



REPUBLIC OF KENYA



KENYA LAW
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**Odhiambo v Odinde (Civil Appeal E001 of 2024)
[2025] KEHC 732 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 732 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E001 OF 2024
RE ABURILI, J
JANUARY 30, 2025**

BETWEEN

ROSE AUMA ODHIAMBO APPELLANT

AND

EDWARD OKIRO ODINDE RESPONDENT

*(An appeal from the ruling & order of the Hon. L.N. Kiniale Senior
Principal Magistrate delivered on the 5.10.2023 at Nyando Senior
Principal Magistrate's Court in Succession Cause No. E316 of 2022)*

JUDGMENT

Introduction

1. The appellant herein obtained a grant of letters of administration intestate to administer the estate of Laurence Ocharo Odek alias Ocharo Odek (the deceased) on the 7.11.2022 and had the same confirmed on the 11.4.2023.
2. The respondent filed Summons for Revocation of Grant dated 11.5.2023 on the grounds that the proceedings to obtain the grant of letters of administration intestate and subsequent confirmation were defective in substance and that the grant was obtained fraudulently by the making of false statements and concealment from the court of some material facts.
3. It was the respondent's case that he was a creditor to the estate of the deceased by virtue of purchase of the suit property Kisumu/Kabondo/716 from the appellant's deceased's brother, Pius Onyango Ocharo, and that he was the one who jumpstarted the succession process vide Nyando Citation Cause No. 91 of 2021 in which he cited the appellant to commence succession proceedings over the deceased's estate.



4. The respondent further averred that both he and the appellant filed separate succession causes in the trial court vide Succession Cause E412 of 2022 and E316 of 2022 respectively and that the cause that the respondent had filed was stayed while that filed by the appellant, E316 of 2022 commenced.
5. The appellant in response to the Summons for Revocation of Grant acknowledged that the citation was to comply and file succession. Further, that the respondent was not a family member hence not a beneficiary to the deceased's estate. The appellant further averred that the respondent failed to prove any claim of purchase from her deceased brother and that he ought to seek redress in the Environment and Land Court.
6. The trial court in its judgement found that the respondent had met the threshold for revocation of grant as the petitioner was well aware of the respondent's claim over the suit property and failed to involve him in the proceedings; that the appellant made untrue allegations and failed to disclose material facts of the existence of the respondent's interest in the deceased's estate. The trial magistrate went on to hold that the deceased's estate could not be distributed until the issue of ownership was settled. He thus revoked the grant issued to the appellant.
7. Aggrieved by the said decision, the appellant filed a memorandum of appeal dated 8th February 2024 raising the following grounds of appeal:
 - a. That the learned magistrate erred in law and in fact by considering and allowing the respondent's summons for revocation and confirmation of grant and thereby arriving at a grossly unfair decision and in all circumstances failed to do justice to the appellant.
 - b. That the learned magistrate erred in law and in fact by failing to find that the respondent was not a beneficiary and or creditor of the Estate of Laurence Ocharo Odek (Deceased) and therefore the respondent's summons for revocation and confirmation of grant was frivolous and vexatious as the respondent lacked locus standi to revoke the Certificate of Confirmation of Grant.
 - c. That the learned magistrate erred in law and fact by considering and allowing the respondent's summons for revocation and confirmation of grant yet the Honourable Court lacked jurisdiction to consider the summons as the Honourable Court, while sitting as a succession court was limited to making determinations on distribution of the estate to its beneficiaries and not to determine whether the suit property was purchased by a third party or not.
 - d. That the learned magistrate erred in law and fact by failing to find that the respondent had purchased the subject land parcel number Kisumu/Kabondo East/716 from Pius Onyango Ocharo (Deceased) and not Laurence Ocharo Odek (Deceased) and therefore the respondent could not be a creditor of Laurence Ocharo Odek (Deceased).
 - e. That the learned magistrate erred in law and fact by compelling the appellant to meet and resolve the dispute with the respondent and thereafter enter into an agreement with the respondent who is not a beneficiary or creditor of Laurence Ocharo Odek (Deceased).
 - f. That the learned magistrate erred in law by failing to find that the respondent's summons for revocation and confirmation of grant lacked merit.
8. The appeal was disposed by way of written submissions.



The Appellant's Submissions

9. The appellant submitted that the Respondent is not a beneficiary of the deceased's estate and that his claim was that of a purchaser, although he did not purchase the land from the deceased and as such, the trial magistrate lacked the jurisdiction to hear the Respondent's claim while sitting as a succession court but that it was the Environment and Land Court that had jurisdiction to determine the respondent's claim. Reliance on the issue of jurisdiction was placed on the case of Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1.
10. The appellant further relied on the case of Priscilla Ndubi & Zipporah Mutiga v Gerishon Gatobu Mbui, Meru Succession Cause No. 720 of 2013, where it was held inter alia that "The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries where, as of necessity, the estate property must be identified and in instances where issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed."
11. It was submitted that the Respondent was not a beneficiary of the estate and did not purchase the land from the deceased and therefore was not a creditor to the estate as his purchase took place after the death of the deceased and before this succession cause was filed. Further, that the Respondent purchased the land from a party who was not the registered owner of the land.
12. The appellant submitted that based on the aforementioned, the Respondent had no locus to present the summons for revocation of grant as was held and determined in Machakos HC Succession Case No 101 of 2004 - In The Matter of the Estate of Joseph Mutiso Kithome (Deceased) (An Application for Revocation of Grant filed by JAMES Kariuki & 2 Other Objectors v Gideon Cyrus Mutiso – Petitioner)
13. The appellant further submitted that the Respondent was thus guilty of intermeddling having engaged with a third party on the property of the deceased. Regarding the issue of intermeddling, the appellant relied on the definition as held by Musyoka J in the case of Veronica Njoki Wakagoto (Deceased) [2013] eKLR.

The Respondents' Submissions

14. It was submitted that the assertion that the trial court lacked jurisdiction to deal with the summons for revocation of grant was false as the same is granted vide section 23 of the Magistrate's Court [*Act No. 26 of 2015*](#) and further reinforced by court in the case of Turfena Anyango Owuor & Another v Mary Akinyi Dengo 2018] eKLR.
15. The respondent submitted that the appellant was aware of his claim over the deceased's estate but did not disclose that to the court at the time of petitioning for the grant and as such the trial magistrate was right in revoking the grant.
16. It was submitted that as there was a dispute with regard to the ownership of the suit property, the same had to be resolved before the court could proceed to distribute the deceased's estate as captured in Rule 41 (3) of the Probate & Administration Rules and reinstated in the case of Priscilla Ndubi & Zipporah Mutiga (supra).
17. The respondent submitted that the law requires that where an interested party has demonstrated his interest in the deceased's estate the party has to be considered. He further submitted that the trial court did not make a determination as to whether the interest of the respondent was genuine or not but



only indicated that the estate cannot be distributed until the issues raised by respondent as a creditor of the estate.

18. The respondent submitted that courts have revoked a grant when a party fails to disclose the interest of all the parties in the estate at the time of applying for the grant or confirmation as was the case in *Re Estate of Moses Wachira Kimotho (Deceased) Succession Cause 122 of 2002 [2009] eKLR*.
19. The respondent submitted that the application before the trial court was for revocation of grant and not for determination of whether the respondent was a beneficiary of the deceased's estate and that section 76 of the *Law of Succession Act* only requires that a party must have interest on the estate of the deceased to move court when filing summons for revocation of grant thus the respondent had locus standi to move court.

Analysis and Determination

20. As it is now settled by the numerous authorities both by this court and the superior courts, the duty of this court as the first appellate court is to revisit the evidence on record, evaluate it and reach its own conclusion in the matter. Further, this court ought not to ordinarily interfere with findings of fact by the trial court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings. (See *Mwanasokoni vs. Kenya Bus Service Ltd. (1982-88) 1 KAR 278* and *Kiruga vs. Kiruga & Another (1988) KLR 348*).
21. I have re-evaluated the evidence which was tendered before the trial court and also perused through the documents and pleadings which were filed before the learned trial court.
22. The issue for determination is whether the orders of the trial court revoking the grant should be interfered with.
23. The circumstances under which a grant of representation may be revoked are provided for under section 76 (a)- (e) of the *Law of Succession Act* and include;
 - a) Where the proceedings to obtain the grant were defective in substance;
 - b) Where 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) Where 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) Where 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) Where the grant has become useless and inoperative through subsequent circumstances.

(See *re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR* and *re Estate of Agwang Wasiro (Deceased) [2020] eKLR*).



24. The appellant in his pleadings and submissions both at the trial court and before this court averred that the respondent did not have the locus standi in the subject matter and as such, the orders sought therein could not be granted. The question therefore is whether the respondent lacked the requisite locus standi to seek relief from the court to revoke the grant in question issued to the appellant. In my view, issues as regards locus standi are critical preliminary issues which must be dealt with and settled before delving into other substantive issues.
25. Section 76 of the *Law of Succession Act* is very clear 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..... (emphasis added).
26. From the perusal of the application for revocation of grant on record, it is clear that the respondent is not one of the heirs or survivors of the deceased. His interests in the estate of the deceased herein arise from the alleged purchase and sale agreement between him and the brother to the deceased (Pius Onyango Ocharo). As such, he averred that his interest is that of a creditor. The question which ought to be answered at this instance is whether the respondent is a creditor of the estate of the deceased and hence an interested party?
27. A creditor generally is a person to whom a debt is owing by another person, called the “debtor.” It means one who has a legal right to demand and recover from another a sum of money on any account whatever.
28. The respondent deposed that he bought land from one Pius Onyango Ocharo who was the brother to the deceased herein. He exhibited the sale agreement in that respect and which confirms the same. The said agreement is in relation to the suit land herein (LR. Kisumu/Kabondo/716) and which, from the record, was registered in the name of the deceased herein. In my opinion, at the time of the said sale, the said Pius did not have the capacity to sell the suit land. The respondent did not prove that the said Pius had the capacity by exhibiting a grant of letters of administration intestate issued to the said Pius Onyango Ocharo. In fact, from the record, it is clear that the administration of the deceased’ estate had not been commenced. That being the case, the respondent could not be said to be a creditor of the estate of the deceased herein. His interest can only be against the estate of the said Pius Onyango Ocharo who sold to him the land that he did not legally own.
29. It is my finding therefore that the respondent did not possess the requisite locus standi to present the application for revocation of grant. There is no way he could claim against the estate of the deceased whereas the agreement of sale in question was not executed by the said deceased.
30. Considering all the above, it is my opinion that the respondent herein did not possess the requisite locus standi to approach the trial court as he did not have any claim as against the estate of the deceased. Where a party has no locus standi in a matter, the court does not have jurisdiction over the same.
31. It is trite that jurisdiction is everything and without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. (See Owners of the Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Ltd [1989] eKLR). In the circumstance, it is my opinion that the respondent’s application by way of Summons for Revocation of Grant was incompetent and as such the same ought to have been dismissed.
32. Although the respondent claimed that there was a dispute as to ownership of the land which dispute had to be resolved before distribution of the estate of the deceased, I find no ownership dispute as to ownership is imagined for reasons that the respondent bought land from a different person, not the



registered owner of the land. The respondent is at liberty to engage the estate of the seller and sue them for what he claims that he lawfully owns and not the estate of a different person who never sold him the land, as is the case herein.

33. The upshot of the above is that I find this appeal merited, I allow this appeal and set aside the trial court's ruling rendered on the 5.10.2023. I substitute the said ruling with an order dismissing the Summons for Revocation of Grant dated 11th May, 2023.
34. Each party to bear their own costs of the appeal.
35. The judgment to be uploaded and published in the e-portal. This file with a copy of the judgment be resubmitted to the lower court forthwith.
36. This file is closed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI VIA MICROSOFT TEAMS
THIS 30TH DAY OF JANUARY, 2025.**

R.E. ABURILI

JUDGE

