



REPUBLIC OF KENYA



In re Estate of Japheth Omoro Agwata (Deceased) (Succession Cause 96 of 2005) [2025] KEHC 16229 (KLR) (10 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16229 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 96 OF 2005
WM MUSYOKA, J
NOVEMBER 10, 2025**

RULING

1. I am invited to determine a summons for revocation of grant, dated 7th May 2023. The applicant is Tom Butiko Mboya. I shall refer to him, hereafter, as the applicant. He avers that there were problems with the manner the grant was obtained.
2. The applicant avers that he bought 1 acre of land from the deceased, in 1990, and that, therefore, he was a liability of the estate. He had obtained the Land Control Board consent, for subdivision and transfer, and he had mutation forms, duly executed by the deceased. He avers that he had been initially recognized as a liability of the estate. He claims that the administrator did not perform his duties diligently, as he had transmitted the estate in a perfunctory manner.
3. The reaction, to the application, is in an affidavit by Christopher Owithi Agwata, sworn on 8th May 2025. He avers that the administrator had transmitted the estate in accordance with the law, the applicant was not a child of the deceased, and the alleged sale agreement had no legal foundation. He argues that the deceased died in 2001, and these succession proceedings commenced in 2005. He submits that if there were genuine buyers, the family would have known about them, and the said buyers should have ventilated their claims at the Environment and Land Court.
4. The parties canvassed the application viva voce. They presented 3 witnesses. Their testimonies largely regurgitated the contents of their various affidavits.
5. The principal issue, raised by the applicant, is that he had acquired a portion of the estate, and that he wanted the grant revoked, so that his interest can be taken care of. Some of the transactions allegedly happened during the lifetime of the deceased, going by the material on record, while others followed after his demise.
6. For the assets sold during the lifetime of the deceased, I see Land Control Board consents, dating to 1990, and mutation forms dating back to 1999/2000. The deceased died in 2001, and these succession proceedings commenced in 2005. These revocation proceedings are being initiated in 2024, some 20 years after confirmation of the grant, and more than 30 years after the alleged sales. Why did the applicant not approach the court earlier? Did he ever engage with the administrators, over the assets?



- If the administrators declined to recognise the sales, why did he not take the step of going to court, to obtain an order of specific performance, or for refund of the purchase price? Is he still within the limitation period, with respect to seeking an order of specific performance or for refund? He had these civil remedies available to him. Did he ever pursue them?
7. Succession proceedings are meant to be for the purpose of assets being distributed amongst family members. It is to that extent that succession proceedings are regarded as a process of transfer of wealth from one generation to the next. It is not a forum for buyers, of estate assets, to recover their investment. In the event, their investment is not acknowledged, their recourse lies with the Environment and Land Court, by virtue of Articles 162(2) and 165(5) of *the Constitution*, and not with the High Court. Under Rule 41(3) of the Probate and Administration Rules, disputes over ownership of land ought not be resolved in succession proceedings, but in separate proceedings. A claim that one bought land, and an assertion of entitlement to it, would be a dispute over ownership or title to it.
 8. Secondly, the grants herein have been confirmed twice, paving way for distribution. The first time was on 3rd July 2001. That was set aside by a court order, made on 6th May 2015. An attempt was made, vide an application, dated 11th September 2020, to confirm the grant, and distribute the estate. That application was dismissed, on 26th October 2021. Another attempt was made, vide an application, dated 27th March 2023, for fresh confirmation, which was successful, for that application was allowed on 8th February 2024. A certificate of confirmation of grant was issued, dated 14th February 2024.
 9. The applicant had an opportunity, to come on board, during those 3 confirmation processes, to state his claim. He did not avail himself of those opportunities. The instant revocation application was filed on 9th May 2024, after the grant was confirmed, on 8th February 2024, just some 3 months thereafter. The issues, he raises herein, should have been raised and resolved in the determination of 8th February 2024. The courts do not look favourably at attempts to revoke grants months after a confirmation process, to raise issues that should have been raised in the confirmation proceedings.
 10. I am alive to the principle that the office of an administrator is for life, for personal representatives can be called upon to account at any time, even long after completion of the actual administration of the estate. However, that is truer, with respect to accountability sought by the immediate survivors of the deceased, and less so with respect to creditors, whose claims are subject to the law on limitation of actions.
 11. I am not of the persuasion that the *Law of Succession Act*, Cap 160, Laws of Kenya, overrides the provisions of the *Limitation of Actions Act*, Cap 22, Laws of Kenya, so that claims that are stale, under the latter, can, somehow, get a new lease of life, if brought under the provisions of the former. The 2 statutes have to be read and applied together, to obviate the revival of claims, that are stale under the *Limitation of Actions Act*, through litigation under the *Law of Succession Act*.
 12. In view of what I have addressed above, the issues being raised in the application, filed on 9th May 2024, are belated. They are coming too late in the day, for there was opportunity, for the applicant, to raise them earlier, in multiple fora.
 13. With respect to the sales by the widow of the deceased, the applicant has a claim, personally and directly, against the widow. The estate has been distributed, and the applicant has an opportunity to pursue the said widow, for the land that she sold to him, to be excised from the share allocated to her.
 14. I am not persuaded that the application, dated 9th May 2024, is merited, and I hereby dismiss it. There shall be no orders as to costs.



15. I grant leave, to Tom Butiko Mboya, should he be aggrieved by the orders made above, to move the Court of Appeal, on appeal, appropriately, within the next 30 days.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 10TH DAY OF NOVEMBER 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Eva Adhiambo, Legal Researcher.

Advocates

Mr. Shilisia, instructed by Mr. M. Kiveu, Advocate for Tom Butiko Mboya.

Mr. Were, instructed by Fwaya Masakhwe Were & Company, Advocates for Christopher Owiti Agwata.

