



REPUBLIC OF KENYA



**Adongo & 2 others v Adongo (Family Appeal E005 of 2024)
[2025] KEHC 14579 (KLR) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14579 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
FAMILY APPEAL E005 OF 2024
WM MUSYOKA, J
OCTOBER 16, 2025**

BETWEEN

DONALD ANDUKUSI ADONGO 1ST APPELLANT

KALASINA AORI 2ND APPELLANT

GODFREY OKELLO ADONGO 3RD APPELLANT

AND

EVERLYNE BARASA ADONGO RESPONDENT

(Appeal from the ruling and orders, of Hon. PA Olengo, Senior Principal Magistrate (SPM), of 22nd August 2024, in Busia CMCSC No. 605 of 2018)

JUDGMENT

1. The appeal herein arises from orders that were made by the trial court, on 22nd August 2024. To understand the context, it may be worthwhile to set out the background.
2. The deceased died on 14th November 2001. A letter from the Chief of Bukhayo Central Location, dated 14th March 2018, identified the survivors of the deceased. The deceased was said to have had married 2 wives, Kalasina Aori Adongo and Everlyne Barasa Adongo. Kalasina Aori Adongo had 4 children, while Everlyne Barasa Adongo had no children. Letters of administration intestate were made to Everlyne Barasa Adongo, on 19th September 2019, and a grant was duly issued, on 20th September 2019. Everlyne Barasa Adongo, on 8th July 2020, filed an application, of even date, for confirmation of her grant. It is not clear, from the record, whether the application, dated 8th July 2019, was ever heard and disposed of.
3. Sometime in August 2020, a son of Kalasina Aori Adongo, called Donald Andukusi Adongo, filed an application, dated 4th August 2020, seeking revocation of the grant made to Everlyne Barasa Adongo



- on 19th September 2019. His complaint was that Everlyne Barasa Adongo had obtained grant without involving and consulting the other survivors of the deceased and the beneficiaries of the estate.
4. The application, dated 4th August 2020, was compromised on 28th April 2021, where Everlyne Barasa Adongo and Donald Andukusi Adongo agreed to be joint administrators of the estate. The application, dated 4th August 2020, was allowed in those terms. The 2 administrators, Everlyne Barasa Adongo and Donald Andukusi Adongo, were instructed to apply for confirmation of their grant. It was Everlyne Barasa Adongo who drew an application for confirmation of their grant, dated 7th June 2021. It came up several times, before the trial court, before it was allowed on 29th September 2021, in the presence of both parties. A certificate of confirmation of grant, dated 6th October 2021, was processed and issued, based on a ruling delivered on 6th October 2021, which was founded on the proceedings of 29th September 2021.
 5. Donald Andukusi Adongo and Godfrey Okello Adongo then filed, on 7th February 2022, an application for revocation of the grant of 28th April 2021, made to Everlyne Barasa Adongo and Donald Andukusi Adongo. The revocation application was dated 7th February 2022. They were complaining that Donald Andukusi Adongo had been incorporated as an administrator of the estate, by Everlyne Barasa Adongo, without his knowledge or consent. That allegation was hollow, given that the appointment on 28th April 2021, was made in open court, by consent of both sides, in the presence of both Everlyne Barasa Adongo and Donald Andukusi Adongo. That application, dated 7th February 2022, was, surprisingly, allowed on 7th December 2022, apparently without a formal hearing, after the court was informed that Everlyne Barasa Adongo had been served. It was a curious order to make, given what happened on 28th April 2021, and taking into account that the persons appointed, on 7th December 2022, were the same individuals who had been appointed on 28th April 2021.
 6. Apparently, the grant, of 7th December 2022, was purported to have been confirmed, on 9th January 2023, without a formal application being made for its confirmation. A certificate of that confirmation was issued, dated 9th January 2023. What is more interesting is that there is nothing on record, to indicate that there were proceedings conducted on 9th January 2023, to confirm the grant. It would appear that the grant was confirmed in the absence of a formal appearance before the presiding magistrate.
 7. A perusal of the certificate of confirmation of grant, dated 9th January 2023, suggests that confirmation orders were made on 7th December 2022, and the certificate was an extract from those orders. The orders made on 7th December 2022, were on the revocation application, dated 7th February 2022, yet that application had no component on confirmation, for none of its prayers sought confirmation of grant. The 5 prayers were on certification of the application as urgent, revocation of the grant of 6th October 2021, appointment of new administrators, orders to restrain the County Surveyor, and costs. There was no prayer on confirmation, and the grant of that application did not have the effect of confirming the grant made to the new administrators. The orders of 7th December 2022, could not, at all, be the basis for extraction of the certificate of confirmation of grant, dated 9th January 2023.
 8. A certificate of confirmation of grant is extracted from orders made by a court, confirming a grant, based on an application for confirmation of grant, filed under section 71 of the *Law of Succession Act*, Cap 160, Laws of Kenya. The certificate of confirmation cannot be extracted from nothing. It has to be based on confirmation orders. Confirmation orders cannot be made based on nothing. There must be a confirmation application on record. The fact that a certificate of confirmation of grant was generated on 9th January 2023, which was not based on any confirmation orders made by the court, and especially noting that there was no court session in the matter on 9th January 2023, and no confirmation



application had been filed, which could be the basis upon which such orders could be made, says a lot about the shabby manner in which these proceedings have been conducted. The certificate of confirmation of 9th January 2023 cannot possibly be a valid court paper. It is a nullity.

9. To compound the mishandling of the matter, the trial court purported to rectify that null certificate of confirmation of grant of 9th January 2023, in the impugned ruling of 22nd August 2024. What is curious about the rectification orders of 22nd August 2024 is that they were founded on proposals that Everlyne Barasa Adongo had made in a summons for confirmation of grant, dated 7th June 2021, which was allowed on 6th October 2021. However, the grant that was confirmed, on 6th October 2021, was the one that was revoked on 7th December 2022. The revocation of the grant of 28th April 2021, on 7th December 2022, rendered impotent all the proceedings that had been founded on that grant of 28th April 2021, including the application dated 7th June 2021 and the orders made on that application on 6th October 2021. The trial court could not possibly base its orders of 22nd August 2024 on a process that had been nullified.
10. Everlyne Barasa Adongo filed an application, dated 6th February 2023, seeking review of the orders of 7th December 2022, arguing that she never was served with the application which gave rise to those orders. She also sought that the implementation of the certificate of confirmation of grant, dated 9th January 2023, be stayed. She sought leave to be heard on the application, dated 7th December 2022. The record of the trial court is unclear on what became of the application, dated 6th February 2023, for I have not come across any ruling or orders disposing of it.
11. Donald Andukusi Adongo filed an application, dated 5th April 2024, seeking rectification of the certificate of confirmation of grant, dated 9th January 2023, on an allegation that there were errors. After 2 or so mentions, the application was determined in a ruling dated 22nd August 2024, altering the distribution in the certificate of confirmation of the grant, dated 9th January 2023. For some undocumented reason, the disposal of the application, dated 5th April 2024, was prioritised over the pending application, dated 6th February 2023.
12. It is the orders of 22nd August 2024 that have aggrieved the appellants. In their grounds of appeal, they complain that the estate was re-distributed without an application for confirmation of grant, a trust was erroneously created, there was failure to provide for a liability, and the trial court was biased.
13. Directions were taken, on 9th June 2025, for disposal of the appeal by way of written submissions. There has been compliance, for both sides have filed written submissions, which I have read through and taken note of the arguments made.
14. The appeal is by the applicant, in the application, dated 5th April 2024, and his side of the family, which application was the basis of the orders impugned in this appeal, made on 22nd August 2024. I find it curious, that 1 of the grounds of appeal is that the trial court re-distributed the estate without a formal application for confirmation of grant. In the first place, there is no provision for filing of a summons for confirmation of grant to redistribute an estate after confirmation. Redistribution of an estate can only be done on the basis of a consent or review of the confirmation orders. Subsequent confirmation proceedings can only be undertaken where the initial confirmation was partial, or had been nullified by the court. Secondly, the confirmation orders that the appellants are relying on do not exist, for there is nothing in the trial record indicating that the trial court sat on 9th January 2023, or on any other date, to confirm the grant of 7th December 2022. There was no sitting by the court, and there was no pending confirmation application, upon which the confirmation orders could have been made on 9th January 2023.



15. I have already dealt with the aspects of the rectification orders above. I could re-visit. One, the order sought to be rectified was null. No confirmation orders existed from which the certificate of confirmation of grant of 9th January 2023 could be extracted. As that certificate was a nullity, it was not available for rectification. Secondly, the rectification orders were founded on a process, of 2021, which was nullified on 7th December 2022. Having nullified that process, the trial court could not go back to it, to find material for the purported rectification orders of 22nd August 2024. Essentially, there was nothing to rectify, and the orders of 22nd August 2024 were in vain. To that extent, the appeal herein is merited.
16. The record of the trial court reflects a sorry state of affairs, with respect to the manner that the trial court has handled the succession cause. Orders have been given in the matter like confetti. Multiple applications have been granted without affording a hearing to all the parties, and in the absence of a considered reasoned ruling. Some applications have been determined in priority over others pending, without any justification being given for that.
17. The filing of a series of revocation applications is indicative of a fundamental problem with the administration of the estate, particularly touching on the way the administrators were appointed. That should call for an oral hearing, where the parties should be allowed to express themselves on oath in open court, and to bare out their hearts on the matter of the estate of their loved one. That is the only way closure can be obtained in succession proceedings. That cannot be achieved, where orders are dished out on revocation applications, without having conducted a formal hearing at all on the application. Summary determination of such applications only serves to convolute the matter and to prolong the dispute.
18. What is more disheartening is that the trial court confirmed a grant without having a formal confirmation application before it. It revoked a grant, on 7th December 2022, in the absence of the administratrix, without affording her a chance to be heard. Then, on 9th January 2023, the court proceeded to extract a certificate of confirmation of the grant, purportedly issued on 7th December 2022, in circumstances where the new administrators had not even applied for its confirmation.
19. Section 71 of the *Law of Succession Act*, does not contemplate confirmation of a grant in the absence of an application. Rules 40 and 41 of the Probate and Administration Rules provide elaborate guidelines on how confirmation of a grant is to be handled, in terms of how the application for it is to be conceived, what it should contain, how the survivors and beneficiaries are to be involved, and how the courts are to deal with the application. There is provision for summary procedure, where all the parties are consenting to the mode of distribution proposed. The parties must be heard, however, where there is no consensus on the issue, and all the steps, envisaged in Rules 40 and 41 of the Probate and Administration Rules, must be complied with. Under no circumstances should a court proceed as if those rules and processes do not exist.
20. Succession proceedings are about people's lives, and they should be taken and handled with seriousness. The trial court should avoid the easy way out, of dishing out orders to parties, without first hearing them. Let the parties be heard in contentious matters, such as this one, where the deceased died a polygamist, and where competing or rival interests exist. After hearing the parties, a considered reasoned ruling must be delivered, where all the issues, arising from the hearing, are laid out, analysed and discussed, before a conclusion is reached, and an order is finally made. Court orders should not be seen to be granted in the manner of a sweepstake or a rotary.
21. The trial court herein has not done justice at all to this succession cause. There should be a re-set of the matter, so that the same is handled fully in compliance with the processes and proceedings set out in the



Law of Succession Act and the Probate and Administration Rules. I shall have to exercise the supervisory powers, conferred upon me by Article 165(5) of the Constitution.

22. To do justice to the parties, I hereby revoke the grant of letters of administration intestate, made to the parties on 7th December 2022, or whichever grant is in force. I hereby set aside the prevailing orders confirming that grant, and any other grant, and any other orders related to those confirmation orders, inclusive of those orders made on 24th August 2024. Any certificate of confirmation of grant, purported to have been issued before 7th December 2022 and 24th August 2024, is hereby nullified and cancelled. To do justice in the matter, to all, let the trial court start these proceedings from square one, by appointing fresh administrators, but without having to go through the gazette process.
23. The original trial court file herein shall be returned to the Chief Magistrate's Court, where fresh administrators shall be appointed, 1 from the 1st house and the other from the 2nd house. The new administrators shall file an application for confirmation of their grant, which shall fully comply with the directions in section 71 of the Law of Succession Act and Rule 41 of the Probate and Administration Rules, on what should be contained in such applications. Let the trial court handle the application for confirmation of grant, properly, once filed, paying keen attention to what is required of the court by Rules 40 and 41 of the Probate and Administration Rules.
24. The appeal herein is disposed of in the terms of paragraphs 15, 22 and 23, hereabove, of this judgment. Each party shall bear its own costs. This appeal file shall be closed.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 16TH DAY OF OCTOBER 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Eva Adhiambo, Legal Researcher.

Ms. Everlyne Barasa Adongo, the respondent, in person.

Advocates

Ms. Omar, instructed by R Omar & Company, Advocates for the appellants.

