



REPUBLIC OF KENYA



**Obange & another v Oganyo & 4 others (Civil Appeal E033 of 2021)
[2022] KEHC 627 (KLR) (26 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 627 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL APPEAL E033 OF 2021
RE ABURILI, J
APRIL 26, 2022**

BETWEEN

BENTA OGOLA OBANGE 1ST APPELLANT

AUSTINE JUMA AOL 2ND APPELLANT

AND

WALTER OWAGA OGANYO 1ST RESPONDENT

PETER OLANGO OGANYO 2ND RESPONDENT

ROSE AKINYI OMWARE 3RD RESPONDENT

MARK JUMA OKWADHA 4TH RESPONDENT

EUNICE ATIENO OWUOR 5TH RESPONDENT

*(Being an appeal from the judgement of Hon. J.P. Nandi delivered on
27th August 2021 in Bondo PMCC Succession Cause No. 21 of 2019)*

JUDGMENT

Introduction

1. The appellants Benta Ogola Obange And Austine Juma Aol jointly petitioned and were issued with a grant of letters of Administration intestate to administer to the estate of the deceased Aol Misudia in respect of parcel North Sakwa/Nyawita/592 (suit land) as his only asset.
2. Prior to confirmation of the grant, the respondents herein filed a protest stating that they were beneficiaries of the deceased's estate and that they had not been included in the proceedings; that the appellants had lodged the succession proceedings secretly without giving the respondents Notice and that the deceased had prior to his demise allocated various parts of the suit land to his heirs and dependants which the entire family consented to.



3. After hearing the oral evidence presented by the parties therein, the trial magistrate found that the appellants and the 1st to 3rd respondents were the only dependants of the deceased who were entitled to 5.85Ha of the suit land whereas the remaining 4.4Ha would go to the 4th and 5th respondents and other persons not before court who stayed on the suit land but were not dependants of the deceased.
4. Aggrieved by the trial court's finding, the appellants filed a memorandum of appeal on the 30th August 2021 setting out the following grounds:
 - i. That the learned trial magistrate in his judgement grossly misdirected himself both in law and fact in preserving part of the deceased's estate (North Sakwa/Nyawita/592) measuring 4.4Ha for MAJ, Mark Juma Okwadha and Eunice Otieno Owuor in spite of making a finding that they are not the deceased's dependants.
 - ii. That the learned trial magistrate grossly misdirected himself in making a determination in a land and environmental matter in succession proceedings in spite acknowledging in his judgement that the primary mandate of the probate court is to distribute the deceased's estate.
 - iii. That the learned magistrate disgustingly exceeded his mandate and jurisdiction.
 - iv. That the learned magistrate erred in law in awarding the protestors prayers not sought in the protest.
 - v. That the learned magistrate utterly misdirected himself in its judgement by taking a partisan stand to the extent of instructing the protestors on what to do to enable them gain from the deceased's estate.
 - vi. That the learned trial magistrate erred in law and in fact by distributing the estate of the deceased without adequately considering other beneficiaries namely Ioa, Maj and Pao.
 - vii. That the learned trial magistrate misdirected himself by allocating the 2nd petitioner/appellant 1.17Ha of the deceased's estate to hold in trust for his siblings namely IOA and PAA who are of the same priority with the 2nd appellant in distribution of the deceased's estate.
 - viii. That the learned trial magistrate misdirected himself in finding that Leso Nyodera (mother to Walter Owaga Oganyo, Peter Olango Oganyo and Rose Akinyi Omware) was married to the deceased.
 - ix. That the learned trial magistrate utterly misled himself in law and fact in finding that the deceased had only two wives namely Jerusa Nyobilo and Ragen Nyaluoch and at the same time including the children of Leso Nyodera (mother to Walter Owaga Oganyo, Peter Olango Oganyo and Rose Akinyi Omware) as the deceased's dependants in spite dependency not proven by the protestors.
 - x. That the learned trial magistrate misdirected himself by finding that the said Leso Nyodera was married to one Oganyo Koganyo but proceeded to allocate the deceased's estate to Walter Owaga Oganyo, Peter Olango Oganyo and Rose Akinyi Omware (children of Leso Nyodera who was married to one Oganyo Koganyo).
 - xi. That the learned trial magistrate misdirected himself in not finding that Walter Owaga Oganyo, Peter Olango Oganyo and Rose Akinyi Omware (children of Leso Nyodera) had inherited their deceased's father (Oganyo Koganyo) estate in spite of the appellants producing evidence to corroborate the same.



- xii. That the learned trial magistrate misdirected himself in finding that Walter Owaga Oganyo, Peter Olango Oganyo and Rose Akinyi Omware are the deceased's dependants.
 - xiii. That the learned magistrate was utterly misguided in fact and law in his judgement and in rubbishing the appellant's evidence.
5. The Respondents filed a memorandum of cross-appeal on the 27.9.2021 in which they expressed their dissatisfaction with the trial court's decision on the following grounds:
1. That the learned trial magistrate erred in law and fact in failing to find that on a balance of probabilities the respondents had effectually discharged their burden of proof on the entitlement of Eunice Atieno Owuor and those claiming under her as heirs to the estate of Aol Misudia (deceased);
 2. That the learned trial magistrate erred in law and in fact in arriving at a decision that was discriminatory against Eunice Atieno Owuor and those claiming under her and therefore repugnant to natural justice, equity and good conscience by finding that they are not entitled as heirs to the estate of Aol Misudia (deceased) merely because Wadola (deceased) who they claim under was a female and not a male child of Aol Misudia (deceased).
 3. That the learned trial magistrate erred in law and in fact in failing to appreciate the unimpeached testimony and evidence proffered by the respondents that Wadola was together with her husband immigrated by her father Aol Misudia (deceased) during his lifetime from Wahendhe clan where she had been married because of clan hostility and deprivation and that she was settled by her deceased father on a portion of his now disputed land where the father built a house for her and allocated her land for cultivation for her family food, a portion of land on which her scions and their families claiming through her son Oiro (deceased) and grandson Charles Owuor (deceased) including his wife Eunice Atieno Owuor continue to live on and cultivate to date. That the learned trial magistrate erred in law and fact in failing to find that on a balance of probabilities the appellants failed wholly to effectually discharge their burden of proof on allegations that Eunice Atieno Owuor and those claiming under her are not entitled as heirs to the estate of Aol Misudia (deceased);
 4. That the learned trial magistrate erred in law and fact in failing to appreciate and find that the distribution of the estate of the deceased is not subject to the Law of Succession Act but rather to the written laws and Luo traditional customs applying at the deceased's death but nevertheless that the administration of the said estate shall commence or proceed so far as possible in accordance with the Law of Succession Act; the magistrate having determined that the deceased demised prior to the coming into force of the said act;
 5. That the learned trial magistrate erred in law and fact in failing to appreciate and apply the written laws and Luo traditional customs applying at the date of the death of the deceased, which laws and Luo traditional customs allowed Eunice Atieno Owuor and Mark Juma Okwadha to benefit from the deceased's estate;
 6. That the learned trial magistrate erred in law and fact in not finding that the respondents herein being entitled by marriage and blood are of higher priority in consideration for letters of administration to the deceased's estate over the appellants being dependants;
 7. That the learned trial magistrate erred in law and fact in failing to find that Mark Okwadha and those claiming under his father, one Samuel Okwadha are entitled to benefit as dependants out of the estate of the deceased;



8. That the learned trial magistrate erred in law and fact in not appreciating and finding that the dependants are only entitled to reason provision as opposed the heirs who are entitled to division of the net estate either according to the laws or the Luo traditional customs in place at the time of the deceased's demise;
 9. That the learned trial magistrate erred in law in failing to revoke and/or annul the temporary grant of letters of administration issued to the appellants on 5.9.2021 by Hon. E.N. Wasike despite having correctly determined that the proceedings to obtain said grant of letters of administration were defective in substance, laced in fraud and based on false statements, untruths and concealments of material facts;
 10. That the learned trial magistrate erred in law and fact in failing to substitute grant of letters of administration for the estate of the deceased to Walter Owaga Oganyo and Rose Akinyi Omware in place of the temporary grant of letters of administration issued to the appellants on the 5.9.2021.
6. The parties canvassed the appeal by way of written submissions.

The Appellants' Submissions

7. It was submitted that whereas the appellants are the dependants of the deceased, the respondents are not dependants within the meaning of section 29 of the *Law of Succession Act* as the deceased never married Leso Nyodera (grandmother to the protestors) who was married to Oganyo Koganyo, a union that sired the protestors' father Douglas Oganyo and that neither did the protestors live and or depend on the deceased during his lifetime.
8. The appellants further submitted that customary law only applies where it is not repugnant to justice and thus it defeats logic as to why Leso Nyodera was married to the deceased and at the same time in a union with Oganyo Koganyo, the grandfather to the protestors who also took up his surname in line with Luo customs, whereas the appellants took up the deceased's surname.
9. The appellants submitted that Oganyo Koganyo lived with and catered for the protestors' father during his lifetime and bequeathed his estate to the respondents specifically land parcels no. North Sakwa/Ajigo/638 and further that some of his heirs occupy land parcels nos. 6579,6580 and 6581.
10. It was submitted that the trial magistrate was misled in his reasoning and judgement as the beneficiaries in the instant proceedings did not produce their identity cards in confirmation of their identities and further as he found that the deceased remarried Leso Nyodera whereas it was undisputed that Leso Nyodera was married to Douglas Oganyo.
11. The appellants submitted that the trial court erroneously proceeded to preserve a part of the deceased's estate to persons it deemed not to be dependants of the deceased which was detrimental to the deceased's rightful beneficiaries.
12. It was submitted that 2nd appellant and his siblings were entitled to equal shares of the deceased's estate as section 39 (e) of the *Law of Succession Act* provides for relatives who are in the nearest degree of consanguinity up to and including the sixth degree in equal shares and as was reiterated in the case of *In Re Estate of the late M'thigai Muchangi (deceased)* [2020] eKLR.

The Respondents Submissions

13. It was submitted that the respondents discharged the burden of proof, on a balance of probabilities, in relation to their entitlement to the deceased's estate whereas the appellants failed to demonstrate that



- the respondents were not entitled. They further submitted that they managed to prove that the grant of letters of administration was defective in substance, laced with fraud and based on false statements, untruths and concealment of material facts. It was the respondents' submissions that they rank in higher priority over the appellants in administration of the estate of the deceased Aol Misudia.
14. The respondents submitted that all of them, save for Mark Juma Okwadha have direct blood lineage with Aol Misudia or through marriage and are therefore qualified as heirs to the estate of the deceased Aol Misudia whereas the appellants gave inconsistent and conflicting evidence disowning the deceased's marriage to Leso Nyodera.
 15. It was submitted that the evidence on North Sakwa/Ajigo/638 adduced by the appellants was irrelevant to the current matter as it did not relate to the estate of the deceased Aol Misudia.
 16. In underscoring their claim that those who claimed under Leso Nyodera were entitled to inherit from the deceased, the respondents relied on the case of *Silas Murindu Itbinji v Fredrick Kaumbu M'itbinji* [2017] eKLR where it was stated inter alia that once a widow is inherited, she becomes the wife of the new husband and a new marriage is created with the children born out of that new union belonging to the man inheriting the widow and further succeed the inheriting man whereas in a levirate union (one merely for sexual intercourse to produce children,) the children take the name of the deceased husband and are regarded as his children for all purposes including succession and further it is only open if she had no children with the deceased husband.
 17. The respondent further relied on the case of *In re Estate of Gamaliel Otieno Onyiego (deceased)* [2018] eKLR where the court considered the instance where a wife has been inherited and stated inter alia that it would allow a customary law that stipulates that a child of an inherited widow cannot inherit the property especially land of the inheriting man to be a good law except in situations where the child's biological father left him no property or land and similarly a customary law that provides that an inherited widow cannot inherit the property especially land of the inheriting man is good law except in cases where the deceased husband left her no property.
 18. It was thus submitted that in the instant case, Leso Nyodera was taken as a wife, dowry paid and she moved out of the compound of her former husband to live with the deceased, and that she further had no children with her former husband and was thus the deceased's wife for all intents and purposes and as such all her children are entitled to inherit out of the deceased's estate.
 19. It was further submitted that Eunice Atieno Owuor and all those claiming under her are entitled to inherit from the deceased's estate. That by disinheriting her as she is a daughter of the deceased, the trial court's decision to leave her out merely because her mother was a female and not a male child of the deceased is repugnant to natural justice, equity and good conscience. Reliance was placed on the case of *In re Estate of Seth Namiba Ashuma (deceased)* [2020] eKLR where it was held inter alia that men and women ought to be considered equally in succession matters not only in the distribution of assets of the estate but also in the administration of the estate.
 20. Counsel submitted that in addition to the respondents, those claiming under Vitalis Juma Ogola including the appellants together with IA and PA as well as those claiming under Okwadha such as Mark Juma are all entitled to benefit as dependants of the estate of the deceased Aol Misudia as the respondents had proved by adducing evidence. Reliance was placed on the case of *Airo K Otiato v Samson Otieno* [1993] eKLR where it was held that customary law must be proved by evidence.
 21. The respondent's counsel further submitted that the proceedings to obtain the grant of letters of administration in this instance were defective in substance as they were based on forged letter of



introduction of the appellants by the Chief for Bondo Township, Walter O. Omolo and as such, the grant issued to the appellants ought to be revoked.

22. It was further submitted that the grant was obtained through the concealment from the court of some material things specifically the existence of other heirs including the respondents as well as other dependents of the deceased. It was further submitted that the grant was also obtained by means of an untrue allegation of a fact essential in point of law specifically that the appellants were the daughter and grandson of the deceased, this being an essential element of the legal qualification of the petitioners to obtain the grant. Reliance was placed on the case of *In re Estate of Oloikampai Sarapae Sanguti (deceased)* [2018] eKLR.
23. It was also submitted that in the absence of Leso Nyodera (deceased) and Jerusa (deceased) both who were the spouses of the deceased and their respective children and considering the family tree, the respondents stand the highest in priority to administer the deceased's estate in line with section 66 of the *Law of Succession* and as reiterated in the case of *In re Estate George Ragui Karanja (deceased)* [2016] eKLR.

Analysis and Determination

24. I have considered the appeal and cross appeal as well as the extensive rival submissions filed by all the parties to the appeal and cross appeal. I have also considered the pleadings, proceedings and ruling by the trial court.
25. This being a first appellate court, it has a duty to examine matters of both law and facts and subject the whole of the evidence to a fresh and exhaustive scrutiny, before drawing a conclusion from that analysis. The court has however to bear in mind the fact that it did not have an opportunity to see and hear the witnesses first hand. This duty is captured by Section 78 of the *Civil Procedure Act* which espouses the role of a first appellate court which is to: '... re-evaluate, reassess and reanalyze the extracts of the record and draw its own conclusions.' This duty was emphasized by the Court of Appeal in the case of *Peter M. Kariuki v Attorney General* [2014] eKLR where it was held that:

“We have also, as we are duty bound to do as a first appellate court, to reconsider the evidence adduced before the trial court and reevaluate it to draw our own independent conclusions and to satisfy ourselves that the conclusions reached by the trial judge are consistent with the evidence..... (See *Ansazi Gambo Tinga & another v Nicholas Patrice Tabuche* [2019] eKLR)”
26. Taking the above into consideration as well as a scrutiny of the appellants' memorandum of appeal and the respondents cross-appeal and extensive submissions, I find the following issues for determination:
 - a) Whether the Law of Succession Act is applicable in this case?
 - b) Who are the deceased's, Aol Misudia, dependants?
 - c) Who ranks in priority for grant of letters of administration?
 - d) Whether the grant of letters of administration issued to the appellants on 5.9.2021 by Hon E.N Wasike, Principal Magistrate should be revoked?
27. As to which law is applicable in this case, the certificate of death serial number 0595521 produced in support of the Petition for letters of administration intestate before the trial court shows that the deceased Aol Misudia died on the 30.4.1978.



28. The *Law of Succession Act* came into force in 1981. According to section 2(1) of the Act, the substantive provisions of the Act, which include Part V, which governs intestate succession, are to apply to estates of persons who died after the Act commenced on 1st July 1981. Section 2(2) applies the Act to distribution of estates of persons who died before 1st July 1981, and the applicable law to those estates is the law that was in force as at the date of death. Since death here occurred in 1978, section 2(1) does not apply, and therefore, distribution of the estate of the deceased herein should not be in accordance with Part V of the Act. Section 2(2) applies, and, therefore, the applicable law should be the law that applied as at 30th April, 1978, to the estate of a dead African, and in this case, a Luo man.
29. Section 2(1)(2) of the *Law of Succession Act* provides as follows:
- (1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application in all cases of intestate or testamentary succession to estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.
 - (2) The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act.”
30. Further, under Rule 64 of the *Probate and Administration Rules* and the principle stated in *Ernest Kinyanjui Kimani v Muiru Gikanga and another* [1965] EA 735 and *Wambugi w/o Gatimu v Stephen Nyaga Kimani* [1992] 2 KAR 292, customary law ought to be established as a matter of fact as customary law is not a matter for judicial notice, but proof as a matter of fact. See the case of *In re Estate of Mirikwa Werimo (Deceased)* [2021] eKLR.
31. As to who are the deceased’s dependants, the appellants herein petitioned for a grant of letters of administration intestate claiming to be daughter and grandson of the deceased respectively as is evident from P&A 80 form filed in the trial court on the 21.1.2019. The appellants did not list any other person as a beneficiary of the estate of the deceased.
32. On their part, the respondents have made submissions that in addition to themselves and the appellants, those claiming under Vitalis Juma Ogola together with IA and PA as well as those claiming under Okwadha such as Mark Juma are all entitled to benefit as dependants of the estate of the deceased Aol Misuda in one degree or another.
33. I have considered the evidence adduced by the parties herein before the trial court. Both the appellants and the respondents are in agreement that the deceased Aol Misudia had two wives one of whom was Jerusa Obilo.
34. There is agreement that the deceased and Jerusa had two children Onunga (deceased) and Opondo, and all parties agree that Jerusa was inherited by one Vitalis Juma Ogola, a union that was blessed with two children, Benta Obange, the 1st appellant herein and Christopher Aol. Christopher Aol married and had three children namely; Austine Juma Aol, the 2nd appellant, IA and PA.
35. On the other side of the family, there is a dispute as to who the deceased’s second wife was. It was the respondents’ case that one Leso Nyodera was also married to the deceased Aol Misudia having been previously married to one Oganyo, the elder brother of the deceased Aol Misudia. This was the evidence of the 1st respondent and PW2, one Clementina Orengo.
36. PW1 further testified that the deceased and Leso were blessed with 3 children Wadola, Douglas Oganyo and Ogambi. It was the 1st respondent’s testimony that he was the son of Douglas Oganyo, being one



- of six children, the other five being Lucas Omware (deceased), Peter Olang Oganyo, Walter Owaga, Clementina Orengo, Jane Akinyi and Caroline Atieno (deceased).
37. He further testified that Wadola had 2 children namely Oiro and Nereah Odhiambo and that Oiro also had 2 children namely Charles Owuor (deceased) who was married to Eunice Atieno Owuor, the 5th respondent. In his submissions before this court, the 1st respondent submitted that his brother Lucas Omware died and left behind a widow, Rose Akinyi Omware, the 3rd respondent.
38. The 1st respondent's testimony before the trial court was corroborated by the witnesses he called in support of his case and remained unimpeached even under cross-examination.
39. On the other hand, the testimony of the appellants was not supported on their allegations that they were the only beneficiaries of the deceased and specifically that the 1st appellant was the daughter of the deceased, yet she was the daughter of Vitalis Juma Ogola who inherited her mother Jerusa after the death of her mother's first husband Aol Misudia.
40. From the testimony of all the parties herein before the trial court, it was also clear that there were some people who had settled on the suit property for a period of time including Mark Juma Okwadha, the 4th respondent. PW4, Walter Ochieng Omollo, the area Chief testified that the 4th respondent was a beneficiary of the deceased's estate by adverse possession. PW1 also testified that prior to his death, the deceased had shown them how the land should be sub divided and that he set out portions for one Simeon, the father of the 4th respondent.
41. It is undeniable that the deceased died intestate and therefore based on the evidence adduced before the trial court, the only people who are the deceased's dependants are the following:
- i. Benta Ogola Obange
 - ii. Austine Juma Aol and his Siblings
 - iii. Walter Owaga Oganyo
 - iv. Peter Olango Oganyo
 - v. Rose Akinyi Omware
 - vi. Eunice Atieno Owuor
42. The Law is clear that other than beneficial claims, matters or claims for ownership of or title to land cannot be ventilated or be determined in succession proceedings. Those claims by those who are on the suit land and are not dependents of the deceased can be ventilated before the Environment and Land Court which is seized with the jurisdiction to handle such matters.
43. This Court and the trial court as probate courts are only tasked with identifying the assets and the dependants of a deceased and subsequently distributing the estate.
44. To this end, I find that the whole of the suit land, North Sakwa/Nyawita/592 is up for distribution between the deceased's dependents identified above. It was therefore erroneous for the trial court to include other persons residing on the land as beneficiaries on account that they have prescriptive rights.
45. As to who ranks in priority for a grant of letters of administration in this estate of Aol Misudia, Section 2(2) of the [Law of Succession Act](#) provides inter alia that though the estates of the deceased are not subject to the Act if he died prior to 1981, the administration of their estates shall commence or proceed so far as possible in accordance with this Act



46. The parties herein have made detailed cases on their respective relationships to the deceased. The 1st appellant, the 1st and 2nd respondents are grandchildren of the deceased. The court will therefore exercise its jurisdiction as provided for under section 66 of the Act based on the evidence before this court as deposed in the affidavits. Under Section 39 of the *Law of Succession Act*, the order of priority where the deceased has left no spouse or children is set out. The kindred under Section 39 (1) (a)- (d) does not present any difficulties. Under section 39(e), the court has discretion to determine the relatives based on the nearest degree of consanguinity and affinity.
47. *In Re- Estate of James Kiani Kiranga (deceased)* 2020 eKLR Majanja J held that the deceased's grandchildren ought to be in priority to the deceased's daughter -in – law. It follows that grandchildren are entitled to share equally the portion which their parent would have received.
48. In view of the foregoing, I find and hold that the 1st appellant and 1st and 2nd respondents rank in priority for a grant of letters of administration to the deceased's estate.
49. Finally, as to whether the grant of letters of administration issued to the appellants on 5.9.2021 ought to be revoked, it is evident from the proceedings before the trial court and this court that the appellants were not truthful in their petition for letters of administration intestate in respect of the estate of the deceased.
50. The 1st appellant testified under cross-examination that she was not the deceased's daughter but her grandchild and she further stated that she and the 2nd appellant failed to include some other beneficiaries such as the 2nd appellant's siblings as they were minors.
51. Under section 76 of the *Law of Succession Act*, a court may revoke a grant on a number of grounds. A grant of letters of administration may be revoked on three general grounds. The first is where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate 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.
52. The second general ground for revocation 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.
53. 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 to carry on the exercise, or where the sole administrator loses the soundness of mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.
54. In this case, the appellants misrepresented facts by claiming to be the daughter and grandchild of the deceased respectively and further concealed important facts specifically that there were other beneficiaries not listed in the petition.
55. For that reason, the grant of letters of administration issued to the appellants on 5.9.2021 having been issued by misrepresentation and concealment of matters as well as based on falsehoods is amenable for revocation. It is hereby revoked.



56. Taking all the above into consideration, I find and hold that the trial court's judgement of 27.8.2021 was erroneous. The same is hereby set aside and in its place, that judgment is substituted with and order setting out the deceased's dependants as herein determined. Out of the said dependants, three of them namely Benta Obange the 1st appellant and Walter Owaga Oganyo and Peter Olango the 1st and 2nd respondents shall Petition afresh for a grant of letters of administration intestate of the estate of the deceased Aol Misudia and ensure that all the other dependants and beneficiaries of the estate of the deceased Aol Misudia are listed therein.
57. Both the appeal and cross appeal therefore succeed substantially.
58. On costs, as the appeal and cross appeal have succeeded substantially, I order that each party shall bear their own costs of this appeal.
59. This file is closed.
60. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 26TH DAY OF APRIL, 2022

R.E. ABURILI

JUDGE

