

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

SUCCESSION CAUSE NO.6 OF 1997

IN THE MATTER OF THE ESTATE OF SAULO OKONYOLO OKUTOYI
(DECEASED)

ANNE

CHIBOLE

ASWANI

-----OBJECTOR/APPLICANT

VERSUS

STANELY

OUTA

OKONYOLO-----

PETITIONER/RESPONDENT

RULING

1. The applicant herein filed a summons for revocation dated 14th February 2025 seeking that the grants of letters of administration issued to the petitioner/ respondent Stanley Outa Okonyolo on 8th December 2016 and confirmed on 14th April 2023 be revoked and annulled.
2. According to the applicant, the grant was fraudulently obtained by making a false statement that all the beneficiaries of the deceased had agreed to the proposed mode of sharing the estate of the deceased, which he claimed was false, leaving the applicant with no share of the estate.
3. She avers that the proceedings to obtain the grant were defective in substance and proceeded secretly and without the consent and knowledge of the objector/applicant, and further that the consent for distribution of the deceased estate dated 20th September 2021 presented to the court before the confirmation was defective in substance as the applicant was not a signatory to the alleged proposal.
4. The applicant filed a supporting affidavit in support of his application, where she stated that she was the daughter of the

deceased Saulo Okonyolo Okutoyi, who died intestate on 12th November 1995.

5. She named the deceased beneficiaries as;
 - a) Stanley Outa Okonyolo-son
 - b) Fredrick Masengo- son
 - c) Eliakim Oketi- son
 - d) Philip Okutoyi Outa- Grandson
 - e) Anne Chibole Aswani-Daughter.
6. According to the applicant, her deceased father's estate comprised two land parcels, being Marama/Lunza/2017 and Marama/Lunza/2014, which were subdivided into Marama/Lunza/3054 and Marama/Lunza/30555.
7. She admitted that she had filled a petition on the estate off her father in succession Cause 6 of 1997 for which she obtained letters of administration and a grant was confirmed by the court and later she learnt that a similar succession cause o 84 of 1999 had been instituted by Wilson Olubwa without her knowledge and a grant was issued in respect to the estate.
8. She asserts that the two grants were consolidated on 27th January 2005; however, on 29th September 2008, the consolidated grant was revoked for concealment of material facts and failure to provide a full inventory of all the assets of the deceased estate, and on 8th December 2016, the respondent petitioned for letters of administration, which were granted. She claimed that the respondent made a false claim to the court that all the parties had agreed to the mode of distribution; however, she was never consulted.
9. According to the applicant, the mode of distribution was unfair, unlawful, and improper, with the petitioner and the deceased grandson getting the biggest share, her brother Eliakin getting 1 ½ acres, while she was left with no share.
10. She denied being served with any summons for confirmation or consenting to the mode of distribution; hence, the grant being

obtained by making a false statement, the grant was defective as the petitioner misled the court on the mode of distribution.

11. She prays that the court revoke the grant on the ground that the petitioner made a false, misleading claim to the court, which led to the grant being granted and her being disinherited from her father's estate.

12. The application was canvassed by way of written submissions.

Appellant's submissions.

13. The appellant raised one issue for determination, being whether the confirmed grant ought to be revoked. She cited section 76 of the Law of Succession Act that highlights the grounds that a grant can be revoked and quoted the case of in re estate of **Prisca Ong'ayo Nande (2020) eKLR.**

14. According to the appellant, the petitioner obtained the letters of administration fraudulently and neglected to seek the consent of the applicant while processing the succession and administration of the estate of the deceased.

15. She claimed that the administrator failed to diligently administer the estate and ought to be revoked, as the estate ought to be shared equally among all the beneficiaries. She avers that the respondent did not deny that the applicant did not take part in the confirmation process, and neither was she given a share of the estate, claiming that it was an allegation that she was not interested in the estate.

16. They pray that the grant be revoked in the interest of justice and a fresh grant be issued .

Respondent's submission

17. The respondent submits that the objector's application is an afterthought, frivolous, and states that the objector/applicant had secretly obtained the grant and confirmed it, and allocated land parcel MARAMA/LUNZA/2017 to herself and later sold it to a stranger, Remigius Nganyi Watieri.

18. He claimed that he filed for revocation of the said grant and further applied for another grant dated 30th December 2014, where the sold land was reverted to the deceased estate and name, and that this appeal is against the decision of the court to revoke the grant issued to the objector.
19. He claimed that he filed a summons for confirmation of the grant and a consent on distribution, which was served to the applicant's advocates, M/S Onsando Getanda & Co. Advocates, who declined service, and when the objector was served with the documents and notices to attend court for confirmation on 15/6/2021, 30/9/2021, 18/1/2022, 26/4/2022, and 13/6/2022.
20. According to the petitioner, the applicant was not interested in a share of the estate, and she deliberately chose not to attend court on all occasions, and that the application is an afterthought.
21. He avers that the court in accepting the application will affect the orders issued on 15/6/2021, 30/9/2021, 18/1/2022, 26/4/2022 and 13/6/2022 and hold that the applicant was served on several occasions but denied service and avers that the application was deliberate considering that she had to wait until the entire process is conducted and finalized and now asks the court to reverse all the process and delay justice and that allowing the application will amount to reviewing the court's ruling dated 24th March 2023 distributing the estate when it confirmed that grant.
22. According to the respondent the court, after considering all the factors including that the deceased had distributed his property, being Marama/Lunza/2014 and Marama/ Lunza 2681, and Marama/Lunza/2682, made a decision and that this court should not review or set aside its proceedings and start afresh, as it amounts to the court sitting on its own decision, and prayed that the court dismiss the application as held in the case of **CACA NO.211 OF 1996 National Bank of Kenya LTD vs. Ndungu Njau.**

23. They pray that the court dismiss the objector's summons dated 14th February, 2025, and if aggrieved, she should appeal the decision by Justice Musyoka dated 24th March 2023.

Analysis and determination

24. The main issue for determination is whether the Applicant has established sufficient grounds under section 76 of the Law of Succession Act to warrant revocation of the grant issued and confirmed in favour of the Respondent.
25. Section 76 of the Law of Succession Act (Cap 160) provides for revocation or annulment of a grant on the following grounds:

“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 making a false statement or by 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...”

26. It is not disputed that the Applicant was the deceased daughter and hence a rightful beneficiary under section 29(a) of the Law of Succession Act. She now claims that she was excluded from the succession process and a chance to inherit from her father's estate.

27. The Respondent equally admits that the Applicant did not participate in the confirmation proceedings but blames her for disinterest and her claim that she did not want to be included in the succession process.
28. In re *Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR, the court emphasized that:
“A grant obtained without the involvement of all beneficiaries and without their consent is defective in substance and amounts to concealment of material facts.”
29. Similarly, in re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR, Musyoka J held:
“A person applying for confirmation of a grant must ensure that all beneficiaries are involved in the process and that their consent is obtained. Failure to obtain their consent renders the proceedings defective and liable to revocation under section 76 of the Act.”
30. In the present case, the consent to confirmation dated 20th September 2021 was allegedly signed by all beneficiaries. However, the Applicant has sworn that she did not sign it, and the Respondent has not provided any forensic or affidavit evidence to rebut that denial. This court therefore finds that the consent presented could have been false thus misleading.
31. In Samuel Wafula Wasike v Hudson Simiyu Wafula [1993] eKLR, the Court of Appeal held that: *“A grant obtained fraudulently by making a false statement or by concealment of material facts is liable to revocation even where confirmed.”*
32. From the record, it is clear that the Respondent distributed the entire estate, allocating himself and the deceased's grandson the largest shares while completely excluding the Applicant. That act alone demonstrates bad faith and deliberate disinheritance, contrary to the principles of fairness under section 38 of the Law of Succession Act, which mandates equal distribution among children of the deceased.

33. In *in re Estate of G.K. Kariuki (Deceased) [2016] eKLR, Musyoka J* reiterated that:

“All the children of a deceased person, whether male or female, married or unmarried, are entitled to an equal share of the deceased’s estate unless there is a lawful justification for discrimination.”

34. There was no written evidence produced by the petitioner that the Applicant renounced her interest in the deceased estate, and therefore, her exclusion amounts to discrimination and injustice. The court cannot uphold a grant obtained through such concealment of material facts.

35. The Respondent’s reliance on National Bank of Kenya Ltd v Ndungu Njau (supra) is misplaced. That case dealt with the review of civil judgments, not the revocation of a grant. Section 76 expressly empowers the probate court to revoke a grant at any time, even after confirmation, where it is shown that the same was obtained through fraud or concealment.

36. **In re Estate of Wahome Njoki Wakagoto (Deceased) [2013] eKLR**, the court stated that;

“A grant obtained through concealment of material facts cannot be allowed to stand, for the court would be seen to be sanctioning illegality and injustice.”

37. Accordingly, the court is satisfied that the Applicant has proved, on a balance of probabilities, that the grant was obtained fraudulently and through concealment of material facts.

Orders

- a) The Summons for Revocation dated 14th February 2025 is hereby allowed.
- b) The grant of letters of administration issued to Stanley Outa Okonyolo on 8th December 2016 and confirmed on 14th April 2023 is hereby revoked and annulled.

- c) A fresh grant shall issue in the joint names of Stanley Outa Okonyolo and Anne Chibole Aswani to ensure fairness and representation of all beneficiaries.
- d) The new administrators shall, within 90 days, file a comprehensive inventory and proposed mode of distribution for approval by the court in accordance with section 83(e) of the Law of Succession Act.
- e) Each party to bear its own cost of the Application for this is a family matter.
- f) Mention 25th June, 2026 to confirm progress.
- g) Right of Appeal 30 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA
THIS 14TH DAY OF OCTOBER, 2025.**

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Mr. Shiroya for the petitioner present online.

Ms Nechesa for the Objector , absent though aware of the ruling date.