

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO. 80 OF 2003

IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH
EMONGURA OTIENGI (DECEASED)

RULING

1. The application, dated 24th November 2023, seeks that the grant made on 30th May 2023, and confirmed on 25th July 2023, be revoked, and the *ex parte* judgment, decree and consequential orders be set aside, pending hearing and determination of the application. There is also a prayer for stay of execution, of the orders of 23rd May 2023, to stop the intended cancellation of titles and subdivision of South Teso/Angorom/4058, pending hearing and determination of the application. There is also a prayer for maintenance of *status quo*, with respect to the certificate of confirmation of grant, and grant of a temporary injunction, to restrain the objector and administratrix from interfering, trespassing onto or dealing with the estate assets.

2. The application is at the instance of Paul Otieno Oloo and David Kimani. They swore a joint affidavit, on 24th November 2023, in support. They assert to be the owners of South Teso/Angorom/16669, 16670, 17370, 17371, 17373, 17374, 17375 and 17388, which they had allegedly bought from Rose Amunyet, in 2011 and 2012, which were hived off South Teso/Angorom/4058. A confirmation application was heard on 31st October 2013, and the grant was confirmed, and a certificate of confirmation of grant was issued. That confirmed grant was revoked on 23rd May 2023, together with the certificate confirming it, and a fresh grant was issued to Rose Amunyet Oketch and Chrispinus Ojune Adome. The cancellation of title reverted the property to South Teso/Angorom/4058, in the name of the deceased.

They aver that they were not involved in the process, as interested parties, and there was no disclosure to them of the subsequent proceedings. They aver that the Chief's letter, of 20th August 2002, did not disclose Chrispinus Ojune Adome, as a beneficiary, as it had only 3 names of survivors of the deceased. No evidence was tendered before the court, to demonstrate that Chrispinus Ojune Adome was a nephew of the deceased. They aver that they would suffer, as they have been in occupation of the land since 2008, where they have built their houses, and they stood to be evicted. They say that the transmission of the property, as per the confirmation orders, followed the laid down law.

3. They have attached documents that support their case. There are copies of title deeds for the subdivisions of South Teso/Angorom/4058, that were registered in their names. There are also copies of the sale agreements, executed between them and Rose Amunyet Oketch, in 2011 and 2012. There is a copy of a letter from the Chief, dated 20th August 2003. There are copies of the certificates of confirmation of grant, dated 12th November 2013 and 25th July 2023, and the grants of 22nd September 2022 and 30th May 2023. There are also copies of the proceedings conducted between 19th July 2023 and 31st October 2013. A copy of the confirmation application, filed on 27th November 2023, is also attached, and evidence that they paid Rose Amunyet Oketch, ostensibly, the purchase monies for the parcels of land that they had allegedly bought.
4. Chrispinus Ojune Adome responded to the application, by way of grounds of opposition, and an affidavit, both dated 26th November 2025. The grounds indicate that the applicants were not dependants of the deceased, and the sale agreements that they allegedly executed amounted to intermeddling with the estate of the deceased, and were null and void, and that their attempt to enter the land of the estate was an act of intermeddling. It is asserted that they

were strangers for whom there would be no obligation to involve them in these proceedings, hence there would be no basis for nullification of the grant.

5. In the affidavit, it is averred that South Teso/Angorom/4058 belonged to his grandfather. He states that he learnt, in March 2023, that his aunts, Rose Amunyet Oketch and Christine Nekesa Omwene, had obtained a grant, without involving him, and had had it confirmed. He filed for revocation of that grant, by an application, dated 31st March 2023. After he served Rose Amunyet Oketch, with the revocation application, she agreed to have the grant revoked, and a joint grant issued to her and him. They recorded a consent to that effect, on 12th June 2023, and a fresh distribution followed. He avers that the sale agreements, the applicants rely on, were executed in 2011 and 2012, when South Teso/Angorom/4058 were still registered in the name of the deceased. He explains that the initial administrator was Michael Otiengi, who died in 2009, and was substituted by Rose Amunyet Oketch, in 2013. He argues that Rose Amunyet Oketch was not an administratrix in 2011 and 2012, when the land sales happened. He asserts that those sales were not valid, as they were executed in contravention of section 45(1) of the Law of Succession Act, Cap 160, Laws of Kenya. He also argues that the applicants were not dependants of the deceased, hence they could not seek the orders sought in the application. The applicants are accused of being trespassers on the land of the deceased.
6. Chrispinus Ojune Adome has attached several documents, to his affidavit, to expound on his case. There is a letter from the Chief, dated 20th August 2023. There is a replying affidavit, sworn by Rose Amunyet Oketch, on 20th May 2023. There is the consent order of 23rd May 2023, as formally extracted on 12th June 2023. There are copies of the sale agreements of 2011 and 2012, as executed between the applicants and Rose Amunyet Oketch. There is also a copy of

the chamber summons of 2012, filed by Rose Amunyet Oketch.

7. Directions were taken, on 27th November 2025, on the disposal of the application, dated 24th November 2023. Only the applicants filed written submissions, which I have read, and noted the contents.
8. The grant, sought to be revoked, made on 30th May 2023, and confirmed on 25th July 2023, was by consent of Rose Amunyet Oketch and Chrispinus Ojune Adome. The initial administrator of the estate was Michael Otiengi, who had been appointed on 6th June 2006, and a grant of letters of administration intestate issued to him, bearing an even date. He died on 28th July 2009, and a certificate of death was issued, dated 7th September 2011, being serial number 133178. Upon his death, Rose Amunyet Oketch applied, vide an application, dated 15th February 2012, to take his place, as administratrix. That application was placed before Tuiyott J, on 18th July 2013, and was allowed, which meant that Rose Amunyet Oketch became the administratrix of the estate on 18th July 2013. I see, on the record, that the grant that was issued to her, purported that she was appointed on 20th September 2022, and the grant issued, was dated 22nd September 2022. That cannot be accurate, for her application for appointment, as such, was not placed before a Judge, until 18th July 2013, when it was allowed. The appointment was on 18th July 2013, and became effective from that date, and a certificate or a grant issued, out of the order of 18th July 2013, could only bear the date of 18th July 2013 or a date thereafter. Rose Amunyet Oketch purportedly filed an application, on 18th July 2013, which was undated, and which was placed before Tuiyott J, on 31st October 2013, and was allowed. A certificate, of that confirmation, issued, dated 15th January 2013.

9. So, how did Chrispinus Ojune Adome come into the picture? He filed a summons for revocation of grant, dated 31st March 2023. He identified the deceased as his uncle, who had been survived by him, as nephew, and by Rose Amunyet Oketch and Christine Nekesa Omwene, who he identified as his aunts, and, therefore, sisters of the deceased. He complained that the succession was done secretly, without his knowledge, or involvement, as he had been completely left out.
10. I cannot tell whether Rose Amunyet Oketch responded to the application, dated 31st March 2023, prior to the recording of the consent orders of 23rd May 2023, for I have not come across any filing by her, but Chrispinus Ojune Adome has attached a replying affidavit that she purportedly swore on 20th May 2023, in response to an application, dated 10th January 2023. I have not seen the original affidavit of 20th May 2023, in the file before me, and I have equally not seen the application, dated 10th January 2023, which it purports to respond to. I cannot vouch, therefore, for the veracity of the substance of the said affidavit. I shall place no reliance at all to it. I also have serious issues with the application, dated 31st March 2023. It was filed on 31st March 2023. Kshs. 1,500.00 was charged, for filing it. The assessment was endorsed on the face of the Motion of 31st March 2023, against a court date stamp of 31st March 2023. However, the receipt, issued by the Judiciary Accounts Office, is dated 27th January 2023, indicating that the bank transfer happened on 27th January 2023, for Kshs. 1,500.00.
11. Whatever the case, Rose Amunyet Oketch conceded to the application, dated 31st March 2023. The circumstances of the concession were not disclosed, but as the matter was between Rose Amunyet Oketch and Chrispinus Ojune Adome, the consent, they proposed, was recorded as an order of the court, which paved way for the orders that were subsequently made, distributing the estate between Rose

Amunyet Oketch, Chrispinus Ojune Adome and Christine Nekesa Omwene, in July 2023.

12. How did the applicants, Paul Otieno Oloo and David Kimani, come into the picture? They were introduced into the matter by Rose Amunyet Oketch, vide her undated confirmation application, filed herein on 18th July 2013. They were not listed in the affidavit that she swore in support, as survivors of the deceased, but it was proposed that the estate property, South Teso/Angorom/4058, be devolved wholly to the 2 of them, with Paul Otieno Oloo taking 0.37 hectares and David Kimani taking 0.34 hectares. It was not disclosed, in the affidavit by Rose Amunyet Oketch, how Paul Otieno Oloo and David Kimani were related to the deceased herein, or to the estate, to justify or warrant the entire estate being devolved upon them. The matter came up on 31st October 2013, before Tuiyott J, for confirmation. Rose Amunyet Oketch, Christine Nekesa Omwene and David Kimani were in court. The issue of who Paul Otieno Oloo and David Kimani were to the deceased, or to the estate, did not come up.
13. But who were Paul Otieno Oloo and David Kimani to the deceased or to his estate? That has come to light, through the application, dated 24th November 2023. In the affidavit in support of their application, sworn on even date, they identify themselves as interested parties, having bought the land from Rose Amunyet Oketch, in agreements, dated 11th December 2011 and 22nd May 2012, exhibited to the application. The agreement of 11th December 2011 was between Rose Amunyet Oketch and Paul Otieno Oloo, while that of 20th May 2012 was between Rose Amunyet Oketch and David Kimani. It would appear that it was on that basis that the property was devolved upon them, in the proceedings of 31st October 2013.

14. However, there is a problem. The property of a person who has died intestate, as was the case here, vests in the personal representative or administrator, by virtue of section 79 of the Law of Succession Act. The grant of letters of administration intestate does not relate back, by dint of section 80(2) of the Law of Succession Act, to the date of death, and it only becomes effective on the date the grant is made. As at 11th December 2011 and 20th May 2012, when Paul Otieno Oloo and David Kimani transacted with Rose Amunyet Oketch, the estate herein had no administrator. The estate of the deceased vested in no one, at the time. The deceased had no personal representative. Rose Amunyet Oketch was not appointed administratrix until 18th July 2013, when her application was allowed, which was well after the dates of 11th December 2011 and 20th May 2012. The estate of the deceased did not vest in her, by dint of section 79 of the Law of Succession Act, when she purported to enter into those sale agreements with Paul Otieno Oloo and David Kimani. She could not represent the deceased, in a transaction relating to his property, at that time, since the property of the estate did not vest in her. She had nothing to sell, and she sold nothing to Paul Otieno Oloo and David Kimani. Her appointment, on 13th July 2013, as administratrix of the estate and personal representative of the deceased, did not help them, for the same did not relate back to the date of the death of the deceased, so as to authenticate the said sales.

15. Moreover, capital assets of the estate, such as land or immovable property, cannot be distributed before the grant is confirmed, by dint of sections 55 and 71 of the Law of Succession Act. Section 82(b)(ii) is emphatic, that immovable property is not to be sold, prior to confirmation of grant. Rose Amunyet Oketch was appointed administratrix on 13th July 2013. She filed a summons for confirmation of her grant, on 18th July 2013, just 5 days after her appointment, and that confirmation happened on 31st

October 2013. Going by section 82(b)(ii), Rose Amunyet Oketch could only validly sell South Teso/Angorom/4053, the estate property, to Paul Otieno Oloo and David Kimani, after 31st October 2013. Whatever was done, before 31st October 2013, did not have the backing of the relevant law, and was unlawful, and its product was invalid.

16. Paul Otieno Oloo and David Kimani were neither survivors nor representatives of the deceased, for they were not related to him by blood or marriage. They were not creditors of the estate either. They did not transact with the deceased, during his lifetime, which would have clothed them with legitimacy, to assert beneficial interest in his estate. After his death, they did not transact with his personal representatives. The person they dealt with, Rose Amunyet Oketch, was not the administratrix of the estate in 2011 and 2012, and she could not represent the deceased in purported sales of his land at that time. She had nothing to sell, for the property did not vest in her. She transferred no rights, whatsoever, to the alleged buyers, and they acquired none from those sales. Paul Otieno Oloo and David Kimani acquired no beneficial interest that could be devolved to them, in the proceedings of 31st October 2013, and they have none that can be asserted in the instant proceedings. They can only look up to Rose Amunyet Oketch, to recover their money, or to access the land that ultimately devolved upon her, at the confirmation proceedings of 11th July 2023.

17. The activities of Rose Amunyet Oketch, Paul Otieno Oloo and David Kimani, of 11th December 2011 and 20th May 2012, amounted to, what section 45 of the Law of Succession Act refers to as, intermeddling, being the handling or dealing with estate assets by a person who has no authority to handle or deal with them. Rose Amunyet Oketch did not have authority, from the court, to handle the property of a dead person, the deceased herein, in the manner that she did. She could not sell it, without first obtaining a grant,

which was the only way she could get authority to handle it. The fact that the deceased was her brother was not a source of authority, absent of a grant of letters of administration intestate. Section 45 criminalises the handling of a property of a dead person, without authority. The offence attracts a fine or a term in jail, or both. Transactions, tainted by criminality, such as those between Rose Amunyet Oketch, Paul Otieno Oloo and David Kimani, cannot possibly have any validity.

18. The applicants have no basis, in law or equity, to assert rights of any colour or shade, to justify intervention into these proceedings, in the manner that they have done. They acquired no interest in the estate, in the context of the Law of Succession Act, and section 76 thereof, in particular, to justify consideration for revocation of the grant made herein.

19. I believe I have said enough to justify a conclusion that the application herein, dated 24th November 2023, has no merit. As it lacks merit, it is hereby dismissed, with costs to the estate. The applicants have leave, to challenge this dismissal, at the Court of Appeal. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED, AND SIGNED IN
CHAMBERS, AT BUSIA, THIS 16TH DAY OF FEBRUARY
2026.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

**Mr. Gakuya, instructed by JO Juma & Partners, Advocates for
David Kimani and Paul Otieno Oloo.**

**Mr. Otanga, instructed by Bogonko Otanga & Company,
Advocates for Rose Amunyet Oketch.**

**Mr. Okeyo, instructed by Okeyo Ochiel & Company, Advocates
for Chrispinus Ojune Adome.**