

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO. 247 OF 2012

IN THE MATTER OF THE ESTATE OF BUSURU KINUSUTU
(DECEASED)

RULING

1. What is for determination is the summons, dated 20th February 2017. It seeks revocation of a grant that was made herein, which was confirmed on 30th November 2016, and for appointment of Alfred Sokoni Ekinusut as the new administrator.
2. The said application is premised on grounds that the said grant had been obtained by Christopher Okwi Ijirimani fraudulently, in collaboration with Margaret Ajilit Odionyi. The applicant asserts to be the rightful administrator, who was never involved in the process of obtaining the grant. It is also argued that Margaret Ajilit Odionyi was a daughter-in-law of the applicant, and that the deceased herein held the estate property, Bukhayo/Lupida/182, as trustee, on behalf of his siblings. It is further argued that there were plans afoot to sell the property to strangers.
3. The facts, to support those grounds, are set out in the affidavit of the applicant, Alfred Sokoni Ekinusut, sworn on 20th February 2017. The applicant identifies the deceased as his own brother, who held the estate property in trust. He identifies Margaret Ajilit Odionyi as a former wife of a late son of the deceased, identified as Christopher Odionyi, who had divorced her prior to his death. She is accused of coming back to the estate, and selling it off to strangers. He states that the current administrator was fraudulently appointed.

4. The alleged administrator, Christopher Okwi Ijirimani, has replied to the application, vide his affidavit, sworn on 16th October 2023. He describes Margaret Ajilit Odionyi as deceased. He asserts that the succession proceedings were initiated regularly. He describes the deceased to have been the absolute proprietor of Bukhayo/Lupida/182, as at the time of his demise, and that that property was sold to him by the late Margaret Ajilit Odionyi, upon the demise of the deceased. The late Margaret Ajilit Odionyi then obtained representation to the estate in 2012, and the grant was confirmed on 5th December 2016, in proceedings where the survivors of the deceased and beneficiaries of his estate had consented. He, Christopher Okwi Ijirimani, thereafter obtained a title deed to Bukhayo/Lupida/182. He asserts that the court has become *functus officio*.
5. He has attached, to his affidavit, a number of documents, to support his case. There is a sale agreement, dated 12th May 2016, between himself and the late Margaret Ajilit Odionyi, disposing of Bukhayo/Lupida/182. There is a handwritten document, titled "Debt Cleared," dated 19th April 2017, indicating that the entire sale price for Bukhayo/Lupida/182, had been settled in full. There is a copy of grant of letters of administration intestate, made to the late Margaret Ajilit Odionyi, in this cause, on 17th September 2012, bearing an even date. There is a certificate of confirmation of grant, dated 5th December 2016, evidencing confirmation of the grant made to the late Margaret Ajilit Odionyi, on 30th November 2016. There is a set of the typed proceedings herein, running from 3rd February 2016 to 20th September 2023. Finally, there is a copy of a title deed, for Bukhayo/Lupida/182, dated 21st December 2016, showing that that property is registered in the name of Christopher Okwi Ijirimani.
6. The prosecution of the application, dated 20th February 2017, was taken over by Mika Ochana Sokoni, a son of the

applicant, Alfred Sokoni Ekinusut, after it became apparent that the applicant could not prosecute it, on account of old age. That takeover was allowed by the court; in a ruling it delivered on 15th March 2024. The hearing of the revocation application, dated 20th February 2017, was conducted *viva voce*.

7. The oral hearings commenced in earnest on 30th May 2024, when Mika Ochana Sokoni took to the witness stand. He described the deceased, Busuru Kinusutu, as his grandfather, being the father of his own father, Alfred Sokoni Ekinusut. He stated that reference to the deceased as a brother of Alfred Sokoni Ekinusut was by error. He said that he did not know Margaret Ajiliti Odionyi, then again, he said that she was a widow of a Christopher Odionyi Osur, saying that he last saw her in 2011. He confirmed that he did not serve her with the revocation application. He explained that she had been divorced, but came back, but conceded that he had not filed any evidence of the divorce.
8. He said that his father was 1 of the 7 children of the deceased, adding that all were dead, save his father. He described Christopher Odionyi Osur as a grandson of the deceased, being a son of the deceased known as Osuru Rarawe Kinusutu, a brother of Alfred Sokoni Ekinusut. He said that Osuru Rarawe Kinusutu was entitled to 2.9 hectares, out of Bukhayo/Lupida/182, and that was the share that should have gone to Margaret Ajiliti Odionyi. He identified her children, with Christopher Odionyi Osur, as Stephen Musumari and Angelina Judith, adding that Lillian Kadogo was not his child, for she was born outside wedlock. He stated that the name of his father was not disclosed in the letter from the Chief.
9. He said that he was not party to the sale of the land to Christopher Okwi Ijirimani, and that was why they were protesting. He stated that the title given to Christopher Okwi

Ijirimani ought to be cancelled, and the land reverted to the estate. He mentioned that the deceased had 3 brothers, all of whom were dead, being Olaktari, Odongo and another, and that their families were not claiming from the estate, as they had their own land. He asserted that his father was entitled to 2.9 hectares, out of B/L/182. He stated that Bukhayo/Lupida/182 had been shared out on the ground, between Alfred Sokoni Ekinusut and his brother, Osuru Rarawe Kinusutu, equally. He stated that Alfred Sokoni Ekinusut was in occupation and possession of the 2.9 hectares or 7¼ acres. He said that Osuru Rarawe Kinusutu had only 1 child with Margaret Ajilit Odionyi, being Christopher Odionyi Osur. He stated that the family of Margaret Ajilit Odionyi was entitled to 2.9 hectares or 7¼ acres.

10. Christopher Okwi Ijirimani followed. He testified that Margaret Ajilit Odionyi had approached her, telling her that she was selling some land. She showed him probate papers, which included a grant of representation in her name, and he found the papers genuine. He bought the land; a title was processed in his favour. Alfred Sokoni Ekinusut then emerged, claiming entitlement to the same land. He said that he had confirmed that the land belonged to the deceased, and Margaret Ajilit Odionyi and her children caused it to be devolved to him.

11. He asserted that Alfred Sokoni Ekinusut had no connection with the land. He said that Alfred Sokoni Ekinusut and the deceased were sons of Bushuru, from different mothers, and each had their own land. He stated that Alfred Sokoni Ekinusut had pushed Margaret Ajilit Odionyi out of the land, and she had gone back to her parents' home, but she came back to reclaim her late husband's land. Alfred Sokoni Ekinusut and his people then began to frustrate her, and she chose to sell off the land, after which she bought alternative land, and settled there.

12. Christopher Okwi Ijirimani called 2 witnesses. Stephen Musumari Odionyi was the first to take the stand. He described the deceased as his grandfather, the father of his father. He stated that the deceased had only 1 son, called Christopher Odionyi, who in turn had only 1 son, him, the witness. He described Alfred Sokoni Ekinusut as a brother of the deceased, but from a different house. He explained that Alfred Sokoni Ekinusut and the deceased had different fathers.
13. He further explained that Alfred Sokoni Ekinusut had his own land, separate from that of the deceased, and which was some distance away. He stated that after the deceased passed on, Alfred Sokoni Ekinusut attempted to grab the land belonging to the deceased, from his mother Margaret Ajilit Odionyi. Alfred Sokoni Ekinusut entered the land by force, but Margaret Ajilit Odionyi sought to have it devolved to herself, through succession proceedings. Margaret Ajilit Odionyi thereafter sold the land to Christopher Okwi Ijirimani, with the concurrence of her children, including him, the witness. That sale was what prompted Alfred Sokoni Ekinusut to come to court.
14. He asserted that his father was not holding the land in trust for anyone. He stated that Alfred Sokoni Ekinusut had siblings, who were not laying claim to the land. He explained that Christopher Okwi Ijirimani got the land properly, and that he, the witness, was not complaining. He confirmed at his mother, Margaret Ajilit Odionyi, was also deceased. He explained that Alfred Sokoni Ekinusut was not of the same father with the deceased, and that his own father was called Ombar Kinusutu. He argued that had Alfred Sokoni Ekinusut been a blood brother of the deceased, the 2 would have split the land between themselves. His parting shot was that if the Government visited the ground, it would establish that Alfred Sokoni Ekinusut had his own land. He stated that the

family of Alfred Sokoni Ekinusut occupied the land belonging to Christopher Okwi Ijirimani.

15. Francis arap Temoi followed. He was at onetime a Chief of the area where the land is located. He said that he did not know the deceased, and that it was Margaret Ajilit Odionyi who first approached him, with an intent to initiate succession proceedings. She brought to him a certificate of search for the land, to confirm ownership, and, based on that, he issued her with a letter to initiate the succession proceedings. He said that he did not know the family well, although he knew Alfred Sokoni Ekinusut and a Omonya.
16. He stated that he found Alfred Sokoni Ekinusut living on the land, although the land belonged to Margaret Ajilit Odionyi, according to the certificate of official search. He stated that he was aware that Christopher Okwi Ijirimani bought the land from Margaret Ajilit Odionyi, and a title deed was issued to him. He described Margaret Ajilit Odionyi as a widow of the deceased, asserting that Alfred Sokoni Ekinusut was a distant relative, who had no interest in the land.
17. He stated that land registration was done in the area in 1972, and the land was registered in the name of the deceased. He could not tell the names of the father of Alfred Sokoni Ekinusut and his brothers. He said he wrote the letter to court guided by the certificate of official search, and that it was not his mandate to remove Alfred Sokoni Ekinusut from the land. He said that the deceased had a son called Stephen.
18. After the proceedings closed, on 13th May 2025, Mika Ochana Sokoni filed written submissions, which largely summarised the facts of the case. He also filed a further affidavit, albeit without leave of court, which purported to address aspects of the evidence that had been given at the trial, by the witnesses presented by Christopher Okwi

Ijirimani, and which attached a ruling, in Busia ELC No. 131 of 2017, between Christopher Okwi Ijirimani and Alfred Sokoni Ekinusut, staying that suit, to await the outcome of these proceedings.

19. The application, that I am called upon to determine, is for revocation of grant. The grant was made to Margaret Ajilit Odionyi, on 12th September 2012, in her capacity as the widow of the deceased. The letter, from the Chief, lodged together with the petition, was dated 29th December 2011, and came from Francis arap Temoi, the Assistant Chief of Kapina Location. It identified Margaret Ajilit Odionyi as the legal heir of the deceased, said to be Obusuru Kinusutu.
20. Revocation of a grant is provided for under section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. That provision confers jurisdiction on the court to revoke grants, on 3 general grounds, that is to say problems encountered during the process of obtaining the grant, maladministration of the estate by the administrators, and the grant having become useless and inoperative.
21. The application, before me, is anchored on the first general ground. That first general ground revolves around the process of obtaining the grant, and, therefore, it turns on the circumstances prior to the making of the grant. The other 2 deal with matters arising after the making of the grant. That first general ground has 3 components, these are the process of obtaining the grant having been defective, the process having been attended or tainted by fraud and misrepresentation, and there having been concealment of matter from the court.
22. The applicant, Alfred Sokoni Ekinusut, and his son, Mika Ochana Sokoni, claim entitlement to a share in the estate of the deceased, on account of having been related to him. Alfred Sokoni Ekinusut had claimed, in his affidavit, that

the deceased was his brother of Alfred Sokoni Ekinusut, and that the estate asset, Bukhayo/Lupida/182, was registered in the name of the deceased in trust for his siblings, including Alfred Sokoni Ekinusut. That meant that they are asserting the same to be ancestral land. That being the case, they argue, then they ought to have been disclosed in the petition as heirs and beneficiaries, and they ought to have been involved in the process. They assert that they were not, hence the process of obtaining the grant was defective, was fraught with fraud and misrepresentation, and there was concealment of important matter from the court. His son, Mika Ochana Sokoni, later said that the deceased was in fact the father of Alfred Sokoni Ekinusut.

23. Christopher Okwi Ijirimani disagrees. He asserts that the grant was obtained regularly, in the sense that the proceedings were not defective or deficient in the manner alleged by the applicant, there was no fraud and misrepresentation, and that there was no concealment of any matter or information from the court. He argues that the persons entitled to the land in question were the immediate survivors of the deceased, who he identified as Margaret Ajilit Odionyi and her children. He asserted that those individuals were disclosed in the petition, and were involved in the process of obtaining the grant. He asserts that Alfred Sokoni Ekinusut was not an immediate survivor of the deceased, for he was not a sibling of the deceased, and he was not entitled to a share in the estate. There was, therefore, he argues, no obligation, to inform him of and involve him in the proceedings.

24. The parties did not present a clear case to me at all. What emerges, from the oral testimonies, is that the initial administratrix, Margaret Ajilit Odionyi, was not a spouse of the deceased herein, as she alleged in her petition. The oral evidence, the affidavit of Alfred Sokoni Ekinusut, and other filings, disclosed that she was either a spouse of a child of

the deceased, named as Christopher Odionyi Osur, or of a grandson of the deceased known as Christopher Odionyi Osur, who was a child of Osuru Kinusutu, a son of the deceased. What is certain is that she was never a spouse of the deceased herein. To that extent, she obtained the grant on the strength of a misrepresentation. I cannot tell whether the same was fraudulent or not. It also amounted to concealment of matter from the court, of the exact nature of the relationship between Margaret Ajilit Odionyi and the deceased. That made the process defective, as it was founded on faulty particulars.

25. When the applicant approached the court, in the instant application, he described himself as a brother of the deceased. Alfred Sokoni Ekinusut, himself, did not testify at the oral hearing, as he appeared to have health issues, ostensibly arising from his great age, and the mantle of presenting his case had to be passed to his son, Mika Ochana Sokoni. Mika Ochana Sokoni was the sole witness in support of his father's case. He asserted that the deceased and Alfred Sokoni Ekinusut were not blood brothers, but that the deceased was the father of Alfred Sokoni Ekinusut and the late husband of Margaret Ajilit Odionyi. That testimony was contested by Christopher Okwi Ijirimani, and his witnesses, who asserted that Alfred Sokoni Ekinusut was not a blood brother of the late husband of Margaret Ajilit Odionyi, and claimed, instead, that he was a distant relative, what appeared to me, from their testimonies, to suggest that he was a cousin of the deceased.

26. The exact nature of the relationship between the deceased and the applicant, Alfred Sokoni Ekinusut, did not clearly come out. I cannot tell whether he was a blood brother of the deceased, or a cousin of the deceased, or even a nephew of the deceased, as some of the material would appear to suggest. He who alleges must prove what he asserts. I doubt that the applicant has discharged that

burden. The inclination, that I get, is that there is preponderance of evidence, from the side of Christopher Okwi Ijirimani, that Alfred Sokoni Ekinusut was a distant relative of the deceased, and, as such, he was not entitled to what he was claiming from the estate.

27. The contest was on the ownership of Bukhayo/Lupida/182. The applicant claimed that that was ancestral land, hence it was held in trust, by the deceased, for him, and probably others. Christopher Okwi Ijirimani and his witnesses contended that that was not so, for the property was in the name of the deceased, and there was nothing, in the register, to indicate otherwise. The burden was on Alfred Sokoni Ekinusut, to establish that that property was in fact ancestral land, and was registered in the name of the deceased to hold in trust for other relatives.

28. I do not think that burden was discharged. Other than remarks that the land was registered in 1972, in the name of the deceased, no other evidence was presented, of the circumstances of the registration, in terms of who participated in that exercise, and, crucially, an explanation as to why it was registered in the name of the deceased, and not of any other person. Registration is usually preceded by demarcation and adjudication, and it is at those stages that the matter of resulting trust would emerge. No evidence was led on what happened at those stages, to lend credence to the argument that the land was registered in the name of the deceased, in trust for or on behalf of others, including Alfred Sokoni Ekinusut.

29. It is not enough to merely allege things; an effort ought to be made to prove that which is alleged. I have nothing before me, that would lead me to a conclusion that Bukhayo/Lupida/182 was registered in the name of the deceased in trust for the applicant and others, to warrant

their involvement in succession proceedings in the estate of the deceased herein.

30. The property was registered in the name of the deceased herein. The evidence placed before me pointed to Margaret Ajilit Odionyi and her children as the successors of the said deceased person. As mentioned above, the connection between the deceased and Alfred Sokoni Ekinusut remains hazy. It was not established whether the deceased was his brother, or father, or grandfather, or uncle, or cousin. That being the case, it would appear that it was proper for succession proceedings to be mounted at the behest of Margaret Ajilit Odionyi, without involving Alfred Sokoni Ekinusut.

31. I am invited to revoke a grant. The record before me points to only 1 grant having been made, and that was on 17th September 2012, to Margaret Ajilit Odionyi. No other grant has been issued since. It emerged that Margaret Ajilit Odionyi might have died. However, none of the parties placed a certificate of death, with respect to her death, before me. Her son, Stephen Musumari, testified that she died, and no contrary evidence was presented. I shall take it that she is dead. A grant held by a dead person is useless and inoperative, for the holder would be unavailable to use it, that is for the purposes of exercising the powers granted under it, and discharging the duties imposed by it. The grant of representation is made *in rem*. It is personal to the grantee, and it can confer no powers to another person, nor impose duties to that other. It cannot, therefore, be used by another. It, thus, becomes available for revocation, on account of being useless and inoperative, following the death of the holder or grantee.

32. The applicant named Christopher Okwi Ijirimani as a petitioner. Christopher Okwi Ijirimani was never a petitioner, to the extent that a petitioner refers to a person

who initiates court proceedings by way of a petition. Christopher Okwi Ijirimani never filed a petition in these proceedings at any stage. He never was a petitioner, and he never was an administrator of the estate herein. His position, in these proceedings, is that of a purchaser of an asset of the estate, which apparently happened between him and the late administratrix, Margaret Ajilit Odionyi. The fact that Margaret Ajilit Odionyi died, did not make Christopher Okwi Ijirimani her successor in administration. The grant, sought to be revoked, according to the application, is that allegedly made to Christopher Okwi Ijirimani. No such grant was ever made, and no such grant is available for revocation.

33. So, the grant made on 17th September 2012 is available for revocation. On what basis would I revoke it? Should I revoke it on the basis of having been obtained in a defective process, where some of the information used to obtain it was not altogether accurate; or on the basis that it had become useless and inoperative? If the administratrix were still alive, I would have proceeded under the first ground, and revoked the grant. However, she died, and her grant became useless and inoperative, existing only for the purpose of being revoked. I would revoke it on that second account, that it has since become useless and inoperative.

34. The other reason, why it would not be revoked under the first ground, is that it has been established, from the material on record, that Margaret Ajilit Odionyi was entitled to a share in the estate of the deceased, as a successor of the deceased, by marriage, for she would appear to be his relative, on account of having married his grandson, for it would appear that her husband was a grandson of the deceased; and further that Alfred Sokoni Ekinusut has not adduced clear evidence on the exact nature of the relationship between him and the deceased. Margaret Ajilit Odionyi would appear to have a more solid claim to the estate than Alfred Sokoni Ekinusut.

35. Based on that, it is my conclusion that the applicant herein, Alfred Sokoni Ekinusut, has not made a claim for me to conclude that a grant should not have been made to Margaret Ajilit Odionyi, and I, accordingly, dismiss his application, dated 20th February 2017. Each party shall bear their own costs. Should Alfred Sokoni Ekinusut, through Mika Ochana Sokoni, be aggrieved by these orders, I grant him leave, of 30 days, to challenge this decision at the Court of Appeal. It is so ordered.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS,
AT BUSIA, ON THIS 15TH DAY OF OCTOBER 2025.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Mr. Alfred Sokoni Ekinusut/Mika Ochana Sokoni, the applicant, in person.

Advocates

Mr. Otieno, instructed by Masiga Otieno & Associates, Advocates for the petitioners.