



**In re Estate of Martin Anyango Ogutu (Deceased) (Succession Cause
134 of 2015) [2026] KEHC 5224 (KLR) (17 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5224 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
SUCCESSION CAUSE 134 OF 2015**

OA SEWE, J

APRIL 17, 2026

IN THE MATTER OF THE ESTATE OF MARTIN ANYANGO OGUTU (DECEASED)

AND

**IN THE MATTER OF AN APPLICATION FOR REVOCATION
OF GRANT OF LETTERS OF ADMINISTRATION INTTESTATE**

BETWEEN

ROBERT OUKO ANYANGO 1ST APPLICANT

MARY AOKO 2ND APPLICANT

AND

DANIEL OLUOCH OWICH RESPONDENT

RULING

1. The Summons for Revocation of Grant dated 19th June 2024 was filed by the objector, Daniel Oluoch Owich, under Section 76 of the *Law of Succession Act*, Cap 160 of the Laws of Kenya, Sections IA, 1B, 3A and 63(e) of the *Civil Procedure Act*, Cap 21 of the Laws of Kenya, Rules 44, 48, 58, 63, 70 and 73 of the Probate and Administration Rules, and Order 40 Rules 1, 2, 3, 10 of the Civil Procedure Rules, 2010 for the following orders:
 - (a) That application be certified as urgent and service thereof be dispensed with in the 1st Instance. (spent)
 - (b) That the Grant of Letters of Administration issued to the petitioners/respondents and confirmed on 2nd day of November 2020 be revoked and/or annulled.
 - (c) That there be an Order of Conservation and/or Preservation of the Estate land being LR. Number Lambwe East 1 141 pending hearing and determination of this application.



2. The application was anchored on the following grounds:
 - (a) The objector is a lawful beneficiary of the deceased herein having bought a portion of the Estate Land Number Lambwe East 1 141 Measuring 4 acres from the deceased herein but was left out in the list of beneficiaries.
 - (b) The Grant was obtained fraudulently by the making of false statements.
 - (c) The Grant was obtained by means of untrue allegations of facts essential in point of law to justify the Grant.
 - (d) The Grant was obtained fraudulently by the making of false statement and/or by concealment from the Court of material issues to the case namely that the Estate is indebted to the objector/ applicant.
 - (e) The Proceedings to obtain the Grant were defective in substance.
3. The application was supported by the objector's own affidavit, sworn on 19th June 2024 in which he deposed that on the 12th day of November 2003, he lawfully bought a portion of land measuring 4 Acres from the deceased herein out of his Land Title Number Lambwe East 1 141 (Annexed hereto and marked DOO 1 is copy of the Agreement). He averred that he thereby became a natural beneficiary of the estate of the deceased and his interest formed part of the liabilities of the estate of the deceased in so far as the said portion measuring 4 acres was not transferred to him by the deceased before his death.
4. The applicant further averred that respondents herein fraudulently and illegally failed to disclose his interest or list him as one of the beneficiaries in this Petition. For this reason, the applicant contended that the Grant herein was obtained by fraud and by failure to make material disclosure to Court as by law required. He consequently prayed that the Grant issued herein be revoked so as to have his interest included as one of the beneficiaries of the deceased and owner of a portion measuring 4 acres of the estate land, namely Lambwe I East 1 141.
5. In response to the application, the respondents relied on the Replying Affidavit sworn by the 1st respondent, Robert Ouko Anyango. They were categorical that the applicant does not qualify as a beneficiary of the deceased within the meaning of the *Law of Succession Act*. The respondents denied that the deceased sold a portion of the suit property to the applicant, contending that the entire parcel of land known as Lambwe East/141 is less than what the applicant is claiming. They annexed to the Replying Affidavit a copy of the Certificate of Search in proof of their assertion.
6. The respondents denied that there was fraud or falsehood committed in obtaining the Grant as they do not recognize the applicant as s beneficiary or a creditor of the deceased estate. Accordingly, they prayed for the dismissal of the application with costs.
7. The application was canvassed by way of written submissions, pursuant to the directions given herein on 18th February 2025. In his written submissions dated 18th March 2025, the applicant reiterated his stance that he bought a portion the suit land from the deceased herein and urged the Court to taken into consideration the Sale Agreement he annexed to his Supporting Affidavit, which he pointed out was witnessed by the respondent. He therefore submitted that, having purchased a portion of the estate property from the deceased himself, he qualifies as a lawful beneficiary of the deceased, as the Sale Agreement remained a liability of the estate which had to be taken into account in the succession proceedings.
8. The applicant further submitted that, since the deceased died intestate, the respondents were under duty to disclose his interest as a purchaser for value as a material fact to this Court in their Petition



herein. He reiterated that the respondents were all along aware of the Sale Agreement and therefore willfully concealed the same from the Court, thereby acting fraudulently to deprive him of his entitlement in the estate of the deceased. In the applicant's submission, concealment is one of the main grounds for revocation of Grant under Section 76 of the *Law of Succession Act*.

9. The applicant relied on Re Estate of Moses Wachira Kimotho (Deceased) Succession Cause No. 122 OF 2002 (209) eKLR among other authorities. He accordingly prayed that the Summons dated 19th June 2024 be allowed and the orders sought therein granted. In the alternative, the applicant prayed that the Certificate of Confirmation be set aside to pave way for fresh distribution that takes into account his interest as a purchaser. He relied on The Matter of the Estate of Late Epharus Nyambura Nduati (Deceased) (2021) eKLR to augment his arguments.
10. The respondents filed written submissions dated 12th May 2025 and reiterated their stance that the application lacks merit in so far as the applicant is claiming ownership and or interest in the deceased's estate by way of purchase. They denied the Sale Agreement presented by the applicant and stated that at no point did the deceased enter into such an agreement with the deceased. In their submission, a claim for ownership of a portion of the deceased estate cannot be brought in a Succession cause. They relied on Re estate of Stone Kathili Muinde (Deceased) (2016) eKLR as was adopted in the Succession No. 744 of 2015 Tom Mbaluto v Joel Mulei Kasalu to buttress their argument.
11. The respondents also contended that, although the applicant claim is that he bought 4 acres of land from the deceased, the entire estate property is only 3.75 acres; and therefore the legitimacy or otherwise of the applicant's alleged Sale Agreement can only be determined in a land case before the appropriate forum. They consequently prayed for the dismissal of the application dated 19th June 2024.
12. I have given due consideration to the applicant's Summons dated 19th June 2024, the averments in the Supporting Affidavit filed therewith as well as the Replying Affidavit filed in response thereto by the respondents. I have similarly given due consideration to the written submissions filed by counsel for the parties.
13. There is no dispute that the respondents are the legal representatives of the deceased, Martin Anyango Ogutu. They filed this Petition for Grant of Letters of Administration Intestate in respect of the estate of the deceased on 10th April 2015. They were issued with a Grant, upon due process, on 18th January 2016. The said Grant was thereafter confirmed and a Certificate of Confirmation of Grant was issued on 2nd November 2020. That Certificate shows that the asset comprising the estate of the deceased, namely Land Parcel No. Lambwe East/141 was to be transmitted to Robert Ouko Anyango who was to hold the same in trust for himself, as well as Mary Aoko, Benard Otieno Anyango, Jared Owiti Anyango, Calvin Odhiambo Anyango, Gordon Ochieng Anyango and Danish Ouma Anyango.
14. The court record further shows that the matter remained dormant until 19th August 2024 when the instant application was filed. It is therefore evident that the applicant, Daniel Oluoch Owich was not part of the succession proceedings; and that in their Form P&A.5 filed in Support of the Petition for Grant, no liability of any sort was disclosed by the respondents. Therefore, the single issue for determination herein is whether the applicant has shown sufficient cause for the revocation of the Grant issued to the respondents herein.
15. Section 76 of the *Law of Succession Act*, one of the enabling provisions relied on by the applicant, provides 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 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.
16. As has been pointed out herein above, the application was premised on the grounds that the applicant is one of the beneficiaries of the deceased; and that his name was neither included as such nor his interest as a purchaser of a portion of the estate property for value noted as a liability to the estate.
17. Section 66 of the *Law of Succession Act*, which sets out the order of preference for purposes of petitions for Grant of Letters of Administration Intestate is explicit that:
- When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—
- a. Surviving spouse or spouses, with or without association of other beneficiaries;
 - b. Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
 - c. The Public Trustee; and
 - d. Creditors
18. In this instance, the respondents vehemently denied that the deceased sold a portion of the suit property to the applicant. But even assuming that he did and that the Sale Agreement was acknowledged and recognized by the respondents, that would only confer on the applicant a creditor status, and would be no basis for setting aside the Grant that was lawfully issued to the respondents. It is therefore manifest that the application for revocation of Grant is misconceived.
19. In the alternative, the applicant prayed that the Certificate of Confirmation be set aside to enable him present his claim for fresh distribution of the estate. In my careful consideration, such a prayer would only be tenable had the respondents acknowledged the Sale Agreement. Where there is a contestation, as is the case herein, the proper procedure would be for the applicant to file a civil suit in the normal



manner. This point was aptly articulated by Hon. Musyoka, J. in *Re Estate of Stone Kathuli Muinde (Deceased)* 2016 eKLR thus:

27. With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.
28. Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the Civil Procedure Rules. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.
29. It is the failure to observe the foregoing, and allowing non-survivors or beneficiaries of the estate to prove their claims against the estate within the probate court that has often made succession causes complex, unwieldy and endless. It is by the same token that it had become necessary for the court to allow joinder of persons to the succession cause who ideally ought not to be party to the cause in the first place.
20. In the result, I find no merit in the application dated 19th June 2024. The same is hereby dismissed with an order that each party bears own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF APRIL, 2026

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OLGA SEWE

JUDGE

