



**In re Estate of Zablun Benjamin Obado (Deceased) (Succession Cause 389 of 2013) [2024] KEHC 7654 (KLR) (Family) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7654 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 389 OF 2013  
HK CHEMITEI, J  
JUNE 27, 2024  
IN THE MATTER OF THE ESTATE OF ZABLON BENJAMIN OBADO (DECEASED)**

**BETWEEN**

**TIMOTHY KIPLAGAT CHUMBA ..... 1<sup>ST</sup> APPLICANT  
DAVID KOSE OCHIENG ..... 2<sup>ND</sup> APPLICANT  
ELIZABETH ODERA OCHIENG ..... 3<sup>RD</sup> APPLICANT**

**AND**

**MARY AKINYI OBADO ..... 1<sup>ST</sup> RESPONDENT  
CLEMENT ARGWINGS OBADO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. There are three sets of application pending before this court. So as to bring to speed this matter the court shall deal with them summarily albeit with different orders as they have prayed.
2. The first application is dated May 20, 2021 brought by Timothy Kiplagat Chumba seeks the following orders;
  - (a) That the grant of letters of administration issued on the 29<sup>th</sup> day of July 2013 to the Respondents/Petitioners herein Mary Akinyi Obado and Clement Argwings Obado and confirmed on the 31<sup>st</sup> March 2014 be revoked and or annulled.
  - (b) Pending prayer (a) above a conservatory order be issued preserving the deceased estate from adversely dealing with land parcel number Kakamega /Lumakanda /439.



- (c) That the title deeds to any resultant portions carved out of the subject land parcel Kakamega/Lumakanda /439 be surrendered or deposited with this court.
3. The application is premised on the applicants sworn affidavit dated the same date. The Applicant claims that the deceased was his father having been born by his third wife the late Eunice Cheronno who died in the year 1999.
  4. That the Applicants did not notify him of these proceedings and he only got to know when land parcel number Kakamega /Lumakanda/439 was subdivided.
  5. He attached copies of the title and a letter from the area chief indicating his relationship with the deceased.
  6. The respondents vide their replying affidavit sworn on July 26, 2021 have opposed the same. They argue that there was no evidence exhibited that the applicant was a son to their deceased father and that there was nothing to show that the applicant was introduced to the 1<sup>st</sup> Respondent.
  7. They prayed that the application be dismissed noting that they followed all the processes in ensuring that the proceedings herein comply with the law.
  8. That the chief's letter attached to the Applicant's affidavit was irregularly obtained after the deceased had passed on hence this court cannot rely on it.
  9. The court has perused the application as well as written submissions by both parties. What is evident is that the issues raised by the applicant cannot be dealt with by way of affidavit evidence alone. The same ought to be subjected to oral evidence.
  10. Evidence must be let for instance on whether the late Eunice Cheronno was indeed the deceased third wife and if that is the case whether the Applicant was his son. There must be sufficient uncontroverted evidence by the parties and in particular the applicant.
  11. It will be unfair in my view to rely on affidavit evidence alone noting that the issues they are dealing with have a long historical span.
  12. Although I shall deal with the issues surrounding the land parcel Kakamega/Lumakanda/439 in the subsequent applications it appears that the Applicant has an interest in it. There is some *prima facie* evidence that he has been farming maize on the said parcel of land as well as other crops.
  13. This of course is not an idle argument and needs proper interrogation of how the applicant found himself on the said parcel.
  14. In the premises I find the application meritorious and in my view the grant can only be revoked after taking oral evidence from the parties. It is not enough to do so at this juncture.
  15. The next application is dated January 17, 2023 filed by David Kose Ochieng and Elizabeth Odera Ocheing, the Applicants, seeking for orders that:
    - (a) Spent.
    - (b) Spent.
    - (c) Pending hearing and determination of the application herein, the court be pleased to issue temporary conservatory orders preserving the property known as Kakamega/Lumakanda/8439, prohibiting any dealings on the said property further restricting any survey, subdivision, sale or transfer over the said property.



- (d) The letters of administration issued to the petitioners/ respondents, Clement Argwings Obado and Mary Akinyi Obado, on July 29, 2013 and confirmed on March 24, 2014 be revoked and or annulled.
- (e) All the steps taken by the said Administrators pursuant to the said order granting the letter of Administration and Certificate of Confirmation and which may have changed the assets of the estate subject of this application, be accounted for and subsequently be declared nullity in law.
- (d) Costs be to the estate.
16. The application is supported by affidavits sworn by Elizabeth Wangalwa Oundo and David Kose Ochieng on January 17, 2023. They aver, *inter alia*, that they are the deceased's grandchildren. The administrators (Petitioners/Respondents herein) have failed to diligently administer the deceased's estate in line with the certificate of confirmation of grant issued on March 31, 2014 and they have also failed to produce an account of the said distribution.
17. That they have illegally transferred to themselves land parcel numbers Kakamega/Lumakanda/439 (6.1HA) and Central Karachuonyo/ Kogweno Oriang/ 1655 (1.8 HA) to themselves contrary to the distribution in the certificate of confirmation of grant issued on 31<sup>st</sup> March, 2014. According to the confirmed grant, Clement Obado is supposed to hold 50% of the 6.1 HA in land parcel number Kakamega/Lumakanda/439 in trust on behalf of the first house and Central Karachuonyo/ Kogweno Oriang/ 1655 is to be shared equally amongst Clement Obado, Anthony Otieno Ocheing, David Kose Ochieng, Philip Obado and Job Obuya.
18. He went on to depose that the administrators have gone further to sub – divide land parcel number Kakamega/Lumakanda/439 and sell to unsuspecting members of the public. A person that Elizabeth Odera Ocheing had permitted to used land parcel number Kakamega/Lumakanda/439 has been removed by the administrators and his crops destroyed. The administrators have denied David Kose Ochieng and other beneficiaries access to land parcel number Central Karachuonyo/Kogweno Oriang/1655 for purposes of sub – division, their possession and use.
19. The application is opposed by replying affidavit sworn by Mary Akinyi Obado on March 27, 2023. She avers, *inter alia*, that the Applicants and all the other beneficiaries had agreed to the mode of distribution of the deceased's estate prior to the confirmation of grant. Kakamega/Lumakanda/439 was to be divided equally between the two houses. This was done with Philip Obado to hold half of it in trust for the first house and Clement Obado to hold in trust for the second house.
20. The parcel of land was subsequently sub–divided into two new portions i.e. land parcel numbers Kakamega/ Lumakanda/ 8438 and Kakamega/Lumakanda/8439. Kakamega/Lumakanda/ 8438 was registered in Philip Seje Obado's names to hold in trust for the second house and Kakamega/Lumakanda/8439 was registered in the names of Clement Argwings Obado to hold in trust for the first family. Since then, she has never dealt with land parcel number Kakamega/Lumakanda/8439 and is not privy to any transfer or dealings thereto.
21. That the second house has never sold any portion of land parcel number Kakamega/Lumakanda/8438 neither have they forcefully evicted anyone from it.
22. Further that Central Karachuonyo/Kogweno Oriang/1655 was divided equally amongst its beneficiaries. She has never set foot on the parcel of land since her home is at Kipkaren. She has never denied the applicants or any other beneficiary the right to deal in the land. She is a stranger to the averments made in its regard. The deceased's estate has already been sub–divided and the allegations



raised by the applicants pertain to distribution of the portions allocated to the first house amongst its members, including Clement Argwings Obado, the 2<sup>nd</sup> Respondent herein

23. The Applicants have filed submissions dated November 24, 2023, placing reliance on the following among others:-

a. *In Re Estate of Prisca Onyang Nande (Deceased)* [2020] eKLR where the court stated as follows:-

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

24. The Respondents have not filed submissions.

25. Having gone through the application before this court, the responses and submissions filed by the parties, the issue really is how the two administrators have executed the grant issued to them by this court.

26. It appears to me that the complain by the Applicants are essentially the manner in which the grant has been dealt with. In other words, they have not been issued with their shares. There is no doubt that being the deceased grandchildren they are entitled to the share in the estate. The Respondents / Administrators have not denied this.

27. I find that save for the land parcel number Kakamega/ Lumakanda/439 and which has now been subdivided into two portions the rest of the property suffers no contention except that raised by the Applicants.

28. In this regard I do not think it is necessary to have the grant revoked. The best way is for the administrators to distribute the estate to the rightful beneficiaries who are all adults and can take care of their inheritance.

29. Its only if they face challenges in taking over and occupying that they can raise it before this court. As it is there is no evidence that the administrators have denied them any access.



30. The issue of Kakamega/Lumakanda/8439 (formerly 439) has been dealt with above in the earlier application. The orders of preservation of the said parcel falls on the Applicants' *mutatis mutandis* as well.
31. It is therefore directed that the Respondent /Administrators within 90 days from the date herein complete the distribution of the estate assets as per the grant issued on March 31, 2014 except on land parcel number Kakamega/Lumakanda/8439 and 8438 (formerly number 439) as the said parcel is still in contention as found above.
32. The Respondent should proceed to file accounts in that regard within 30 days after completing the exercise.
33. The third application is by one Dorcas Atieno Obado and Susan Adhiambo Obado dated February 3, 2023. The said application seeks injunction reliefs against Wycliffe Magozwe and Esther Njeri who have trespassed on land parcel number Kakamega/Lumakanda/8439.
34. The application is supported by their affidavit of the same date.
35. I have perused the said application as well as the supporting affidavit extensively. It appears that although the suit land is held by the administrators herein on their behalf they have been unable to utilize the said parcel after they were chased away by the above stated trespassers.
36. The two though served did not file any response. I therefore find merit in the application and allow the same.

### **Conclusion**

37. It is hereby directed in respect to the three application that:
  - (a) There be stay of any dealings in land parcel number Kakamega/Lumakanda/8438, and 8439 (formerly 439) pending the hearing and determination of the objection proceedings by Timothy Kiplagat Chumba and Elizabeth Wangalwa Oundo and David Kose Ochieng or until further orders of this court.
  - (b) For avoidance of doubt there shall not be any sale, transfer or sub-division of the aforesaid parcel of land pending the determination of the objection proceedings herein.
  - (c) As regards the other parties/beneficiaries of the estate the administrators should within 90 days from the date herein execute the grant issued in their favour and ensure that all the beneficiaries get their rightful shares.
  - (d) In compliance with (c) above the administrators shall within 30 days thereafter file a report to this court indicating compliance.
  - (e) Wycliffe Magozwe and Esther Njeri are hereby stopped by way of an injunction from trespassing on land parcel number Kakamega /Lumakanda/8439 or at all.
  - (f) Let the status quo obtaining as at the delivery of this ruling be maintained in the two parcels namely Kakamega/Lumakanda/8438 and 8339 pending the determination of the objection proceedings.
  - (g) Being a family matter each party shall bear its own costs.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 27<sup>TH</sup> DAY OF JUNE 2024.**



**H K CHEMITEI**  
**JUDGE**

