



**In re Estate of Simeon Okwama Opala (Deceased) (Miscellaneous Succession Application E001 of 2024) [2025] KEHC 14409 (KLR) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14409 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
MISCELLANEOUS SUCCESSION APPLICATION E001 OF 2024**

**DK KEMEL, J  
OCTOBER 14, 2025**

**BETWEEN**

**GRACE OJWANG OWUOR OKWAMA ..... 1<sup>ST</sup> APPLICANT**

**JOEL NYAGUDI OKWAMA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**SYLVIA ATIENO ..... 1<sup>ST</sup> RESPONDENT**

**REBECCA WAORO ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JOHN WALTER ONYANGO OTIENO ..... INTERESTED PARTY**

**RULING**

1. Placed before this Honorable Court is summons for revocation of grant dated 4/3/2024 brought under Section 76 of the [Law of Succession Act](#), Rules 44 and 49 of the Probate and Administration Rules. The same seeks the following orders:
  - i. That the confirmed grant issued to Issack Otieno Okwama (now deceased) in Kisumu High Court Succession Cause number 310 of 2011 who was the sole administrator to the estate be revoked.
  - ii. That the subsequent transfer of land L.R. No. Siaya/Omia-Malo/4478 to third parties be revoked and annulled and be reverted back to the estate of Simeon Opala Okwama.
  - iii. That Grace Ojwang Owuor Okwama & Joel Nyagundi Okwama be appointed administrators of the deceased estate.
  - iv. That the costs of this application be provided for.



2. The application is supported by the grounds set out thereunder and by the supporting affidavit of the 1<sup>st</sup> Applicant herein Grace Ojwang Owuor Okwama dated 4<sup>th</sup> March 2024 wherein she averred inter alia; that she is the second wife of the deceased and has authority from the 2<sup>nd</sup> applicant to swear the affidavit on his behalf and in support of the summons; that the deceased Simeon Okwama Opala had three wives including herself and children as hereunder and as per the chief's letter annexed:

**1<sup>st</sup> House**

- i. Susan Okwama-1<sup>st</sup> wife(deceased)
- ii. Bithia Waore Okwama alias Rebecca Waore Okwama –Daughter
- iii. Sylvia Ndolo Okwama alias Sylvia Atieno Okwama-Daughter
- iv. Issack Otieno Okwama-Son (deceased)
- v. Loice Abwajo Okwama-Daughter (deceased)

**2<sup>nd</sup> House**

- i. Grace Ojwang Owuor Okwama -2<sup>nd</sup> wife
- ii. Jane Atieno Okwama-Daughter

**3<sup>rd</sup> House**

- i. Phelisia Ongulo Nyagudi -3<sup>rd</sup> wife (deceased)
- ii. Joel Nyagudi Okwama –Son
- iii. Daniel Nyawalo Okwama-son (deceased)
- iv. Caren Achor Okwama-daughter (deceased)

; that her husband died on 8<sup>th</sup> September 1989 as per the annexed copy of the deceased's death certificate marked 'GOO-2'; that the current administrator Issack Otieno Okwama (now deceased), took out letters of administration in respect of the estate of the deceased herein on 14<sup>th</sup> December 2011 vide Kisumu High Court succession Cause No. 310 of 2011 as per the copy of the grant marked 'GOO-3'; that the said grant was confirmed on 5<sup>th</sup> October 2012 as per the copy of the confirmation of grant marked 'GOO-4'; that the said administrator failed to include them as beneficiaries to the deceased's estate; that the administrator secretly took out the letters of administration without the consent or consultation with other beneficiaries; that the said administrator proceeded to transfer L.R. Siaya/Omia-Malo/4478 to third parties as per the copy of official search marked 'GOO-6' without regard to the Applicants and all the other beneficiaries of the estate; that the actions of the administrator in concealing the material facts and failing to seek consent of all other beneficiaries in the application for grant shows that he had ill intentions; that the grant has become inoperative as the administrator Issack Otieno Okwama is now dead, having died on 27<sup>th</sup> January 2022 as per the copy of death certificate marked GOO-7; that this court do proceed to issue a fresh grant to them to enable them administer the estate appropriately.

3. The Respondents filed a response dated 3/12/2024 sworn by 1<sup>st</sup> Respondent herein Sylvia Atieno who averred inter alia; that the Applicants were aware of the filing of the succession cause and that the same



was proper and not defective; that the Applicants were aware of the matter even when the grant was issued in 2011 but they did not object to the same and therefore the present application is made in bad faith and malice; that the deceased was a polygamous man and who set up different homes for each of his wives and children; that she is aware that parcel No. Siaya Omia-Malo/4478 was sold to the interested party by the deceased in 1988 when he was still alive and therefore the same does not form part of the estate of the deceased; that the deceased had no intention to disinherit the Applicant from the estate; that letters of Administration namely 'grant de bonis non' should be issued where the sole administrator has died and left behind an estate which has not been administered and that the new administrators will take up from there; that she and co-respondent are in the process of seeking to come on board as administrators and conclude the task left behind by the deceased administrator; that allowing the application will lead to endless chaos among the family members; that the proceeds of the sale of the parcels by the deceased were used in paying fees for the children and footing medical bills for the deceased; that the Applicants are malicious in bringing this application and have not shown how they stand to be prejudiced if the same is declined; that the application lacks merit and should be dismissed.

4. The interested party filed his grounds of objection and response dated 26<sup>th</sup> March 2025, in which he contends to the inclusion of land parcels number Siaya Omia malo/2159 and East Asembo/Omia malo/4478 which he purchased from the deceased and then administrator Issack Otieno Okwama innocently and for value. He further stated that he first entered into a sale agreement with the deceased in 1988 and made several payments and that the transaction was later concluded by the then administrator and that he was issued with titles sometimes in 2015. That the Applicant's application dated 4/3/2024 is already overtaken by event. He placed his reliance on the case of John Muremi Muhanda v. Elias Moard Mategwa (2016) eKLR.
5. The application was canvassed by way of written submissions. All the parties except the Respondents filed submissions which have been duly considered.
6. I have considered the application, rival affidavits and against the same, and submissions. I find the issues for determination are:
  - a. Whether the applicants have demonstrated sufficient ground for revocation of the current grant?
  - b. Whether the land parcels number Siaya Omia-Malo/2159 and East Asembo /Omia Malo/4478 should be included as part of the estate of the deceased.
7. The threshold for revocation of a grant is stipulated under section 76 of the *Law of Succession Act* as hereunder:

#### Revocation or annulment of grant

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.
8. As noted from the rival affidavits, the previous administrator Isack Otieno Okwama has since died after petitioning for letters of grant and having the same confirmed. It is also noted that the said deceased administrator did not conclude the task of administration and therefore there is need to appoint new administrators. The two Respondents herein Sylvia Atieno and Rebecca Waoro have already made their intention known that they seek to substitute the deceased administrator and conclude the exercise of administration. It is also noted that the Applicants herein have made a raft of accusations against the deceased administrator and they seek to have the grant revoked based on the allegations that they have made. It is unfortunate that the person they are accusing is already dead and therefore he cannot be available to answer their allegations. The Applicants have sought reliance in all the provisions enumerated under Section 76 of the Laws of Succession Act. In view of the demise of the administrator, it is my considered view that this court will not determine the Applicants' application based on the provisions of Section 76 (a,b,c & d) but it shall consider it under provision (e) - "that the grant has become useless and inoperative through subsequent circumstances."
  9. In the case of the death of the Administrator, another qualified person should apply for the revocation of the former grant and apply for a fresh grant of representation.
  10. In RE Estate of Mwangi Mugwe alias Elieza Ngware (Deceased) [2003] eKLR, the Court in considering a situation where the sole Executor/Administrator of an estate has passed away stated as follows: - ".....the operative word in substitution." The law of Succession has no provision talking about substitution of a deceased single administrator. In the circumstances therefore it is my considered view that the proper provisions of the law to apply is Section 76(e) of the Law of Succession Act and Rule 44 of the Probate and Administration Rules whereby the Applicant would apply for revocation or annulment of a grant on the ground "that the grant has become useless and inoperative through subsequent circumstances." The Applicant would proceed to put a prayer in the same application that a new grant be made to him and could as well add a further prayer if need be for confirmation of the new grant. The application should of course, be supported by consent from adult beneficiaries in the estate of the first deceased person, the second deceased person being the deceased administrator."
  11. Similarly, in Re Estate of George Rugui Karanja (deceased) (2016) eKLR, Hon. Justice William Musyoka held as follows: - "it would appear to me that once all the holders of a grant die Section 81 of the Act would be of no application. indeed, the said grant becomes useless and inoperative and liable for revocation under Section 76 of the Law of Succession Act to pave way for appointment of new administrators. The appointment of fresh administrators takes the place of the previous one following their death is subject to the provisions of Section 51 through to Section 66 of the Act."
  12. Finally, in Re Estate of Elijah Okitah Mikah Tsimbwele (Deceased) [2021] eKLR, Hon. Justice Musyoka stated thus "The death of one or more administrators does not affect the grant, in terms



of rendering it invalid or inoperative or useless. Under Section 81 of the Act, the powers and duties of personal representative rest in the surviving personal representative on the death of one of them. Section 76(e) of the Act only applies where there is a sole administrator who then dies....”

13. In the case of *Re Alexander Ombikhwa* [2024] KEHC11912 (KLR) Musyoka J held that:

“A grant is personal. It is made in personam. It cannot be transferred to another individual. Once the sole holder dies, the grant becomes a useless piece of paper, and it would exist for the sole purpose of revocation, to pave way for appointment of another administrator, if there would be need. See *John Karumwa Maina v Susan Wanjiru Mwangi* [2005] eKLR (Kwach, Shah & O’Kubasu, JJA).

14. Sometimes it would not even be necessary to revoke the grant made to an administrator who has died. Such would be the case where that administrator had completed administration, in terms of having gathered and preserved the estate, paid debts and liabilities, obtained confirmation of the grant, and transmitted the estate to those entitled. Where administration had been completed, there would be no need to revoke the useless grant and appoint a fresh administrator, for there would be no administration to be done. Revocation, in such circumstances, would only be necessary, where administration of the estate was left incomplete, in terms of assets and liabilities not having been ascertained, or assets not collected, or debts and liabilities not settled, or beneficiaries not ascertained, or confirmation not done, or distribution or transmission of the estate not having been done following confirmation of the grant. Revocation is not for the heck or sake of it. There must be a purpose to it. Where a sole administrator dies, leaving the administration of the estate incomplete, in one way or other, another administrator is appointed to complete the administration. The presumption would not be that the dead administrator had done completely nothing at, with respect to administration, but that he had done some tasks, and the incoming administrator would come to complete the work, not to start afresh. In such cases, the grant is said to be a grant *de bonis non administratis*, meaning a grant limited to the purpose of administering the unadministered part of the estate. See *In re Estate of ZKM Deceased* [2018] eKLR (Ali-Aroni, J) and *In re Estate of Brigitte Gohil (Deceased)* (Onyiego, J). [2018] eKLR”

15. In *re Estate of Prisca Ongayo Nande(deceased)* [2020] Eklr, Musyoka J stated as follows:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties



as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

16. In the instant case, the applicants averred that the former administrator left out other beneficiaries in the distribution of the estate, which necessitated the application for revocation of the grant in its entirety. The Applicants must also contend with the fact that the said deceased administrator is not alive in order for him to respond to the allegations. However, that notwithstanding, the administrator having passed on requires the court to appoint new administrators to continue with the task of administration of the estate.
17. Guided by the above authorities, I find the applicants are within the law in applying for revocation of the grant. Owing to the death of the administrator Issack Otieno Okwama, and the exclusion of other beneficiaries, I find that the applicants have shown sufficient ground for revocation of the grant. However, it is noted that the said deceased administrator is not alive so as to be in a position to respond to the allegations raised against him by the Applicants for not including them in the Succession proceedings. That being the position and even without the present application by the Applicants being lodged, the estate could not be left to lie in waste without another person being appointed to continue with the task of administration. It would be appropriate for a fresh grant to be issued so as to prevent the estate from being left to waste before the same is finally distributed among the beneficiaries. Already the two applicants herein Grace Ojwang Awuor Okwama and Joel Nyagudi Okwama have come forward to be considered as administrators of the estate as they represent the 2<sup>nd</sup> and 3<sup>rd</sup> houses. It is noted that there is no representation from the 1<sup>st</sup> house and thus this court proceeds to suo moto appoint Bithia Waore Okwama alias Rebecca Waore Okwama as an administrator representing the first house and to join the other administrators.
18. On the issue of whether the suit properties mentioned by the interested party should form part of the estate, it is noted that the Interested Party has claimed that he had bought one of the properties fully from the deceased while the other one was completed by the deceased administrator. It is not in dispute that the former administrator had the grant confirmed on 5<sup>th</sup> October 2012. It is also not in dispute that the sale agreement between the said administrator and the interested party is dated 8<sup>th</sup> June 2013. This therefore means that the said land parcels were purchased by the interested party upon confirmation of the grant. Whether the grant was regularly or irregularly obtained was not an issue that a third-party purchaser would have known. It is also instructive that the deceased prior to his demise had engaged the interested party over sale and purchase of the aforesaid parcels some of which they concluded while others were concluded by the deceased administrator. If the sale of such properties were concluded by the deceased himself, then the same predated the deceased and ought to be protected. Further, upon the demise of the deceased, the part performance was later concluded by the deceased administrator. If the new administrators to be appointed wish to pursue him regarding ownership, then they should do so in the Environment and Land Court. Hence, the properties now in possession of the interested party should be isolated from distribution and to await determination in the Environment and Land Court.
19. In the case of *John Muremi Muhanda v Elias Mategwa* [2016]Eklr the Court, while addressing the issue of sale of properties by an administrator, stated as follows:

“In the case of *Re Estate of Kariuki* [2002] 2 KLR 172, it was held by Khamoni J that purchaser of the free property of a deceased person acquires no interest in the asset unless he buys it from the administrator, and he has no protection of the law unless he is a purchaser for value without notice”



20. In light of the foregoing, i find that the interested party was an innocent purchaser for value and that the then administrator was clothed with the requisite authority to the deceased's free property which he did. The purchaser should therefore not be punished for the said transaction. I find that the land parcels, namely Siaya Omia-malo/ 2159 and East Asembo /Omia Malo/4478 were legally purchased by the interested party as an innocent purchaser for value without notice of the internal wrangles in the deceased's family. The said properties must be isolated from the distribution and that the new administrators will have an opportunity to contest the Interested Party's ownership in the Environment and Land Court.
21. In view of the foregoing observations, the application dated 4/3/2024 partially succeeds in terms of prayer i) and (iii). I hereby make the following orders:
- a. The grant of representation issued to Issack Otieno Okwama on 14<sup>th</sup> December 2011 and confirmed on 5<sup>th</sup> October 2012 is hereby revoked and further the Certificate of Confirmation of Grant dated 5/10/2012 is hereby cancelled.
  - b. I hereby appoint Grace Ojwang Owuor Okwama, Joel Nyagudi Okwama and Bithia Waore Okwama alias Rebecca Waore Okwama as Administrators to the estate of Simeon Okwama Opala (deceased) and that a fresh grant be and is hereby issued forthwith.
  - c. The said administrators are directed to file an serve fresh summons for confirmation of grant within 30 days upon the issuance of the fresh grant.
  - d. Land parcels numbers Siaya Omia Malo/2159 and East Asembo/omia Malo/4478 shall be excluded from the distribution pending determination of ownership in the Environment and Land Court.
  - e. Each party shall bear their own costs.

It is so ordered.

**DATED AND DELIVERED AT SIAYA THIS 14<sup>TH</sup> DAY OF OCTOBER 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

M/s Kinyanjui.....for Objector/Applicants

Onyango.....for Respondents

M/s Nakhanu for M/s Wangasi.....for Interested Party

Kimaiyo/Maureen.....Court Assistant

