

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO. 334 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE WALTER
OUMA OFUGU (DECEASED)

RULING

1. I am called upon to determine a summons for revocation of grant, dated 20th May 2024. It is at the instance of Caroline Nabwire Ouma and others. It seeks revocation of a certificate of confirmation of grant, issued on 6th November 2013, and a fresh grant to be issued to Wilbroda Nabwire Oketch, a widow of the deceased.
2. The background to the matter is that this cause was filed on 11th September 2012, by a citor, known as Solome Ajiambo Okumu. She did not list the survivors of the deceased, in her petition for representation. A grant was made to her on 19th November 2012. She brought a summons for confirmation of her grant, dated 13th March 2013. She sought distribution of Samia/Bujwang'a/1054, and she proposed that 4 acres be devolved to her. That application was allowed on 6th November 2013, and a certificate of confirmation of grant, in those terms, was issued to her, dated 14th November 2013.
3. A summons for revocation of her grant, dated 10th March 2014, was brought by Wilbroda Nabwire Oketch. The said application identified the deceased as Jacob Oyugu Sirima, rather than Walter Ouma Ofugu, who was the subject of the petition by Solome Ajiambo Okumu. She averred that Jacob Oyugu was her father-in-law. She mentioned that her husband, Walter Ouma Oyugu, was a son of the deceased, and she had initiated succession proceedings, in Busia P&A No. 59 of 2005, in the estate of Walter Ouma Oyugu. She averred that Solome Ajiambo Okumu secretly got letters of

administration in this cause. She asserted that she was the person qualified to administer the estate of her father-in-law. She later amended her pleadings, to argue that Solome Ajiambo Okumu had replaced her husband, Walter Ouma Ofugu, as administrator of the estate of Jacob Ouma Sirima, with respect to Samia/Bujwang'a/1054.

4. A ruling was delivered, on that application, dated 10th March 2014, by W. Korir J, on 30th March 2017. The application was dismissed. The court took the position that Solome Ajiambo Okumu had not concealed anything from the court.
5. Solome Ajiambo Okumu then moved the court, by a Motion, dated 23rd February 2023. She wanted the court to order the County Surveyor to demarcate Samia/Bujwan'ga/2308, 2309 and 2310, in accordance with orders made in Busia CMCLC No. 146 of 2011 and the certificate of confirmation of grant, dated 14th November 2013. She averred that she had been given 3 acres, in the order of the court, in Busia CMCLC No. 146 of 2011, on 28th December 2011, and not the 4 acres given to her at confirmation. She sought revocation of the titles for Samia/Bujwan'ga/2308, 2309 and 2310, and for new titles to be issued, taking into account the 4 acres given to her at confirmation. She attached a copy of the order made in Busia CMCLC No. 146 of 2011, where she was awarded 2/3 of Samia/Bujwang'a/1054, in a suit that involved her, Wilbroda Nabwire Oketch and Walter Ouma Ofugu. A certificate of official search for Samia/Bujwan'ga/1054, measuring 2.8 hectares, granting her, Solome Ajiambo Okumu, 4 acres, and Walter Ouma Ofugu, 3 acres, was also attached. There was a title deed for Samia/Bujwang'a/2309, in her name, measuring 1.42 hectares.
6. Solome Ajiambo Okumu filed another application, dated 22nd December 2023, for rectification of the certificate of confirmation of grant, dated 14th November 2013, where she

claimed that she was entitled to 4 acres out of Samia/Bujwan'ga/1054. She averred that Samia/Bujwan'ga/1054 was divided into 3 portions, instead of 2, which should have given her 4 acres and Walter Ouma Ofugu 2.916 acres. She averred that she had been advised by the land registrar to go back to court for rectification. She attached copies of the title deeds for Samia/Bujwan'ga/2308, 2309 and 2310.

7. The application was placed before me, and I allowed it, on 30th January 2024. A certificate of confirmation of grant was issued, on 14th February 2024, based on the orders of 30th January 2024. Samia/Bujwan'ga/1054 was split into 2 portions, with 4 acres going to Solome Ajiambo Okumu and 3 acres going to Walter Ouma Ofugu.
8. It was after that that the application, dated 20th May 2024, was filed, by the children of Walter Ouma Ofugu and Wilbroda Nabwire Oketch, seeking revocation of the certificate of confirmation of grant of 6th November 2013, and that a fresh one be issued to Wilbroda Nabwire Oketch. They disclosed that Solome Ajiambo Okumu was a daughter of Topister Namasio Namisi, who had bought a portion of Samia/Bujwan'ga/1054, from Walter Ouma Ofugu. They averred that Solome Ajiambo Okumu had not disclosed other beneficiaries, and that she misled the court. They listed the survivors of the deceased, as Wilbroda Nabwire Oketch and her 9 children. They averred that consents of those 10 survivors were not sought or obtained.
9. Another application was brought by Solome Ajiambo Okumu, dated 2nd September 2024, seeking subdivision of Samia/Bujwan'ga/1054, and provision of security for that exercise. The orders were sought specifically to give effect to the certificate of confirmation of grant, dated 14th February 2024. That application was not opposed, so I allowed it, on 18th September 2024.

10. After that, Solome Ajiambo Okumu brought another application, dated 25th March 2025, seeking the collapse or reversion of Samia/Bujwan'ga/2308, 2309 and 2310 into Samia/Bujwan'ga/1054, to facilitate implementation of the certificate of confirmation of grant dated 30th January 2024. When the application, dated 25th March 2025, was placed before me, I declined to grant it, and, instead, directed Salome Ajiambo Okumu to join the proceedings in the application, dated 20th May 2024.
11. The application, dated 20th May 2024, was canvassed *viva voce*. Among those who testified were Caroline Nabwire Ouma, Catherine Nekesa Ofugu, Mildred Akelo Ofugu, Wilbroda Nabwire Oketch, Janerose Nerima Okonya, Alice Anyango Abwalaba, Solome Ajiambo Okumu and Benedict Ojiambo Sibia.
12. Caroline Nabwire Ouma was the principal applicant, and she testified on her own behalf and that of her siblings. She wanted the distribution set aside as Solome Ajiambo Okumu had not involved her and the rest of the family, in the succession proceedings. She stated that Solome was not given the whole of Samia/Bujwan'ga/1054. Catherine Nekesa Ofugu was also a child of the deceased. She testified along the same lines as Caroline Nabwire Ouma, and so did Mildred Akelo Ofugu. Wilbroda Nabwire Oketch was the widow of the deceased. She identified Solome Ajiambo Okumu as a child of a buyer. She stated that her husband, Walter Ouma Ofugu, had sold the land to the father of Solome Ajiambo Okumu. Janerose Nerima Okonya was a sister of the deceased, while Alice Anyango Abwalaba was a child of the deceased. Solome Ajiambo Okumu explained how her father bought a portion of the estate land, and how she litigated at the land tribunal over the land, against Walter Ouma Ofugu and Wilbroda Nabwire Oketch, and how the same was awarded to her by the court. Benedict Ojiambo

Sibia was a former *liguru*. He corroborated aspects of the testimony of Solome Ajiambo Okumu.

13. Caroline Nabwire Ouma is a daughter of Wilbroda Nabwire Oketch and Walter Ouma Ofugu. She proposes that the grant, made to Solome Ajiambo Okumu, be revoked, so that her mother, Wilbroda Nabwire Oketch, is appointed administratrix, in the place of Solome Ajiambo Okumu. Yet, this same Wilbroda Nabwire Oketch was the one who had filed the summons for revocation of grant, dated 10th October 2014, to have the same grant, made to Solome Ajiambo Okumu, revoked. That application was handled by W. Korir J, and was dismissed on 30th March 2017. The ruling of 30th March 2017 ran into some 15 pages, and all the issues raised by Caroline Nabwire Ouma, in the instant application, came up for consideration in that ruling, and they were considered, analysed and dismissed. Caroline Nabwire Ouma, and her siblings, is re-litigating the issues that her mother, Wilbroda Nabwire Oketch, had litigated in her application, dated 10th October 2014, and which W. Korir J dismissed on 30th March 2017. The said issues are clearly *res judicata*. They are not available for re-litigation.
14. Solome Ajiambo Okumu had litigated with Wilbroda Nabwire Oketch and the deceased herein, Walter Ouma Ofugu, in Busia CMCLC No. 146 of 2011, and she was awarded a portion of the land, Samia/Bujwan'ga/1054, by the court. The application, by Caroline Nabwire Ouma, seeks to re-litigate the issue of Solome Ajiambo Okumu's entitlement to a portion of Samia/Bujwan'ga/1054. Yet, that issue was litigated in Busia CMCLC No. 146 of 2011, and an order was made in her favour on 28th December 2011. That order still stands, as it was never reversed on appeal, by a higher court, or on review, by the Chief Magistrate. The issue is no longer alive. It is water under the bridge. It was settled. It is *res judicata*.

15. Solome Ajiambo Okumu came to the probate court, citing the family of the deceased herein, specifically Wilbroda Nabwire Oketch, pushing that family to take out representation to the estate of Walter Ouma Ofugu, in a measure to have the portion awarded to her, by the court, in Busia CMCLC No. 146 of 2011, devolved to her. That family ignored her citation, and the probate court allowed her to petition instead, which she did, in this cause. It is little wonder W Korir J was unwilling to revoke her grant. She obtained representation so that she could get enforcement or implementation of the order of 28th December 2011, made in Busia CMCLC No. 146 of 2011. That was the background to her actions. W Korir J, in the ruling of 30th March 2017, did not find any wrongdoing on her part. I equally see nothing wrong with what she did. Even if I found anything, I would have no jurisdiction to reverse the orders made by W. Korir J, for they were made by a Judge with jurisdiction concurrent to mine. What Wilbroda Nabwire Oketch and her family should have done, if they did not agree with the determination by W Korir J, was to appeal against the orders made in that ruling, instead of subsequently filing a similar application, based on the same facts.
16. The long and short of it is that there is no merit in the application, dated 20th May 2024, as it duplicates an earlier application, which was fully heard and determined, on its merits.
17. The application, dated 25th March 2025, was to be determined simultaneously with that dated 20th May 2024. The grant herein was confirmed in 2013. Those confirmation orders have never been reversed. The distribution was varied by the orders of 30th January 2024, to align it to the order of 28th December 2011, made in Busia CMCLC No. 146 of 2011. The orders of 30th January 2024 culminated in the issuance of the certificate of confirmation

of grant, dated 14th February 2024. The application, dated 25th March 2025, seeks orders that would facilitate the implementation of the orders of 28th December 2011 and 30th January 2024. It should be available for granting.

18. The final orders are:
- (a) That I hereby dismiss the application, dated 20th May 2024;
 - (b) That I hereby allow the application, dated 25th March 2025;
 - (c) That each party shall bear its own costs; and
 - (d) That, if any party is aggrieved, by the outcome herein, I grant leave, of 30 days, for that party to move the Court of Appeal, appropriately.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN
CHAMBERS, AT BUSIA, ON THIS 28TH DAY OF NOVEMBER
2025.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Jumba, instructed by Balongo & Company, Advocates for Wilbroda Nabwire Oketch.

Mr. Ouma, instructed by BM Ouma & Company, Advocates for Anthony Odongo Ofugu, Alice Anyango Abwalaba, Beatrice Ajiambo Ouma, Caroline Nabwire Ouma, Janerose Nerima Okonya and Catherine Nekesa Ofugu.

Mr. Otieno, instructed by Masiga Otieno & Associates, Advocates for Solome Ajiambo Okumu.