

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2193 OF 2003

IN THE MATTER OF THE ESTATE OF MARK AGERO

(DECEASED)

BETWEEN

JOSINTA ADHIAMBO AGERO

STANLEY ODIWUOR AGERO

ADMINISTRATORS/RESPONDENTS

AND

VALARY IMALI

APPLICANT

RULING

1. The deceased, **Mark Agero** died on the 17th April, 2002 and Letters of Administration Intestate were granted to Josinta Adhiambo Agero and Jorim Akach Dundu on 6th October, 2003. Jorim was later substituted with Stanley Odiwuor Agero.

2. The grant was confirmed on 9th June, 2009, and the file was closed.
3. The file was reopened to pave the way for the hearing of an application dated 18th February, 2025, in which the Applicant, Valary Imali, seeks to have the grant revoked.
4. The application is opposed. The 1st Respondent filed a replying affidavit dated 28th July, 2025.
5. The Applicant's main contention is that the Administrators/Respondents failed to include the deceased's land Butsotso/Shikoti/14145, which he had purchased from the seller, Benedicto Wetaba Ratoli, with ownership confirmed through a decision in the Chief Magistrate's Court Kakamega, **Environment and Land Court Case No. 319 of 2018.**
6. The Applicant asserts that, as the deceased's children, she and her younger sister Eunice, who are the surviving family members from the deceased's second wife, have not been updated regarding the administration of the estate.

7. The Respondent, on the other hand, contends that the available estate was distributed fairly and that the Applicant was a beneficiary.

8. The Respondent stated that the parcel Butso/Shikoti/14145 was not included in the succession proceedings due to a Court case that was concluded in 2022. The Respondent has invited the Court's guidance on the next steps concerning this property.

Analysis and determination

9. I have read the application and the affidavits. The issue to be determined is whether the grounds raised in the application before the Court meet the threshold for revocation of the Grant.

10. **Section 76** of the **Law of Succession Act** gives the Court the power to revoke a Grant provided the conditions stipulated therein have been met. It states that: -

“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 has ordered or allowed; 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***
- iv. The grant has become useless and inoperative through subsequent circumstances.”***

11. It is not disputed that the Applicant and her siblings were included in the petition for letters of administration. The Applicant acknowledges that they were very young when the proceedings were initiated. The distribution mode indicates that the 1st Respondent (the first wife) held the funds, which constituted the available part of the estate, in trust for all the children, including the Applicant and her sister. The Respondent explained that

the funds were used for school fees and family necessities.

12. The Respondent acknowledges that the parcel of land Butsotso/Shikoti/14145 was not included in the succession proceedings due to a Court case that was concluded in 2022. I have reviewed the judgment by Hon. H. Wandere, delivered on 29th November, 2022, which is after the Grant in this case was issued and confirmed.
13. From the available documents, I have verified that indeed the property did not constitute the free property of the deceased as prescribed for by **Section 3** of the **Law of Succession Act**. The property was and is still registered under a different person.
14. The deceased has a beneficial interest in the property that was affirmed by the decision of the ELC Court.
15. The Law of Succession does not empower the Succession Court to determine issues related to land ownership or to declare the existence of a trust. Instead, such authority is vested in the Environment and Land Court, which is specifically designated to handle matters

related to the environment and land, including land administration, titles, boundaries, disputes over public, private, or community interests land and environmental protection.

16. The Administrator cannot therefore be faulted for omitting this property from the grant, as the ELC Court case had not been decided at the time she applied for the Grant.

17. The judgment shows that she defended the ELC case as an Administrator and participated in its hearing and determination. I am persuaded that there is no evidence of ill faith or malice.

18. The search certificates annexed show that the parcel has since been subdivided, and there are new numbers. It is also not clear whether the parcel was sold to the deceased in its entirety or in part. Be that as it may, there is no proof that the Applicant has pursued the transfer of registration into the deceased's name following the Court decision.

19. There is no flaw in the procedure by which the grant was obtained; there is also no evidence of failure on the part of the administrators.
20. The parties are at liberty to pursue the issuance of a vesting order as per the Magistrate Court - ELC Court judgment, allowing the property to be transferred into the estate. Subsequently, they may move the Succession Court to address matters related to the property's inclusion and distribution.
21. The summons for revocation of Grant dated 18th February, 2025 is dismissed with an order that each party bears its own costs.
22. It is so ordered.

DATED, DELIVERED and SIGNED at NAIROBI through the Microsoft Teams Online Platform on this **11TH** day of **NOVEMBER, 2025.**

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C. KENDAGOR

JUDGE

In the presence:

Court Assistant: Beryl

Parties absent

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