

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**SUCCESSION CAUSE NO. 210 OF 2000**

**IN THE MATTER OF THE ESTATE OF LAWRENCE AKINI OILE -**

**DECEASED**

**BETWEEN**

**ELSIE WINNY AKINYI OILE .....1<sup>ST</sup> APPLICANT/OBJECTOR**

**WENDY ATIENO OILE .....2<sup>ND</sup> APPLICANT/OBJECTOR**

**EDMUND BLAINE OILE ..... 3<sup>RD</sup> APPLICANT/OBJECTOR**

**-VERSUS-**

**SUSAN WANJIRU OILE AKINYI ..... ADMINISTRATOR/RESPONDENT**

**AGGREY OMONDI WASUNNA ..... 1<sup>ST</sup> INTERESTED PARTY**

**MONIQUE KEVIN AJILONG WASUNA ..... 2<sup>ND</sup> INTERESTED PARTY**

**SAFARICOM PLC LIMITED ..... 3<sup>RD</sup> INTERESTED PARTY**

**RULING**

1. The late **LAWRENCE AKINI OILE** ('the deceased') died on **8/12/1999** at Aga Khan Hospital, Kisumu. On **8/3/2000**, Susan Oile Akini ('the Petitioner') petitioned for Letters of Administration intestate.

In Form P&A 5, she disclosed those surviving the deceased as follows: -

**a) Susan Oile – Wife**

- b) Lydia Oile – Wife**
- c) Eddie Oile – Adult**
- d) Clare Akini – Minor**
- e) Troon Akini – Minor**
- f) Anita Akini – Minor**
- g) Synthia Akini**
- h) Joel Akini**
- i) Dorine Akini**
- j) Sylvia Akini**

2. She also disclosed the assets forming the estate as follows: -

- a) L.P No. Kisumu/Korando/138**
- b) LP No. Kisumu/Korando/134**
- c) LP No. Kisumu/Korando/136**
- d) LP No. Kisumu/Korando/252**
- e) LP No. Kisumu/Korando/124**
- f) LP No. Kisumu/Korando/344**
- g) LP No. Kisumu/Korando/3249**

**h) LP No. Kisumu/Korando/123**

**i) LP No. Kisumu/Korando/451**

**j) LP No. Kisumu/Korando/502**

**k) LP No. Kisumu/Korando/122**

3. In a letter dated **24/12/1999** by the Chief, Central Kisumu Location, it was indicated that out of the beneficiaries of the deceased, 6 of them were minors. In that letter, the Chief disclosed a total of 12 people as the beneficiaries while in Form No. P&A5, the petitioner only disclosed a total of 10 beneficiaries. There were two names in the Chief's letter that were missing in the petitioner's list. These were **Jackline Akini** (daughter and **Monica Akini**.
4. Pursuant thereto, the grant was issued to the petitioner alone on **13/7/2000** and confirmed on **15/10/2001**. In the supporting affidavit for confirmation, the petitioner swore in paragraph 5, 6, 7 and 8. She swore as follows: -

***“i) That before his death the deceased shared his properties among the widows and children now surviving him.***

***ii) That each widow is taking care of her own properties as was given by the deceased then.***

**iii) That I have the consent of my other co-wife in administer the estate of the deceased.**

**iv) That all the names of the children of the deceased are as per list in the attached P&A 5.”**

5. By a Summons dated 16/9/2025, **Elsie Winny Akinyi Oile, Wendy Atieno Oile and Edmund Blaine Oile** (‘the objectors’) applied for the revocation of the said grant. The other prayers were for the giving of accounts by the petitioner in respect of the estate, cancellation of the transmission of all the assets of the estate and reinstatement thereof to the name of the deceased, appointment of the objectors as the administrators and, exhumation of the remains of the deceased for purposes of ascertaining paternity of the named beneficiaries. Finally, to subject all the named beneficiaries to paternity test.
6. The grounds for the application were that; the objectors are daughters and 1<sup>st</sup> son of the deceased. That at the time the petitioner petitioned for letters of administration, there were minors who were beneficiaries to the estate. That by virtue of **section 58 of the Law of Succession Act**, there had to be a minimum of two administrators.
7. It was further contended that the petitioner did not disclose all the beneficiaries as well as assets of the estate of the deceased. That the consent of the beneficiaries was mandatory. That the said consent had not been

obtained by the petitioner. That the objectors only realized of the succession in 2024. That the petitioner only disclosed a total of 16 assets as belonging to the estate leaving out 4 other assets being **West Kisumu Ojola/3175**, monies in **Standard Chartered Bank Account Nos. 125-8773** and **015-063-35700**, **Motor Vehicle Registration No. UPS 309** and shares in **Lawsam Chemicals Uganda Ltd.**

8. That the petitioner transferred all the properties to herself and later sold **Kisumu/Korando/122** to the interested parties without the consent of the beneficiaries. That the objectors and one **Jeff Omondi** had been excluded from the succession. That there was concealment of material facts.
9. In her detailed supporting affidavit, **Elsie Akinyi Oile**, swore that she was a bona fide child of the deceased. She produced a **Birth Certificate No. 545334** dated **25/10/1993**. She swore that the deceased has 6 houses with a total of 17 children, 14 of whom were biological while 3 were not. That this information was withheld from the Court. That the deceased at the time of his demise had 40 parcels of land but only 16 were disclosed. That the petitioner took out the grant as a sole administrator yet there were minor beneficiaries. That the objectors had not been catered for in the distribution of the estate.

10. It was further contended that the deceased's properties in Uganda had not been disclosed. Further, the monies held in the two accounts at Standard Chartered Bank and other assets were not disclosed.
11. Her averments were supported by her co-objectors who produced **their Birth Certificate No. A5988968** dated 5/1/2022 and a **National ID Card No. 13038462** showing their respective dates of birth as **22/8/1988** and **20/9/1972** respectively to show that they were the deceased's children.
12. Faced with these very serious allegations of impropriety, material non-disclosure and illegality, the petitioner raised a preliminary objection dated 21/10/2025. It raised 3 points of law as follows: -

*“i) That this Honourable Court is functus officio having fully adjudicated and finalized this succession cause upon the confirmation of the Grant of Letters of Administration issued on 16<sup>th</sup> October, 2001, and therefore lacks jurisdiction to reopen or re-litigate the estate herein.*

*ii) That the applicants' Summons for Revocation of Grant dated 16<sup>th</sup> September, 2025 is res judicata within the meaning of section 7 of the Civil Procedure Act, the issues now raised having been directly and substantially in issue and finally determined in the earlier proceedings culminating in the confirmed Grant.*

*iii) That the said application constitutes an abuse of the process of this Honourable Court having been filed more than twenty-four (24) years after the confirmation of the Grant, and after the estate has been fully distributed to the lawful beneficiaries.*

*iv) That consequently, the applicants' Summons for Revocation of Grant is incompetent, misconceived and ought to be struck out with costs."*

13. It should be noted that all the aforesaid allegations by the objectors were neither denied nor challenged. They were made on oath and remained statements of fact and therefore evidence relied on by the objectors but challenged by way of a preliminary objection as aforestated. I have considered the submissions on record.
14. Under the **Mukisa Biscuits Manufacturing Company Ltd vs West End Distributors Ltd (1969) EA**, a preliminary objection consists of a point of law which has been pleaded or which arises by implication. It is argued on the basis that all the facts pleaded are correct. It is a jurisdictional issue.
15. The first objection is that this Court is *functus officio*. That the issues being raised herein had been raised during the succession proceedings and had been determined resulting in the confirmation of the grant. The petitioner submitted that since a grant had been issued, confirmed on **16/10/2001** and

the estate distributed, the Court had become *functus officio*. The case of **Telkom Kenya Ltd vs John Ochanda (2014) eKLR** was cited in support of proposition. Further, the case of **Estate of Mwaura Mutungi alias Mwaura Gighingo (deceased) (2018) eKLR** wherein it was held that where a grant has been confirmed and the estate distributed, the case cannot be re-opened as the court is *functus officio*.

16. The application before Court was brought under, *inter alia*, **section 76 of the Law of Succession Act**. That section 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 such 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** of this Act 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.”***

17. My understanding of that section is that, the Court does not become *functus officio* just because a grant has been confirmed, if there is a challenge to the efficacy of that grant. The Court retains jurisdiction to look into the grant if any of the grounds set out in paragraphs (a) to (e) of that section is alleged.

That section is very clear by the use of the words ‘*whether confirmed or not*’.

18. In the present case, the objectors have alleged and it has not been denied, that the proceedings to obtain the grant were defective in substance and that the grant was obtained fraudulently by concealment from Court of something material to the case. A perusal of the record shows that there were minors in the estate yet the grant was made to the petitioner alone. Some of the beneficiaries were never disclosed. In this regard, the Court is not *functus officio*. It has jurisdiction to entertain the application.
19. The second objection was the application was *res judicata*. That the objectors were claiming through the same estate and that the issue of beneficiaries was conclusively determined at confirmation. That the 3<sup>rd</sup> objector had filed a similar application in 2011 but failed to prosecute the same. The case of **Estate of Kimani Kimaru (2018) eKLR** was relied on in support of that proposition.
20. The doctrine of *res judicata* is encapsulated in ***section 7 of the Civil Procedure Act***. It bars proceedings that have been dealt with previously by a competent court, between the same parties and determined as between them. Having carefully considered the record, I have not seen any previous application for revocation by any of the objectors. There are no proceedings

of whatever nature to show that any objection or revocation had been dealt with.

21. The record shows that, on **13/7/2000**, the grant was issued. It was confirmed on **16/10/2002**. On **21/9/2011**, an application for rectification to include a property known as **Kisumu/Ojola/3175** was made by the petitioner. That application was held by Aroni J (as she then was) on **4/11/2011** not to have been properly drafted. And, on **9/12/2011**, Chemitei J referred the matter to the registry when the petitioner failed to attend Court. These are the only proceedings on record.
22. In view of the foregoing, I find that the matter is not *res judicata* as contended by the petitioner. That contention is rejected.
23. The third and last objection is that the application is an abuse of the Court process because of the long delay in making the application. The case of **Estate of Gacheri M'Itunga (2019) eKLR** was relied on for that proposition. That the application was being made **24 years** after the estate had been distributed.
24. This Court is in agreement that an application that is made after a very long lapse of time will amount to an abuse of court process. It might lead to the disruption of the lives of people who would have had their lives already settled.

25. What is the position in the present case? The deceased passed away on **8/12/2000**. Within five (5) months thereafter, on **2/5/2001**, the petitioner petitioned for letters of administration as narrated at the beginning of this ruling. The objectors were born on **22/10/1990**, **22/8/1988** and **20/9/1972**, respectively. As at the time of the filing of the petition, they were aged, **11 years**, **13 years** and **29 years**, respectively. The 1<sup>st</sup> and 2<sup>nd</sup> objectors reached the age of majority in **2008** and **2006**, respectively. They have deponed that they were unaware of the succession proceedings until 2024 when some of the beneficiaries boasted to them that they had been given their inheritance yet the objectors were left out.
26. There is no evidence on record to show that the objectors had been notified of the succession proceedings before 2024 as they swore. There is no denial of their averments of having been kept in the dark as far as succession and distribution of the estate is concerned for any negative inference to be made against them.
27. Considering the circumstances of this case, I reject the contention that the delay in bringing the application is an abuse of the court process.
28. The totality of the foregoing is that the Preliminary Objection dated **21/10/2025** is without merit and the same is dismissed with costs. The orders

earlier granted are extended until the final determination of the application for revocation.

It is hereby so ordered.

**DATED** and **DELIVERED** at Kisumu this 24<sup>th</sup> day of **April, 2026**.

**A. MABEYA, FCI Arb**

**JUDGE**