



REPUBLIC OF KENYA



**In re Estate of Nyanduga Land (Deceased) (Succession Cause  
514 of 2011) [2025] KEHC 2710 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2710 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
SUCCESSION CAUSE 514 OF 2011  
MS SHARIFF, J  
FEBRUARY 27, 2025  
IN THE MATTER OF THE ESTATE OF NYANDUGA LANDO (DECEASED)**

**BETWEEN**

**LUKE OTIENO ODI ..... OBJECTOR**

**AND**

**SIGU BODO ..... PETITIONER**

**JUDGMENT**

1. Summons for Revocation dated 7<sup>th</sup> December 2021 brought under Section 76 of the *Law of Succession Act* and Rules 26 (1), 44, 49,59 & 63 of the *Probate and Administration Rules* seek for orders of revocation of Grant issued on 17<sup>th</sup> May 2013 and confirmed on 21<sup>st</sup> March 2014 in favour of the Petitioner on grounds that that the same was obtained vide concealment of material facts.
2. In opposition to the application, the Petitioner filed a Replying Affidavit sworn on 8<sup>th</sup> April 2022, in which he denies the allegations in the Summons General and that the deceased herein was not survived by any beneficiaries hence left his entire estate to him.
3. The Summons were heard by way of viva voce evidence based on the witness statements filed by the parties.

**Objector's case**

4. OB-PW1 was Luke Otiemo Odi, the Objector herein. He relied on his witness statement recorded on 11<sup>th</sup> November 2022, and his list of documents annexed. At his request this Court adopted the same and marked the availed list of documents as OB-Exhibits 1-5 as his evidence in chief. According to him, the Petitioner herein is his paternal cousin as the Petitioner's father, Bado Lando, and his grandfather, Odi Lando, were siblings. He told the Court that the father to Bodo Lando and Odi Lando was one Lando Mitula who had four wives. His grandfather, Odi Lando, hailed from the 4<sup>th</sup> house while the



Petitioner's father, Bodo Lando, hailed from the 1<sup>st</sup> House. He told the Court that his grandfather, Odi Lando, had 3 brothers namely: Nyandunga Lando, Auma Lando and Okaka Lando. He told the Court that the family patriarch, Lando Mitula, divided his parcels of land to his aforesaid 4 wives with land parcel no. Kisumu/Kolunje/1805 being given to the 4<sup>th</sup> house. The said parcel was registered in the name of Nyanduga Lando, the deceased herein, as a trustee. The deceased herein was married but was not blessed with children. Upon his demise, his brother, Odi Lando, who is his grandfather, took the suit parcel of land as it belonged to the 4<sup>th</sup> house as the only trustee. He told the Court that Odi Lando, his grandfather had only one son namely John Odi, who is his father and that Odi Lando siblings died without marrying and were not blessed with children. He told the Court that Bodo Lando hails from the 1<sup>st</sup> house and that he gave birth to Sigu Bodo, the Petitioner herein who is also his father's paternal cousin, and that the claim by the Petitioner herein is in utter dismay as he cannot claim proprietary rights over land parcel no. Kisumu/Kolunje/1805 which unequivocally belongs to the 4<sup>th</sup> house. He told the Court that owing to his father's proprietary rights over land parcel no. Kisumu/Kolunje/1805, he instructed him to build his house therein and the same was done sometime in 2011. He told the Court that on a previous occasion, his father had a dispute with the deceased herein and the Land Dispute Tribunal decided that his father be given the portion he was claiming which is what he has been occupying to date and the same was adopted by the Court.

5. On cross-examination, he told the Court that his bone of contention is in respect to land parcel no. Kisumu/Kolunje/1805 and that the same was registered in the name of John Nyanduga Lando. He noted that he did not know when Odi Lando died but he preceded Nyanduga Lando, and that both of them, Odi and Nyanduga Lando were brothers. He told the Court that he only registered a caution but did not register his name. He confirmed that the deceased herein did not have any children and that he is the one currently occupying land parcel no. Kisumu/Kolunje/1805. He told the Court that he only realized in the year 2020 that the title had been changed to the Petitioner's name but the deceased herein was the registered proprietor and he had 4 wives.
6. On re-examination, he told the Court that he gained possession of the said land parcel no. Kisumu/Kolunje/1805 in the year 2011 and reiterated that his father had a case against the deceased herein with regards to the same parcel. He confirmed that the deceased was only registered as the trustee as he was the eldest son.
7. OB-PW2 was Joseph Onyango Obuya, who told the Court that he knows the parties in this matter. He relied on his witness statement recorded on 11<sup>th</sup> November 2022, and at his request this Court adopted the same as his evidence in chief. According to him, the Petitioner herein is a distant paternal cousin. The deceased herein was married but was not blessed with children and upon his demise his brother Odi Lando, who is the Objector's grandfather took the aforesaid parcel since the deceased only held the same in trust for the 4<sup>th</sup> house. He told the Court that Odi Lando had only one son, the Objector herein, and upon the demise of his father, the Objector took over the entire remaining estate as the only surviving dependant of the 4<sup>th</sup> house. He told the Court that the rest of Odi Lando siblings were never married and blessed with children. He told the Court that he was well versed with the decision of the Land Dispute Tribunal which was adopted by the Kisumu Magistrate's Court. He told the Court that he was not aware if the Petitioner was gifted the land by the deceased herein.
8. On cross-examination, he told the Court that he knew how Lando distributed his property and the same was according to the Luo Customary Law which was each piece of land to each wife, house. Referring to the Land Dispute Tribunal, he told the Court that he was aware that sub-division was to be done.



9. On re-examination, he told the Court that the Petitioner's name was registered with regards to land parcel no. Kisumu/Kolunje/1805 on 22<sup>nd</sup> January 2020 and as per the gazette notice the deceased herein died on 7<sup>th</sup> May 2007 while John Odi died on 30<sup>th</sup> May 2016.

#### **Petitioner's case**

10. PET-PW1 was Vitalis Sigu Bodo, the Petitioner herein. He relied on his witness statement recorded on 17<sup>th</sup> February 2023, his Replying Affidavit sworn on 8<sup>th</sup> April 2022 and his list of documents annexed. At his request this Court adopted the same and marked the availed list of documents as OB-Exhibits 1-8 as his evidence in chief. According to him, the deceased herein had no single child of his own to be identified as a beneficiary of his estate and that during his lifetime, the petitioner he took care of him up to the time of his death. He told the Court that the deceased decided to leave his estate to him as he had taken care of him and conducted the requisite registrations regarding the said estate. He commenced the succession process in regards to the estate of the deceased and was issued with a Grant of Letters of Administration which were subsequently confirmed. He told the Court that he legally proceeded to have land parcel no. Kisumu/Kolunje/1805 registered in his name and he obtained the title deed and that it was during that process that he discovered the Objector had registered cautions on the said title and on invitation to appear before the land registry to explain his legal interest he did not show up. He insisted that the transfer and registration process occurred during the lifetime of the deceased herein and according to the law.
11. On cross-examination, he told the Court that it was true that land parcel no. Kisumu/Kolunje/1805 came into his ownership after the succession process. He told the Court that he was not aware that there existed a land case between John Odi and the deceased and that he was registered as a proprietor of the land in the year 2020 and that the deceased herein died in the year 2007. He insisted that he transferred the land during the lifetime of the deceased and that John Odi died in the year 2016. He told the Court that the transfer process was not completed when the deceased died and that the transfer form is for the year 2005. He confirmed that he required the Grant of Letters of Administration to effect the transfer of title to his name. He told the Court that the deceased owed him some money for the work he did for him and that he did not have an agreement showing he purchased land parcel no. Kisumu/Kolunje/1805 from the deceased but only witnesses to confirm the same. He told the Court that the deceased gave him the land parcel no. Kisumu/Kolunje/1805 when his 1<sup>st</sup> wife died and he was left alone and that he gave the deceased a wife after his 1<sup>st</sup> wife had died.
12. On re-examination, he told the Court that he followed due process when applying for the Grant of Letters of Administration and that he was not aware if the Objector herein filed his objection when he intended to lift the restrictions registered on the title.
13. At the close of the Petitioner's case, this Court vide directions issued on 25<sup>th</sup> September 2023, directed the parties to file, serve and exchange their respective submissions. Both parties complied.

#### **Analysis and determination**

14. After careful analysis of the Summons, the response thereto, the testimonies of each party and the respective written submissions of the learned counsels, the main issue for determination is whether the Objector has presented sufficient evidence to warrant revocation or annulment of the grant.
15. Section 76 of the *Law of Succession Act* gives the Court the powers to revoke a Grant provided the conditions stipulated therein have been met. It states 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 has ordered or allowed; 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
  - iv. The grant has become useless and inoperative through subsequent circumstances.

16. The circumstances in which a Grant can be revoked were discussed in the case of *In the Matter of the Estate of LAK (Deceased)* [2014] eKLR :-

“Revocation of grants is governed by Section 76 of the *Law of Succession Act*. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.”

17. Notably, the power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the persuasive decision in *Albert Imbuga Kisigwa vs Recho Kavai Kisigwa* Succession Cause No. 158 of 2000 where Mwita J stated:-

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

18. The distribution of the estate of a person who died intestate and was not survived by any spouse or children is governed by Section 39 of the *Law of Succession Act*, which states as follows :-

1. Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—
  - a. father; or if dead
  - b. mother; or if dead



- c. brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
- d. half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
- e. the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

19. Rule 7 of the [Probate and Administration Rules](#) is on Application for grant: general provisions and provides as follows:

“(1) Subject to the provisions of sub-rule (9), where an applicant seeks a grant of representation to the estate of a deceased person to whose estate no grant or no grant other than one under section 49 or a limited grant under section 67 of the Act has been made, the application shall be by petition in the appropriate Form supported by an affidavit in one of Forms 3 to 6 as appropriate containing, so far as they may be within the knowledge of the applicant, the following particulars—

- a. the full names of the deceased;
- b. the date and place of his death, his last known place of residence, and his domicile at date of death;
- c. whether he died testate or intestate and, if testate, whether his last will was written or oral, and the place where and the date upon which it was made;
- d. a full inventory of all his assets and liabilities at the date of his death (including such, if any, as may have arisen or become known since that date) together with an estimate of the value of his assets movable and immovable and his liabilities;
- e. in cases of total or partial intestacy—
  - i. the names, addresses, marital state and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child, like particulars of such person or persons who would succeed in accordance with section 39(1) of the Act;
  - ii. whether any and if so which of those persons is under the age of eighteen years or is suffering from any mental disorder, and, if so, details of it;
  - iii. for the purposes of determining the degree of consanguinity reference shall be made to the table set out in the Second Schedule;
- f. the relationship (if any) which the applicant bore to the deceased or the capacity in which he claims:



- g. if the deceased died testate leaving a written will, the names and present addresses of any executors named therein; and
  - h. the postal and residential addresses of the applicant.”
- 20. Rule 7 (1) (e) (i) above provides that an applicant seeking a grant of representation to the estate of a deceased person is required to declare the names, addresses, marital state and description of all legitimate beneficiaries. This was not done by the administrator in this case. Thus, by omitting the names of all the other beneficiaries, the Petitioner contravened the statutory requirement to disclose all legitimate survivors of the deceased.
- 21. On its part, Rule 26(1) and (2) provides as follows:
  - “(1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
  - (2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equally or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.”
- 22. I am in the circumstances of this case, persuaded that the administrator/Petitioner obtained the Grant fraudulently by making of a false statement by concealment from Court of material facts. They claimed in P&A 5 form that they were the only survivors which fact they knew was false.
- 23. I am equally satisfied that the Grant was obtained through proceedings which were defective in substance as the beneficiaries of the estate were never declared on oath in P&A 5 only for this beneficiary to spring up after the confirmation of Grant.
- 24. In light of the above, I invoke the inherent powers of this Court granted under Article 159 of the Constitution and Section 76 of the Law of Succession Act and I make the order to revoke the letters of grant of administration issued to the Petitioner and the subsequent confirmation as it was obtained fraudulently by the making of false statement or by the concealment from Court of something material to the case particularly in relation to the existence of another beneficiary to the estate of the deceased . Thus, the Court makes the order that;
  - i. The Grant issued on May 17, 2013 is revoked and set aside.
  - ii. The Petitioner and Objector to file for fresh letters of administration and in doing so, comply with the law.
  - iii. The registration of the petitioner as the proprietor of parcel No Kisumu /Kolunje /1805 is hereby revoked and the said property to revert back to the name of the deceased Nyanduga Lando.
  - iv. The Land Registrar Kisumu to effect the said reversion of ownership of parcel No Kisumu/ Kolunje/1805.
  - v. This being a family matter each party to bear its own costs.

**DATED AND DELIVERED AT BUNGOMA THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025.**



**Shariff Mwanaisha Saida**

**Judge**

In the presence of :

N/A for Petitioner

Odhiambo for Objector

Diana/Juma /David Court Assistants

