



In re Estate of Eliazaro Odhiambo Odongo (Deceased) (Succession Cause 949 of 1990) [2025] KEHC 5073 (KLR) (Family) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5073 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 949 OF 1990
HK CHEMITEI, J
APRIL 30, 2025
IN THE MATTER OF THE ESTATE OF ELIAZARO ODHIAMBO ODONGO (DECEASED)**

BETWEEN

**GEORGE JACKNOIAH ODHIAMBO (IN HIS CAPACITY AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE LATE ELIAZARO ODHIAMBO ODONGO) 1ST APPLICANT
GRACE WANJIRU ODHIAMBO 2ND APPLICANT**

AND

**SARAH ONYANGO OKOTH 1ST RESPONDENT
JIMLY PROPERTIES LIMITED 2ND RESPONDENT**

RULING

1. These consolidated ruling relates to the application dated 14th February, 2022 and 23rd August, 2022.
2. The first application dated 14th February, 2022, filed by Sarah Anyango Okoth, seeks for orders that:-
 - 1) The honourable court be pleased to revoke/annul the grant issued on 3rd July, 1992 and rectified on 3rd June, 2019.
 2. The honourable court be pleased to review/vary the grant issued on 3rd July, 1992 and rectified on 3rd June, 2021.
 3. This honourable court be pleased to issue any other order that it deems fit for the ends of justice.
 4. Costs be provided for.
3. The application is supported by affidavit sworn by Sarah Anyango Okoth on 14th February, 2022.



4. She avers inter alia that she is the widow of Bob Robert Okoth, who passed away on 20th January, 2015. She currently lives in Delaware, USA. The couple married in 1973 and had five children. The late Bob was chosen by his late father as his heir and was tasked with administering the estate, which was formalized on 3rd July, 1992, in Succession Cause No. 949 of 1990.
5. She averred that before the father's death, Bob organized a family meeting where his father distributed property among his children: Bob was given the Eastleigh property, L.R. No. 36/1/778, Frank Otieno got Makadara property and James Oluoch received Bahati property. Jacksoniah Odhiambo was allocated substantial land and assets in Rusinga, including commercial and residential properties.
6. It was agreed that Jacksoniah would manage the Rusinga land distribution and that Bob would only apply for letters of administration for the Nairobi property and accounts meant for the two widows, Dorina and Aska.
7. However, Jacksoniah processed the entire Rusinga land in his own name, including six plots meant for Dorina and Aska, who have since passed away. He also gave land to Grace Wanjiru Odhiambo, despite her being divorced from Frank since 1978 and not being involved in his later life or funeral expenses.
8. That the Eastleigh property was supposed to be jointly developed by Bob and his two brothers, but they later refused to contribute citing that it was too expensive. The Applicant herein, took out a bank loan and used her retrenchment package from ICRAF to complete the construction. She and her children have paid rates for the property alone for over 33 years. She was not informed about the rectification of the grant of 3rd June, 2019, that affected this property. The sudden reemergence of the Respondents, their attempt to quickly sell the property at a low price and the exclusion of her and her children from the rectified grant suggest fraudulent intent to deprive her of her rightful inheritance. She also highlights that Frank's legitimate wife and children were not included in the rectified grant, which adds to the irregularities.
9. The application is opposed vide replying affidavit sworn by George Jacksoniah Odhiambo on 2nd March, 2022 who avers inter alia that he is an administrator of the deceased's estate under the rectified grant dated 3rd June, 2019. The claim that their late father appointed Bob Robert Okoth as his heir or asked him to apply for letters of administration is incorrect. Bob was chosen to apply simply because he lived in Nairobi and that there was no family meeting that took place to distribute their father's estate.
10. He averred that the Makadara property belonged to Aska Achuro and was passed on to Joyce Akinyi. James Oluoch was entitled to only one-fifth of the Bahati property L.R. No. 209/5389/45.
11. The Eastleigh property, L.R. No. 36/1/778, was never exclusively left to Bob Okoth. Only the properties in Rusinga allocated as gift inter vivos during their father's lifetime. The shops he owns were constructed in 2009 on land he obtained from the City Council in 2002, and the house in Buruburu that he sold was his personal asset.
12. Further that there was no agreement that the three brothers would co-develop the Eastleigh property. In fact, the property already had rental units when their father acquired it. Any additions or modifications, such as the front shops, were done by Sarah and her husband without consulting the rest of the family. Their exclusive collection of rent has covered any expenses incurred in maintaining or developing the property.
13. In regard to Grace Wanjiru, she stated that she was never divorced from Frank Odhiambo Otieno. Frank married Bona Awino because he practiced polygamy. Grace and Bona have mutually agreed that Grace will represent their family in these proceedings.



14. When the matter came up for directions the court directed that the same be determined by way of written submissions.
15. The Respondents filed written submissions to the application dated 6th March, 2024. They have placed reliance among others on *In re Estate of Seth Namibia Ashuma [Deceased] [2020] eKLR* the court stated as follows: “A grant of representation is liable to revocation on three general grounds. The first ground would be where the process of obtaining the grant was attended by glaring difficulties, such as where the same was defective, say because the person who obtained representation was not qualified to be appointed as personal representative, or other procedural requirements were not met for some reason or concealed important information in order to obtain the grant. The second general ground is where the grant is obtained procedurally, but the administrator subsequently runs into difficulties during the process of administration of the estate. Such difficulties include his failure or omission to apply for confirmation of his grant within the period allowed in law, or where he fails to exercise diligence in administration of the estate, such as where he omits to collect or get in an asset, or where he fails to render accounts as and when he is required to do so by the law. The third general ground is where the grant has become inoperative or useless on account of subsequent circumstances, such as where the sole administrator died or lost the soundness of his mind or was adjudged bankrupt.”
16. The Applicant on the other hand did not file written submissions to the application dated 14th February, 2022.

Analysis And Determination

17. I have carefully perused the record herein; the rival affidavits and I find the application totally unmerited for the following reasons.
18. First of all, the dispute is not over the estate of the Applicant’s husband the late Bob Robert Okoth but his father. The property in question and in particular the Eastleigh No 36/1/778 was shared between the three brothers who did not challenge this arrangement and I think for the Applicant to do so now is too late in the day.
19. Even if the grant was to be revoked, I doubt whether the Applicant’s household will have exclusive share of the said property since the deceased did not Will it or gifted the Applicant’s husband inter vivos. In essence the decision to apportioned it between the three brothers was noble in my considered view.
20. I find that the thrust of the Applicant’s objection is the development of the Eastleigh property by the Applicant’s husband and herself. If it is true then as correctly stated by the Respondents the same was done, I suppose unilaterally and if that is the position that should not be a ground for revocation of the grant. If she has any claim then she should pursue the other two beneficiaries separately and not in this cause.
21. Further there was no agreement that the architectural drawings exhibited by the Applicant were approved least of all by the other two beneficiaries.
22. There was an allegation that the Applicants brother divorced the 2nd Applicant Grace Wanjiru Odhiambo. If that is the case then it becomes an inhouse issue between her and the 2nd Respondent vis a vis the estate of her husband. and does touch on the estate of their father-in-law. They ought to fight separately and it is not a basis for revoking the grant herein.
23. I have seen the consent demanded by the court (Muchelule J as he was) dated 30th May 2019 in which all the relevant parties consented to the grant being rectified. For this reason, as well, the Applicant cannot feint ignorance of the proceedings herein.



24. In re Estate of Benjamin Kiregenyi Muiri [Deceased] [2022] eKLR where the court pronounced itself as follows: “Notably, the power to revoke or uphold a grant is discretionary one. This principle was enunciated in the persuasive decision in Albert Imbuga Kisigwa vs Recho Kawai 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 the interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”
25. I think the above authority clearly points out the fact that this is an application brought too late in the day to warrant this court exercise the discretionary grounds laid out under section 76 of Cap 160. So much has passed on since the first grant was issued. Many of the beneficiaries have since died and the estate must be brought to closure.
26. The application as stated earlier is unmeritorious and the same is hereby disallowed.
27. The application dated 23rd February, 2022, filed by the Applicants, George Jackoniah Odhiambo and Grace Wanjiru Odhiambo, seeks for orders that:-
1. Spent.
 2. A declaration be issued that the 1st Respondent has defied and continues to defy this honourable court’s orders of 27th May, 2022 requiring all rental income derived from L. R. No. 36/1/778 to be deposited into a bank account to be opened and held in the joint names of the Applicants’ advocates.
 3. The order given by Lady Justice Maureen Odero on 27th May, 2022 requiring “THAT from 27th May, 2022, all rental income derived from L.R. No. 36/1/778 be deposited into a bank account to be opened and held in the joint names of the advocates for the two parties.” Be set aside.
 4. Upon prayer No. 2 above being granted, an order be given that all rental income derived from L. R. No. 36/1/778 be deposited into a bank account to be opened and held in the joint names of the Applicants’ advocate and deputy registrar of this honourable court.
 5. A declaration be issued that the 1st Respondent has defied this honourable court’s orders of 27th May, 2022 requiring her to cooperate with the Applicants in transferring by way of vesting assent the property known as L.R. No. 36/1/778 to the three beneficiaries named in the rectified certificate of grant dated 3rd June, 2019.
 6. Upon prayer No. 4 above being granted, an order be issued that the deputy registrar of this honourable court be authorised to sign all necessary documents for the process of vesting the suit property, L.R. No. 36/1/778 to the beneficiaries and selling and transferring the same and accounting for the sale proceeds to the beneficiaries including the 1st Respondent.
 7. Such other or further order as this honourable court may consider fit and just to grant in the circumstances, be granted.
 8. The costs of this application be awarded to the Applicants.
28. The application is supported vide supporting affidavit sworn by George Jackoniah Odhiambo on 22nd August, 2022.



29. He avers inter alia that the property L.R. No. 36/1/778 is registered under the deceased's name and remains part of his estate, awaiting transfer to the rightful heirs as per a confirmed grant issued on 3rd June, 1992 and rectified on 3rd June, 2019. The property was allocated to Sarah Onyango, Grace Wanjiru Odhiambo, and George Jackson Odhiambo. However, the 1st Respondent unlawfully took control of the property and used its rental income for personal gain, prompting the Applicants to file the application dated 1st October 2020 to which Lady Justice Maureen Odero issued a ruling on 27th May 2022, directing that:

“ all future rent be deposited into a joint account held by the parties' lawyers; Sarah Onyango provide full rental income records from 1989 to 2015 - for her late husband's period as administrator; Sarah also account for rent received after 2015 up to the ruling date; Jimly Properties Limited to submit rental statements for the same property; Sarah to cooperate in transferring the property to the named beneficiaries; and no cost orders were made.“

31. Despite these directives, the 1st Respondent's lawyers have refused to share details to set up the joint account and Jimly Properties Limited has ignored communications regarding rental preservation. Sarah Onyango has also failed to sign the necessary vesting documents or comply with the court's orders. As she lives outside the court's jurisdiction and remains uncooperative, it's unlikely she will comply voluntarily. Attempts at resolving the matter amicably have failed, as she continues to deny the Applicants' entitlement to the property.

32. The application is opposed vide grounds of opposition filed by Sarah Anyango Okoth; and it is based on the GROUNDS THAT:-

- 1) The application is frivolous, vexatious and an abuse of the court process.
- 2) The current application is res judicata the application dated 1st October, 2020 in that the application seeks similar and identical orders to the ones dated 1st October, 2020.
3. A ruling dated 27th May, 2022 was delivered disposing the application dated 1st October, 2020. As such, the Applicant cannot purport to seek similar orders as they offend the doctrine of res judicata. Prayer 3 of the current application seeks a review of the court's orders given by lady Justice Maureen Odero on 27th May, 2022 requiring that from 27th May, 2022, all rental income derived from L.R. No. 36/1/778 be deposited into a bank account to be opened and held in the joint names of the advocates for the two parties. This prayer is incapable of being granted as a party cannot be allowed to review an order of the court when there is a pending appeal. There is a pending Civil Appeal No. 222 of 2022 in the Court of Appeal. The Applicant's prayer is therefore otiose.
4. The application is final in nature and seeks to determine the partes' rights and finally despite the pendency of the application for review/ revocation of the grant alleged to have been made on 3rd June, 2019.
5. Prayer 6 of the application is ambitious in that it seeks to have the court through the Deputy Registrar dispose of the subject property even when there is a pending dispute on the rectification of the grant on 3rd June, 2019.
6. The application is a back door attempt to have the succession dispute resolved at an interlocutory stage without hearing the parties substantively.
7. The application neither meets the legal threshold for the grant of the orders sought.



8. Against the foregoing backdrop, the application dated 25th August, 2022 should be dismissed with costs.
33. The application is further opposed vide replying affidavit sworn by Sarah Anyango Okoth on 5th October, 2022.
34. She avers inter alia that she is the widow of Bob Robert Okoth who passed away on 20th January, 2015; and she currently lives in Delaware, USA. She argues that the current application is res judicata for a ruling on a previous, similar application dated 1st October, 2020 was delivered on 27th May, 2022, and thus the Applicant cannot request identical orders again. Specifically, Prayer 3 of the instant application requests a review of the 27th May, 2022 order requiring rental income from property L.R. No. 36/1/778 to be deposited in a joint bank account managed by the parties' advocates.
35. However, the Respondent contends that this review is not permissible while an appeal, Civil Appeal No. 222 of 2022, is still pending. Further, the Respondent avers the application improperly seeks to finalize property rights and dispose of the property, despite unresolved issues around the grant's rectification on 3rd June, 2019. She also points out that Prayer 6 is ambiguous as it asks the court to act through the Deputy Registrar while disputes are still ongoing. In conclusion, the Respondent asserts that this is an inappropriate attempt to resolve the estate matter prematurely and urges the court to dismiss the application dated 23rd August, 2022.
36. The Applicants have filed written submissions to the application dated 23rd August, 2023. The written submissions are dated 10th October, 2022 placing reliance on the following:-
 - a. Republic v Cabinet Secretary, Ministry of Education & Another ex parte Thadayo Obanda [2018] where the court cited with authority the case of Gulabchand Popatal Shah & Another Civil Application No. 39 of 1990 where the court held that: "It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void."
 - b. Sarah Wanjiru v Jacinter Wanjiru Nguti [2014] eKLR where the court pronounced itself as follows: "I do however concur with learned counsel, Mr. Kibii that court orders are not made in vain. They must be obeyed by all and sundry, the mighty and the lowly, notwithstanding that either may not agree with it as there are avenues to ventilate any disagreement (s). And of course, the simple explanation to this is that the rule of law and the dignity of the court must be upheld."
 - c. Charles Mukoma Kimaru v Johnstone Muchomba Kaguyu [2020] eKLR where the court held as follows: "20. It has now emerged that after the judgment of the court that the Respondent with a view to defeat the execution of the judgment has refused and/or neglected to sign the relevant transfer documents which refusal/neglect is calculated to defeat this court's judgment. The only way the judgment and decree of the court can be affected is by authorizing the Deputy Registrar to sign all instruments of transfer of land to the Applicant in place of the Respondent within the confines of the law as provided for. 21. I am satisfied in the circumstances that this is a proper case in which the court should exercise its discretion under Section 98 of the Civil Procedure Act and do hereby nominate the Deputy Registrar of this court to execute the



instrument of transfer in favour of the Applicant to enable him enjoy the fruits of the judgment of 4th October, 2018.”

37. The Respondents have not filed written submissions to the application dated 23rd August, 2022.

Analysis And Determination

38. I have carefully considered the applications before the court, the responses thereto and the rival submissions; and address them as below.

39. What is evident is that the Respondent has totally failed to comply with the ruling of my sister Odera J. dated 27th May 2022 cited above which was clear and unambiguous.

40. There is no evidence that an account was opened as directed by the court. Despite the Respondents’ lawyers receiving request from the Applicants’ lawyers to open the joint account there was no response and or any meaningful step to comply.

41. Neither was there any accounts provided by the estate of the late Bob Robert Okoth (the Respondent herein).

42. Neither did Jimly Properties Limited provide any accounts as directed under order 4 of the said ruling.

43. Above all there was no evidence that the Respondent transferred the property to the three beneficiaries.

44. In short, the Respondent is in complete breach of the ruling herein.

45. What the Respondent is telling this court is that she cannot comply till the appeal pending at the Court of Appeal is heard and determined. There is no evidence that the said appeal has been determined. Neither is there any evidence that there was stay of execution of the ruling dated 27th May 2022.

46. In view of this therefore it was imperative that the Respondent complies with the orders whether palatable or not unless set aside by this court or the appellate court. For now, the same is subsisting. She cannot be allowed to hold the estate at ransom just because she is not happy with the same.

47. Elsewhere I have stated that if she thinks that she and her husband made improvements to the Eastleigh property then she can claim it elsewhere against the other two beneficiaries but she must comply with the orders.

48. I do not agree with the line of argument taken by the Respondent that the application is akin to reviewing the orders of 27th May 2022. If the Respondent has refused to comply then nothing stops this court from exercising its discretion and powers to ensure that the breach is rectified in whichever manner appropriate without tampering with the substratum of the orders.

49. In other words, this court will exercise its powers provided under Rule 73 of the Probate rules and other enabling provisions of the law including Article 159 of the Constitution to ensure compliance.

50. In the premises I do find the application meritorious and allow it as follows:-

- (a) The Respondent within 14 days from the date herein must comply with the orders of this court dated 27th May 2022.
- (b) And in default
 - (i) All rental income derived from LR No 36/1/778 be deposited in a joint account between the Applicants advocate and the Deputy Registrar of this court.



- (ii) The Deputy Registrar is hereby authorised to sign the conveyancing instruments so as to transfer land parcel No. LR 36/1/778 to the three beneficiaries as per the rectified grant dated 3rd June 2019.
- (c) Costs of this application to the Applicants.
- (d) The application dated 14th February 2022 is dismissed with no order as to costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 30TH DAY OF APRIL 2025.

H K CHEMITEI

JUDGE

