



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Otengo Wadenya (Deceased) (Succession Cause
161 of 2004) [2025] KEHC 13847 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13847 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 161 OF 2004**

WM MUSYOKA, J

OCTOBER 3, 2025

IN THE MATTER OF THE ESTATE OF OTENGO WADENYA (DECEASED)

RULING

1. I have read and considered the Motion, dated 22nd April 2025, which principally seeks review or setting aside of orders that I made herein on 10th November 2023.
2. It would appear to me that the same rests principally on the fact that a grant ad litem made to Joseph Enaki Okello had been revoked. To my understanding, there is no law, in the *Law of Succession Act*, Cap 160, Laws of Kenya, and the Probate and Administration Rules, which requires that a person seeking a full grant should first obtain a grant ad litem. A grant ad litem is required for the filing of a civil suit, not a cause for grant of representation. The applicant has cited no authority to the contrary.
3. During confirmation proceedings, one of the issues for confirmation is the administrators, for the court is called upon, by section 71 of the *Law of Succession Act*, to audit the process of appointment of the administrators, and to assess whether they have administered the estate in accordance with the law, and whether, upon appointment, they would continue to adhere to the relevant law. Where the audit reveals that the appointment was not properly done, or there was maladministration, the trial court, has power, under section 71, to revoke the grant and make a confirmed grant to someone else.
4. The second strand of the application is about orders allegedly made in ELC No. 52 of 2021, where a declaration of trust was purportedly made. A copy of the judgement, in ELC No. 52 of 2021, has not been exhibited, and, therefore, I have no evidence that such a trust was declared, with respect to the assets the subject of the current proceedings. I see an amended decree, purported to have been given on 17th February 2023, and issued on 21st December 2023. From the decrees and orders therein, I do not see any declaration of trust.
5. The issue raised, about a declaration of trust, and ELC No. 52 of 2021 in general, is suitable for determination in a confirmation application, given that the property in question is or was in fact registered in the name of the deceased herein.



6. I do not find, in the circumstances, sufficient grounds for review or setting aside of the orders of 10th November 2023. I shall, as I hereby do, dismiss the application, dated 22nd April 2025. Whoever is aggrieved, by these orders, has leave of 30 days, to move the Court of Appeal, appropriately. There shall be a mention, on 17th November 2025, for further directions.

DELIVERED, DATED AND SIGNED, AT BUSIA, IN CHAMBERS, ON THIS 3RD DAY OF OCTOBER 2025.

W.M. MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Nabende, instructed by Blayer & Company, Advocates for the applicant.

Ms. Nabulindo, instructed by DK Nabulindo & Company, Advocates for the respondents.

