



In re Estate of Gabriel Odhiambo Opondo (Deceased) (Succession Cause 80 of 1986) [2025] KEHC 6440 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 6440 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 80 OF 1986**

**S MBUNGI, J
APRIL 30, 2025**

IN THE MATTER OF THE ESTATE OF GABRIEL ODHIAMBO OPONDO (DECEASED)

BETWEEN

JOSHUA AREGO OBUOR PETITIONER

AND

SIMON OCHIENG ODHIAMBO OBJECTOR

RULING

1. The objector/applicant herein approached this honourable court by way of application dated 21st January, 2019 and later amended on 11th June, 2021 seeking orders for revocation and/or annulment of the grant issued to the Petitioner, prohibitory orders against L.P South/Wanga/Bungasi/1013 pending the hearing and determination of this application, nullification of the title deed issued to the Petitioner and sought issuance of a new certificate for confirmation of grant which includes the objector as the only beneficiary by dint of being the son of the deceased one Gabriel Ondiambo Opondo.
2. In his replying affidavit dated 29th November, 2001, the Petitioner /Respondent herein opposed the objector/Applicants application by referring to it as frivolous and misplaced, alleging that the deceased one Gabriel Odhiambo Opondo never had any children and that the claims by the applicant that he is the son to the deceased are false.
3. The objection was heard by way of *viva voce* evidence.
4. The objector testified and called Joseph Anda Wairimu, Felister Apondi Wandere and Isaac Otieno as his witnesses.
5. The Petitioner testified and called Peres Achola as his witness.
6. The witnesses had filed their affidavits statements which they adopted as their evidence in chief.



7. A summary of the evidence tendered by the parties and their witnesses is that, on the Objectors side is that the objector is the son of the late Gabriel Odhiambo Opondo who was the registered owner of South Wanga/Bungas/1013. He died intestate. On 30th March, 1979.
8. In the year 1986 Joshua Arego Obuor the father of James Juma Arego the respondent herein fraudulently obtained letters of administration of the estate of Gabriel Odhiambo Opondo and land parcel No South Wanga/Bungas/1013 was registered in his name.
9. Now the objector wants the certificate of confirmation of grant and grant of letters of administration revoked and the land be transferred to him as he is the only son of the deceased a fact the respondents father did not disclose to the court.
10. The objector produced a death certificate for the late Gabriel , a letter from the area assistant chief dated 16th October, 2018 , a copy of green card, ID Card for one Felister , a copy of his birth certificate, proceedings from the Land Disputes tribunal South Wanga division in whose decision the land was given to him as a son of Gabriel as exhibits to support his case.
11. On his part the respondent James Juma Arego case is that Joshua Arego Obuor who inherited Gabriel Odhiambo Opondo was his father. He came in to replace his father in this matter when he died.
12. The Respondent refuted the objectors claim that he was the son of Gabriel Ochieng Odhiambo and asserted that the birth certificate objector obtained showing that he was the son of Gabriel Odhiambo Opondo was fraudulently obtained for purposes of misleading this court for Gabriel Ochieng Odhiambo died without any children.
13. The counsels put in written submissions to support their respective clients cases.
14. I have reviewed the evidence and read the submissions, the cardinal issue for determination is whether the objector Simon Ochieng Odhiambo has proved that he is a son of the late Gabriel Odhiambo Opondo, for if that is proved it follows that as per the provisions of section 66 of the [Laws of Succession Act](#) Cap 160 he takes priority over the respondent.
15. Section 66 of the Laws of Succession provides

“A gift made by will shall not of itself raise any presumption that such gift is intended to satisfy or to take the place of a gift, whether or not of equal amount, previously made to the same person by the testator in contemplation of death.”
16. The burden of proof lies squarely on the objector for who alleges must prove.
17. Section 107 of [Evidence Act](#) provides
 - a. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - b. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

Determination

18. The objector to prove that he is a son of Gabriel Odhiambo Opondo he called Felister Apondi Wandere of ID Card No xxxxxxx who testified that he was the elder biological sister to the Objector and that the Objector was the only son to the deceased .



19. Felister Apondi Wandere said that she was born in 1952 in her statement dated 15th January, 2024 filed in court the same date in Paragraph 2.
20. The death certificate produced by the objector shows that Gabriel Odhiambo Opondo died on 30th March, 1979 so she was about 27 years old at the time the Gabriel died.
21. The objector said he was 6 years and ½ when the father died.
22. To me the puzzle is to whether the birth certificate produced by the Objector as evidence that he was a son of Gabriel would have been solved if the registrar of persons had testified as earlier ordered by the court for he would have produced the documents he relied on to issue the objector with the birth certificate for the question remain why did the objector wait until 2014 to obtain the birth certificate when this case was ongoing.
23. Assuming that the objector was born 6 years prior to the death of Gabriel Odhiambo Opondo it means that he was born in 1972 or 1973 that time modern health care system and record keeping was in place. Therefore these records if produced would have shown the name of the father of the objector similarly if the objector went to school the records would show the name of his father.
24. In absence of such evidence, the evidence of birth certificate cannot be taken as proof that the objector was a son of the Deceased Gabriel Odhiambo Opondo. Even the testimony of Felister Apondi Wandere who said that he was a biological sister to the objector, the same questions arise as to how she acquired the ID card and furthermore the ID Card does not have any name of the deceased Gabriel Ochieng Odhiambo Opondo though it may be argued that she might have changed her names upon her marriage but there must be trail of the prior records connecting her with Gabriel Odhiambo Opondo alias Gabriel Ochieng Odhiambo.
25. The evidence of the letter authored by the area assistant chief one dated 16th October, 2018 and another one dated 17th October, 2011 also cannot assist the objector for as he alleges that Joshua Juma Arengo colluded with the area chiefs when he petitioned for grant of letters for the Estate of the Late Gabriel Odhiambo Opondo. The same allegation can be imputed on his side.
26. The objector also produced proceedings of the Land disputes tribunal South Wanga Division wherein he was declared the owner of land parcel No South Wanga/Bungasi/1013 because he was the son of the Gabriel Odhiambo Opondo. In his testimony he admitted that he never filed the award of the tribunal in a magistrates court as required by the then Land Disputes Act for adoption as a courts judgment therefore the award of the tribunal it is of no evidential value and I also doubt whether the proceedings are authentic because the award was not signed by the members who heard the case as required by then legal regime.
27. Further the signature of Joseph Anda Waremo who signed the proceedings on 28/11/2011 completely differs with the signature appearing on a statement he recorded on 15th January, 2024 and filed in court the same date.
28. It appears that the birth certificate, the Land Disputes Tribunal proceedings, and the letters from the assistant chief produced as evidence by the objector were purely meant for purposes of misleading the court in these proceedings.
29. The petitioners counsel cited the case of *Gachigi v Kamau* (2003) 1 EA 69 (CAK). Where the court of Appeal (EA) faced with a similar situation held "I she relied on her children's clinical cards which all appear to be new. They were made by the same hand. This shows they were prepared for the purpose



of this case. The birth certificate we also prepared during the pendency of this case. The were meant in my view to mislead the court’

30. That the other way the objector could have proved that he is a son of Gabriel was to call for scientific evidence (DNA profiling). He did not .
31. The upshot of the above I find that the objector has failed to prove that he is a son of Gabriel thus not a beneficiary as a child of the deceased neither a dependant for there is no evidence if the Applicant had any relationship with the deceased during his lifetime. Thus I find he has no claim on the estate of Gabriel Odhiambo Opondo. His amended summons for revocation of grant dated 11.06.2021 are hereby dismissed with costs to the Respondent.
32. Before I pen off, I think it’s a high time Kenyans should have a candid conversation on our current succession law regime, is siring a child a blanket ticket for the child to inherit the father? For one can sire a child ,and he never meets the child in his lifetime only for the child to come after his death and start claiming to inherit yet there was no any relationship of a father and a child during the lifetime of the father. Secondly a man might sire a child or a woman might give birth to a child who will never give him/her peace through out his/her entire life, is it really fair for such a child to inherit the father/ mother yet some are known to commit unprintable atrocities to the parents? For currently the only time a child cannot inherit a parent is when the child kills the parent.
33. Right of Appeal 30 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30TH DAY OF APRIL, 2025

S.N MBUNGI

JUDGE

In the presence of :

Court Assistant – Albright Sunguti

Mr Migosi for the Applicant present online.

