



In re Estate of Martin Okwaro Arodi (Deceased) (Miscellaneous Succession Application E013 of 2024) [2026] KEHC 5312 (KLR) (24 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5312 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS SUCCESSION APPLICATION E013 OF 2024
A MABEYA, J
APRIL 24, 2026
(ARISING FROM SUCCESSION CAUSE NO. 567 OF 2006)
IN THE MATTER OF THE ESTATE OF MARTIN OKWARO ARODI – DECEASED
AND
IN THE MATTER OF REVOCATION/ANNULMENT OF
GRANT OF LETTERS OF ADMINISTRATION ISSUED TO
ISACK OCHIENG ABONGO & PATRICK OMONDI OSORE
BETWEEN
GEORGE OMANGI OWINO APPLICANT
AND
ISACK OCHIENG ABONGO 1ST RESPONDENT
PATRICK OMONDI OSORE 2ND RESPONDENT

RULING

1. Martin Okwaro Arodi (the deceased) passed on in Nyalunya Kisumu on 15/8/1994. He left behind several assets and beneficiaries.
2. On the 5/12/2016, Majanja J confirmed the grant after protracted proceedings that commenced in the year 2006. On the 27/6/2024, Aburili J. ordered that a Certificate of Confirmation of grant do issue reflecting the mode of distribution of the estate as agreed upon in the Settlement Agreement dated 15/5/2024 and modified by consent on the 26/6/2024.
3. On the 11/2/2025, George Omangi Owino lodged the present application seeking revocation of the grant on the grounds that the proceedings to obtain the grant were defective in substance and that the same was obtained fraudulently and by concealment of material facts.



4. The application was expressed to be brought under the provisions of section 76 of the [Law of Succession Act](#), Rule 44 of the Probate and Administration Rules and Section 68 of the [Land Registration Act](#), 2012.
5. The application was based on the grounds set out in the body of the Summons as well as the supporting and further affidavits of George Omangi Owino sworn on the 11/2/2025 and 15/4/2025, respectively. Further, the applicant found support vide the supporting affidavit of Edward Okwaro Okwaro alias Elijah Osoreh Okwaro sworn on the 31/7/2025.
6. It was the applicant's case that the respondents, who are his brothers, obtained the Grant of Letters of Administration in secrecy and through misrepresentation and non-disclosure of material facts specifically that they excluded his name from among the persons entitled to inherit from the deceased, who died intestate on the 15/8/1994. That the respondents further included his property, LR No. Kisumu/Nyalenya/2450 (suit property) as part of the deceased's estate.
7. In response, the respondents filed a replying affidavit jointly sworn on the 24/2/2025 in which they deponed that the grant of letters of administration they obtained was not defective since the Certificate of Confirmation had earlier been issued to their mother Rosa Anyango Okwaro on the 8/12/2016 and they were issued with a rectified Certificate of Grant on the 27/6/2024 in the presence of the applicant who never objected to the same.
8. That the applicant was well aware that he had a share in LR No. Kisumu/Nyalenya/2450 which he equally agreed to subdivide to his two brothers from the same house, John Odawa and Godfrey Okwaro, during the mediation process.
9. That the suit land is ancestral land registered in the name of Rosa Anyango Okwaro, the applicant's mother and it came to be registered in the applicant's name when he wanted to obtain a loan thereby necessitated a registration of a portion of the said property in his name, a position consented to by all the family members but whose trust the applicant betrayed by having the entirety of the suit property registered in his name to the detriment of his brothers who similarly have their homesteads in the suit property.
10. That the applicant was present during the mediation process when he consented to the mode of distribution over the suit property and was similarly present during the rectification of the confirmed grant and as such he ought to pursue setting aside of the said mediation settlement agreement.
11. In rejoinder, the applicant in a further affidavit sworn on the 15/4/2025 deposed that the suit property had never formed part of the deceased's estate and was instead registered in the name of his mother Rosa Anyango Okwaro who transferred it to him.
12. The applicant testified as Aw1. He adopted his affidavits dated 11/2/2025, 4/3/2025 and 15/4/2025, respectively as his evidence in chief. He reiterated the claims made in his affidavits and testified that he wanted to have the grant revoked because the suit property belonged to him and was not part of the deceased's estate. That the daughters of the deceased were excluded from the succession proceedings.
13. In cross-examination, he admitted that he participated in the succession and mediation proceedings. That the suit property was wrongly put in the mediation proceedings as it was transferred to him by his mother who was the first registered owner and that he signed the mediation agreement without knowing its effect. That he was not aware that the suit property belonged to the deceased's wives and that is where his mother lived with the deceased while the other wives lived elsewhere.



14. He further admitted that his brothers lived on the suit property and one of them even buried his wife on the said property. That he agreed to sub-divide the suit property on condition that they were removed from the Dunga properties and that there were 10 acres in Muhoroni where they can be settled.
15. He admitted that he had not appealed against the mediation settlement and stated that his sister Damaris Kabiango had objected to the mode of distribution.
16. When questioned by the Court, he stated that his mother died in 2018 while the deceased passed on in 1994. That the deceased had 2 other wives, Nereah Okwaro (1st wife) and Yuniah Okwaro (2nd wife).
17. R1W1, Isack Ochieng Abongo testified that the applicant was a party to and signed the mediation settlement. That when Aburili J. made her final orders, she asked the applicant to remove the condition precedent to adopting the settlement agreement which the applicant agreed to and this led to the rectified grant.
18. In cross-examination, R1W1 testified that the deceased was his grandfather and that he had 3 wives. That the deceased had 2 homesteads, LR No. 2449 and the suit property and that the deceased's two wives lived on LR No. 2449 which was registered in the name of William Martin Okwaro. That he was from the 1st wife.
19. That the suit property was where the deceased's 3rd wife lived together with her children and it was registered in her name, Rosa Anyango Okwaro. That at no time was it in the name of the deceased. That the suit property was fraudulently transferred to the applicant. That two of the deceased's brothers currently live in Dunga and have done so for the past 25 years.
20. That none of the four (4) surviving daughters of the deceased were included in the succession cause and neither did they file a consent. That the Mediation agreement was signed by 9 out of 15 beneficiaries of the deceased.
21. In re-examination, R1W1 testified that he had attached a Modified Mediation Agreement to his affidavit sworn on the 24/2/2025 which was not disputed except by the applicant.
22. R1W2, Caleb Abongo Okwaro adopted his statement dated 28/5/2025 as his evidence in chief. He corroborated the testimony of R1W1. In cross-examination, he testified that the suit property was his father's property but registered in the name of his 3rd wife, Rosa Anyango Okwaro on the 18/10/2004 and subsequently to the applicant on the 14/7/2005. That the deceased's daughters were not included in the succession proceedings as the deceased failed to include them in his will.
23. In re-examination, he told the Court that Rose Anyango Okwaro had children who lived on the suit property with houses built thereon. That some of them had died and were buried there evidencing that the suit property has been part of the deceased's property from the beginning.
24. R1W3 Margaret Aoko Atendo also known as Margaret Atendo Okwaro adopted her statement dated 28/5/2025 as her evidence in chief. She testified that the applicant was her last born brother to her mother in law and that they lived together in the suit property where her husband was buried. That the suit property initially belonged to the deceased herein before he caused it to be registered in the name of Rose Anyango Okwaro. That she and her co-wife who lived on the suit property needed title deeds for their portions.
25. She reiterated that the applicant built his house on the suit property after all his brothers had already settled there. That the two brothers of the applicant still live in Dunga which they thought belonged to their mother but later learnt it to be public land and they had been given quit notices.



26. R1W4 Godfrey Arodi Okwaro testified that he is the applicant's brother and that he belongs to the deceased's 3rd house. That the suit property is family land notwithstanding the fact that it was registered in the name of one of the deceased's wives and then the applicant. That since their mother disagreed with the other wives of the deceased, the deceased moved her to the suit land in the 1960s.
27. In cross-examination, he stated that the suit property was registered in the name of his mother who seems to have transferred it to the applicant. That himself and his brother John were taken to Dunga by their mother but that turned out to be public land. That they participated in the mediation willingly.
28. R1W5 Patrick Omodi Osore adopted his affidavit of 6/8/2025 as his evidence in chief. He testified that the applicant was the one who agreed to give his brothers who were living on public land a share of the suit property. In cross-examination, he admitted that the suit property had never been in the name of the deceased.
29. Caroline Adhiambo Ayieko testified that she was the widow of John Ouko Okwaro with whom she had 2 children. That his husband was from the deceased's 3rd house and that he died in 2000 leaving her in the suit property but that she moved out and rented a house in Kisian.
30. She testified that she was present during mediation and that she wanted the court to give her a portion of the suit property. That during mediation her son was given a portion of the deceased's Muhoroni property but that she now wanted a portion for herself. She reiterated her claims in cross-examination.
31. I have considered the record in totality. The primary order sought by the applicant is revocation of grant issued to the respondents.
32. For avoidance of doubt, Majanja J. confirmed a grant to Rose Anyango Okwaro vide his judgment delivered on the 5/12/2016. A Certificate of Confirmation of Grant was subsequently issued on 8/12/2016.
33. Sometimes in 2024, the respondents petitioned Court seeking rectification of that grant on amongst other grounds that, the distribution had not been effected since confirmation; that the initial petitioner had passed on and that some of the properties listed therein turned out not to form part of the estate of the deceased and there was thus need for redistribution. The parties were directed to go to mediation on the 12/6/2024. They returned with a settlement agreement which the court refused to adopt as it was conditional. On 27/6/2024, the parties presented in court a modified mediation settlement agreement dated 15/5/2024 and consented on the 26/6/2024. A rectified Certificate of Confirmation of Grant issued accordingly.
34. Being dissatisfied with the said modified mediation settlement agreement dated 15/5/2024, the applicant lodged the present summons for revocation.
35. The *Law of Succession Act* ("the Act") provides for revocation of grants under section 76, which provides: -
 - "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.”

36. In this regard, under the above provision, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on an application by a party. A grant of letters of administration may be revoked on three general grounds.
37. The first is where the process of obtaining the grant was marred by several irregularities. Where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation were 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.
38. 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.
39. 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.
40. In the present case, the applicant’s claim was based on the allegation that the respondents obtained the grant fraudulently by firstly including the suit property as part of the deceased’s estate and secondly by failing to include the deceased’s daughters as beneficiaries.
41. On the first aspect, the applicant contended that the suit property never belonged to the deceased but that it belonged and was initially registered to his mother Rose Anyango Okwaro who transferred it to him. That therefore, the suit property did not form part of the estate of the deceased.



42. From the record, it is evident that the respondents did not petition the court for grant of letters of administration. This was done by the applicant's own mother Rose Anyango Okwaro in her position as surviving widow of the deceased. Further, P & A Form 5 reveals that the suit property was at the time never listed as part of the deceased's estate. The only assets listed as forming part of the deceased's estate were, Land Parcel No. Nyando 064/195, Nyando/495 and Kisumu/Nyalunya 2449. To this end, it is my view that Rose Anyango Okwaro did not mislead the court while applying for Letter of Grant of Administration. The suit property belonged to her. This limb of the applicant's claim thus lacks merit.
43. Notwithstanding the aforementioned, it is not clear at what point in the proceedings the suit property was considered as part of the deceased's estate, In the Certificate of Confirmation of Grant issued on the 8/12/2016, the suit property was listed in the Mode of Distribution and was distributed to Rose Anyango Okwaro and her children at the time, in other words, the deceased's 3rd house.
44. Following the mediation sought by the respondents, the parties consented into a Mediation Settlement Agreement in which the applicant agreed to sub-divide the suit property in shares of 0.8HA to each of his brothers, John Odawa Okwaro and Godfrey Arodi Okwaro.
45. The applicant invited this court to find that the suit property did not form part of the deceased's estate and thus not up for distribution. On their part, the respondents contended that the applicant merely held the suit property in trust for his brothers and that it formed part of the deceased's overall estate as distributed during his lifetime.
46. It is trite that issues to do with ownership of land are within the jurisdiction of the Environment & Land Court as provided under Article 162(2) and 165(5)(b) of the Constitution and as such this court cannot pronounce itself on the issue of ownership.
47. The applicant willingly signed a consent agreeing to sub-divide the suit property between himself and his brothers. He has not adduced any evidence to show that he entered into the consent by fraud, mistake, or misrepresentation. It is well settled that a consent judgment can only be set aside in certain circumstances, e.g on grounds of fraud or collusion, that there was no consensus between the parties, public policy or for such reasons as would enable a court to set aside or rescind a contract. See the cases of *Rop & 2 others v Kipruto & another* [2025] KECA 1610 (KLR), *Flora Wasike v Destimo Wamboko* [1982 – 88] 1 KAR 266 and *Brooke Bond Liebigh v Mallya* (1975) EA 266.
49. In the circumstances, I find no reason to interfere with the modified mediation settlement agreement dated 15/5/2024 and consented on the 26/6/2024.
50. The second limb of the applicants Summons was that the petitioners failed to list the deceased's living daughters as beneficiaries when applying for the grant. There was no dispute that the deceased had living daughters at the time when the application was being made.
51. As earlier noted it was Rose Anyango Okwaro who petitioned for letters of administration and not the respondents. In P & A Form 5, none of the deceased's daughters were listed as his surviving heirs neither were they provided for in any of the mode of distributions presented before court prior to the present proceedings.
52. Failing to list daughters—whether married or unmarried—as surviving heirs in an application for a grant of letters of administration constitutes a material misrepresentation and a violation of both the Law of Succession Act (Cap 160) and the Constitution of Kenya.
53. However, this was a polygamous family. The deceased seems to have distributed his estate while he was still alive. He settled his different families in different properties. Each house was represented by a



wife. This is what informed the Mediation Settlement Agreement made on 26/7/2024. In view of the protracted litigation in this family, that settlement offered the best remedy for the peace of that family. Re-opening the matter will not serve any justice but will only lead to injustice and acrimony.

54. The alleged daughters who were not provided for did not turn up to make a claim. This is because they know very well how the deceased had settled his large family. The only one who appeared admitted that she attended the Mediation and the Settlement distributed a portion of land to her son. That portion was meant for her. Even if the grant is revoked, her son, being a grand-child will not be entitled to any portion. It is the portion that was given to him that will be distributed to her.
55. In my view, the applicant held the suit property in trust for his brothers. It was property meant for the 3rd house. That is why the Mediation Settlement arrived at was agreeable to all the parties.
56. In the premises, I find no merit in the application and I dismiss the same with costs.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF APRIL, 2026.

A. MABEYA, FCI Arb

JUDGE

