

REPUBLIC OF KENYA
THE HIGH COURT OF KENYA AT SIAYA
SUCCESSION MISCELLANEOUS CAUSE NUMBER E008 OF
2024
IN THE MATTER OF THE ESTATE OF GABRIEL ONYANGO
RAWAYO (DECEASED)

ROSE ATIENO.....OBJECTOR
APPLICANT

VERSUS

VINCENT SAMSON ODUOR
.....PETITIONER/RESPONDENT

JUDGMENT

1. The Objector/Applicant has filed summons for revocation of grant dated 7/11/2024 seeking the following reliefs:
 - i) Spent.
 - ii) Spent.
 - iii) Spent.

iv) The grant of letters of administration intestate confirmed to Vincent Samson Oduor on the 17/7/2012 be revoked and all consequential dealings in the estate be set aside and or cancelled.

v) The Registrar of Lands be ordered to cancel the title to all that parcel known as North Ugenya/Sega/2066 issued to the Respondent and revert the same back to the estate of the deceased.

vi) The costs of the application be borne by the Respondent.

2. The application is supported by the grounds set out thereunder and by the supporting affidavit of the Objector/Applicant sworn on even date. The Objector's gravamen is inter alia; that the grant was obtained fraudulently by the making of false statement and concealment of material facts from the court; that the proceedings leading to the issuance of the grant of letters of administration intestate were defective resulting in a failure of justice; that the Respondent disinherited all the beneficiaries to the estate of the deceased; that the Respondent while filing for letters of grant of administration had deliberately misled the court when he described himself as a son of the deceased yet he is a nephew and further referring to his father as a son of the deceased while again describing his mother as a sister to the deceased instead of sister in law; that the Respondent secretly registered himself

as the owner of the suit land and locked out the family members; that it is proper to revoke the grant and the title reverted back in the name of the deceased so that the family can organize for a fresh distribution.

3. The application was also supported by the affidavits of Clementina Akinyi Odhiambo and Daniel Maurice Odhiambo sworn on 15/4/2025 which were a reiteration of the Objector's averments.
4. In opposition to the application for revocation, the petitioner filed a reply to the same dated 18/04/2025 in which he averred inter alia; that the proceedings for obtaining the grant were not defective in substance; that the grant was not obtained fraudulently because he made no false statements nor concealed any material information; that his father George Peter Odhiambo had given him permission to institute the succession in the estate of his late brother; that he was also authorized to pursue trespassers on the suit land and to evict them therefrom; that his late father had subdivided his land to his family members before his demise; that the Objector herein is working in cahoots with other persons who have a malicious appetite for his father's land and who have been pushing the area chief to issue them with introduction letters so as to further their agenda; that the Objector has ganged up with her sisters and their mother to harass him; that the registration of the land in his name was

lawful and procedural; that the issues raised by the Objector and her group have been overtaken by events and should not be entertained by this court.

5. The summons for revocation of grant was canvassed by way of viva voce evidence.
6. Rose Atieno Otieno (OBW1) adopted her averments in her supporting affidavit as her evidence in chief. She stated that the deceased herein was her uncle and who was brother to her father. That the Petitioner herein is her older brother. On cross-examination, she stated inter alia; that she is a niece to the deceased; that her late father could have inherited the estate of his late brother; that the Petitioner lied to the court when he described himself as a son of the deceased yet it was not true; that there was a land dispute involving their father and another person vide Case number 139 of 2013; that she conducted a search in August 2024 and learnt that the Petitioner had registered himself as the owner of the deceased's land; that there are three persons on the suit land currently; that the petitioner took advantage of their father who was then aged and tricked him to sign under the guise that he was signing documents over the land case; that the suit land must be shared among all the family members; that she is aware that the petitioner is currently pursuing the trespassers with a view to evicting them; that it is not true

that their father allowed the petitioner to inherit the deceased's land; that the petitioner falsified court documents such as referring to his mother as his sister.

7. Clementina Akinyi Odhiambo (OBW2) relied on her affidavit in support of the summons for revocation of grant as her evidence in chief. She stated that the petitioner is her first born son while the Objector is her third born child. That the deceased herein was her brother in law and elder brother to her husband. On cross-examination, she stated inter alia; that the deceased sometimes in 2008 left the land for his brother who is her husband; that one Dismus Otieno Ogoya has encroached onto the suit land; that her husband did not give the petitioner permission to institute a succession case; that the petitioner requested for identity cards to use in the eviction of the trespassers; that one of her sons Daniel Maurice Odhiambo has since moved onto a portion of the suit land.

8. Daniel Maurice Odhiambo (OBW3) adopted his affidavit in support of the summons for revocation of grant as his evidence in chief. On cross-examination, he stated inter alia; that the petitioner fraudulently obtained the grant; that the deceased died in 2010; that a third party later lodged a claim on the deceased's land and who should be evicted; that he has since built his house on a portion of the deceased's land;

that their father did not allocate the land prior to his demise; that their father directed that they were to share the land; that the petitioner physically showed him the portion he now occupies; that he is not aware that the petitioner is the one who filed cases against trespassers; that the allegations of ganging up against the petitioner are false; that he is aware of the Luo customs where young sons get less land than the older sons; that the petitioner did not inform the family that he had lodged a succession cause; that the deceased did not have a wife or children.

9. Vincent Samson Oduor (PET PW1) adopted his replying affidavit as well his grounds of objection as his evidence in chief. He testified that the Objector is his younger sister. On cross-examination, he stated inter alia; that George Odhiambo Rawayo was his biological father while the deceased herein was a brother to his father; that he did not present himself as a brother of George Odhiambo Rawayo in his application for letters of grant of administration; that he confirms that vide paragraph 4 of his affidavit in support of his summons for confirmation of grant has described him as a brother to George Odhiambo Rawayo; that he requested his younger brother Daniel Maurice Odhiambo to contribute money towards the eviction of trespassers; that Daniel Odhiambo has no right to the land; that he, Rose and Daniel are siblings and entitled to the estate of their late father; that

their late father did not have other assets apart from what he has been pursuing; that his father had a right to the property of the deceased herein being the only surviving relative.

10. Parties duly filed and exchanged submissions.

11. I have given due consideration to the rival affidavits and evidence of the parties as well as the submissions filed. It is not in dispute that the deceased herein died intestate without a surviving spouse or children. It is likewise not disputed that both the Objector and the petitioner are children of the brother to the deceased, one George Odhiambo Rawayo. It is also not in dispute that the Petitioner herein had earlier instituted this cause at Kisumu High Court vide Succession Cause No.102 of 2011 wherein he obtained a grant and which was later confirmed and that the cause was transferred to this court. The bone of contention is that the petitioner left out the objector in the distribution of their deceased uncle's estate. The issue for determination is whether the application for revocation of the grant has merit.

12. Revocation of grants is provided for under section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. The said provision states as follows:

"76. 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.”

13. 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 material facts, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons.

14. 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.

15. 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. It transpired from the evidence that the deceased herein did not have a wife or children and that the closest relative was his brother George Odhiambo Rawayo who apparently was the father of the Petitioner and Objector. Hence, the estate ought to be distributed in line with the provisions of section 39 of the Law of which provides as follows:

“Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—

(a) father; or if dead

(b) mother; or if dead

(c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none

(d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none

(e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund."

17. Applying the above provision to the facts, both the Objector and Petitioner fall under section 39(1)(c) of the Law of Succession Act. It is not in dispute that the father to both Objector and Petitioner was the rightful person to inherit the estate of the deceased but since he had also died then his children rank in equal priority under section 39(c) of the aforesaid Act. This therefore means that both the petitioner and the objector had equal rights to petition the court for the grant of letters of grant. Secondly, the proviso stipulates that they should get equal shares of the estate.

18. I have perused the petition forms P &A 5 that the Petitioner presented to the court vide Kisumu High Court Succession Cause No.102 of 2011 and note that he described his father George Odhiambo Rawayo as a son to the deceased and likewise presented himself as a son to the deceased and further indicated his mother Clementina Akinyi as a daughter of the deceased. This was extremely fraudulent and deceitful on the part of the Petitioner herein when he knew quite well that the deceased was a brother to his father and thus he was his uncle while his father ought to have been indicated as a brother while his mother ought to have been indicated as a sister in law. During the testimony in court the Petitioner's mother Clementina Akinyi Odhiambo stated that the Petitioner took advantage of their illiteracy to dupe them and that she was certain that her late husband did not give the Petitioner authority to petition for letters of grant except to lodge suit against trespassers. It is clear that the Petitioner herein concealed material facts from the court and failed to list all his siblings as beneficiaries of the estate of the deceased. The Petitioner had great difficulty in explaining why he had not given the proper description of the beneficiaries. The Petitioner further faulted the Objector and family members for waging war against him yet he was trying to salvage the land from grabbers and trespassers and went ahead to contend that his title to the property is unimpeachable. It is the contention of the Petitioner that the

Objector and the rest of the family members are ungrateful for the efforts he has so far made in his war against trespassers.

19. Even though the Petitioner has painted a picture of a man on a mission to restore the property, his actions while filing the petition for grant of letters of administration intestate betrays him and later acquiring title to the land and thereby throwing his siblings under the bus calls this court to intervene so that the family members can get their entitlement under the estate. It is instructive that section 39 of the Act gives the guidelines as to the line- up of the beneficiaries. In deed the parties herein are siblings since their father who was to inherit the estate of the deceased has since passed on and therefore all of them rank in equal priority to take out letters of grant and to share the estate equally. It was therefore quite erroneous for the petitioner to exclude them when he filed the case in Kisumu. The situation was even made worse when the petitioner falsely indicated his father as a son of the deceased and further indicated himself as a son of the deceased and further indicated his mother as a daughter of the deceased. This was clear evidence that the Petitioner deliberately concealed material facts from the court and thus warrants an order for revocation of the grant so that the family can commence the process afresh in the interest of justice and fairness. Further, it is noted that the Petitioner did

not obtain the consent of the beneficiaries or a clear authority from his father at the time. From the evidence of the Objector and her witnesses, it emerged that the Petitioner acted secretly and misrepresented their identities in the petition. As the petitioner filed the petition without a clear renunciation by his father George Odhiambo Rawiyo or an authority from him, then the grant subsequently obtained is for all intents and purposes defective in substance and thus amenable for revocation. Further, concealment of material facts from the court must invite an order for revocation as it is clear that the petitioner was out to benefit himself at the expense of the rest of the family members. The Petitioner in his submissions has contended that his female siblings should not benefit from the estate on the grounds that they are already married. It must be pointed out that the constitution vide article 27 outlaws any form of discrimination on grounds of race or gender. Again, the Law of Succession Act does not differentiate on the gender of the children of a deceased person as it refers to them as children of the deceased. The only way female children will be excluded from distribution is when they have renounced any claim to the estate. This court has not been shown evidence to that effect and hence the Petitioner's suggestion must be rejected.

20. An analysis of the entire evidence leads me to come to the conclusion that the Petitioner herein was not acting as an

innocent person but one out on a mission to acquire the property of the deceased to the exclusion of the rest of the family members. I am in agreement with the sentiments of learned counsel for the Objector that the Petitioner initiated the succession process on falsehood and sustained it through until he acquired title. Such a process which is flawed in the eyes of the law must be interfered with by the court. The Petitioner duped his father and made him to believe that he was pursuing the issue of trespassers on the land while in actual fact he was pursuing a personal agenda namely the acquisition of the land to the exclusion of the rest of the family members. The family members were shocked to find that the Petitioner had already registered himself as the sole owner of the land and have thus moved to this court for redress. I find that it is appropriate to revoke the grant and cancel the certificate of confirmation of grant and issue a fresh one in the names of the Petitioner and Objector who will file fresh summons for confirmation of grant. This is necessary so that the family of the deceased can start the process afresh as there has been a false start. It is also appropriate that the title already issued be cancelled and the same to revert in the name of the deceased and be made available for distribution among the beneficiaries. As regards the issue of trespassers on the land, the administrators will deal with it as appropriate.

21. In light of the foregoing, I find that the Objector's application for revocation of grant dated 7/11/2024 has merit. The same is allowed in the following terms:

- i) The grant of letters of administration intestate issued to the Petitioner herein on 12th July 2011 be and is hereby revoked and that the eventual certificate of confirmation of grant issued on 17th July 2012 is hereby cancelled.**
- ii) A fresh grant be and is hereby issued in the name of Vincent Samson Oduor and Rose Atieno Otieno and who are directed to file fresh summons for confirmation of grant within fourteen (14) days upon issuance of the fresh grant.**
- iii) An order is hereby issued directing the Land Registrar Siaya County to cancel the title to all that parcel of land known as North Ugenya/Sega/2066 issued to the Respondent and the same to revert back in the name of the deceased Gabriel Onyango Rawayo and be made available for distribution among the beneficiaries.**
- iv) As parties are members of one family, I order each party to bear their own costs.**

Dated, signed and delivered at Siaya this 5th day of February 2026.

D.KEMEI

JUDGE

In the presence of:

Atito for Odeny.....for Objector

Vincent Samson Oduor.....Petitioner

Maureen/Kimaiyo.....Court Assistant