent points out that the grant was obtained about 40 years ago and the Applicant has never raised any complain for all these years.
14. On allegation of fraud, it is submitted that the same has not been proved, and therefore the Applicant has not met the requirements of section 76 (b) and (c) of the *law of succession Act*.
15. The respondent further submits justice Thurairaja (as she then was) had arrived at the determination that the respondent's father had lawfully purchased the property.
16. The respondent further insists that the Application is resjudicata as the Applicant's sister had filed a similar Application ,which was dismissed.



Determination

17. Section 76 of the *law of succession Act* provides as follows: A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion: -
- a) that the proceedings to obtain the grant were defective in substance;
 - b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
 - c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
 - d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - i) To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - ii) to proceed diligently with the administration of the estate; or
 - iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - e) that the grant has become useless and inoperative through subsequent circumstances.
18. The grounds that have been advanced in this case is that the first Administrator, who was the father of the 2nd respondent herein used forged documents to petitioned for the grant of letters of Administration; that he misrepresented himself as the child of the deceased . consequently it is argued, the obtaining of the letters was tainted with fraud and qualify for revocation under the aforesaid section of the *law of succession Act*.
19. The allegation of forged documents has been made without any prove. Indeed the Applicant has not stated , what document was forged. It has further been stated that the respondent ‘s father was facing trial on forgery charges at the time of his death. The criminal trial , having ended prematurely cannot be used against the respondent’ father. The extensive citation of the testimonies of the prosecution’s witnesses in the criminal case is not helpful to the Applicant either. It was incumbent upon the applicant to prove that the documents used to obtain the grant were forged. She has not discharged that burden.
20. On whether the suit property had been sold to the Respondent’s father during the life time of the deceased, the respondent’s father produced an agreement dated 13/08/1983 that showed that they had entered into an agreement with the deceased Joseph Akunda for the sale of the suit property. The Applicant has argued that the purported sale agreement was a copy. However the agreement was produced . In a ruling delivered by Justice Thurairaja on 11th October 2012, the court found that the suit property had been validly sold to the respondent’s father. There is no evidence that an appeal was proffered against the said decision.
21. A copy of the register of the suit property indicates that the land parcel which was initially registered in the name of Joseph Akunda, the deceased herein, and was later transferred to the respondent’s father, Obadia Sylvester. The said Obadiah then transferred it to one Deina Undisa Reuben. The grant was



obtained 40 years ago. If the Applicant was genuine about her claim, one wonders why it has taken her 40 years to wake up and claim her stake in the estate. It suffices to state that justice Thurania had in this same matter made a finding on the validity of the sale and hence the rightful owner.

22. Finally, the respondent has pleaded that the Application is res judicata. I disagree. Though the issues were similar, in the Application of 16th march 2012, the Applicant was different. For the doctrine of resjudicata to apply, the issues must have been litigated between the same parties, interalia .

23. In the end the Application fails and it is hereby dismissed. Each party to meet their own costs

DATED , SIGNED AND DELIVERED AT KAKAMEGA , THIS 14TH DAY OF NOVEMBER 2024

S. CHIRCHIR

JUDGE.

In the presence of :

Godwin Luyundi- Court Assistant

Mr. Oketch for the Applicant

Ms. Masakwe for the Respondent.

