



REPUBLIC OF KENYA



**In re Estate of Henry Odero Ochilo (Deceased) (Succession Cause E007 of 2022) [2025] KEHC 4813 (KLR) (9 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4813 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
SUCCESSION CAUSE E007 OF 2022**

**MS SHARIFF, J**

**APRIL 9, 2025**

**IN THE MATTER OF THE ESTATE OF HENRY ODERO OCHILO (DECEASED)**

**BETWEEN**

**PAMELA AUMA ODERO ..... 1<sup>ST</sup> PETITIONER  
SOFIA ANYANGO ODERO ..... 2<sup>ND</sup> PETITIONER  
GRACE AWUOR ODERO ..... 3<sup>RD</sup> PETITIONER**

**AND**

**THOMAS AMONDE ODERO ..... 1<sup>ST</sup> RESPONDENT  
GORRETTY NYAGOI ALIAS GORRETY ODERO ..... 2<sup>ND</sup> RESPONDENT  
ANNE WANJIRU MURIUKI T/A JOWI VENTURES ..... 3<sup>RD</sup> RESPONDENT  
DORICE ACHOLA ODERO ..... 4<sup>TH</sup> RESPONDENT  
MOSES OTIENO KOLA ..... 5<sup>TH</sup> RESPONDENT  
MOSES CALVINS OTIENO ODERO ..... 6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**A. Background.**

1. This succession cause revolves around the estate of one Henry Odero Ochilo who is said to have died on the 16<sup>th</sup> June 1993 at Bawo Tonde, God Nyithindo location in Kisumu County. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Administrators/Petitioners moved the Court for grant of letters of administration on 7<sup>th</sup> March 2022. The matter was gazetted on the 11<sup>th</sup> of March 2022, and on the 28<sup>th</sup> of April 2022, a Grant of Letters of Administration intestate was issued to the petitioners.



## B. Application

2. Vide Summons of Confirmation of Grant dated 27<sup>th</sup> July 2023, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Administrators/Petitioners seek, the Confirmation of Grants of Letters Administration Intestate issued on 28<sup>th</sup> April 2022, and urged the Court to confirm the Grant of Letters of Administration since the six months' period had long expired. A supplementary affidavit of proposed schedule of distribution was subsequently sworn by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Administrators/Petitioners, Pamela Auma Odero, Sofia Anyango Odero and Grace Awuor Odero on 12<sup>th</sup> January 2024, where it was deponed that the deceased was survived by the following:

### 1<sup>st</sup> House

- a. Christina Opiyo Odero (deceased)-1<sup>st</sup> wife
- b. Thaomas Amonde Odero-son
- c. Ismael Nyagol Odero (deceased)-son
- d. Dorice Achola Odero-son
- e. Pamella Auma Odero-son
- f. Moses Calvins Otieno Odero-son

### 2<sup>Nd</sup> House

- a. Silibia Kore Odero (deceased)-2<sup>nd</sup> wife
- b. Ann Atieno Odero-Daughter
- c. Sofia Anyango Odero- Daughter
- d. Tom Odhiambo Odhiambo Odero(deceased)-son
- e. Monica Achieng Odero- Daughter
- f. Poline Akinyi Odero (deceased)- Daughter
- g. Grace Awour Odero- Daughter
- h. Elizabeth Auma Odero- Daughter
- i. Elisha Omer Odero-son
- j. Perez Aluoch Odero- Daughter

3. According to them, prior to the death of their father he had the following properties:

- a. Kisumu/Muhoroni/71 measuring approximately 3.3 Ha
- b. Kisumu/Muhoroni/471 measuring approximately 1.7 Ha
- c. Kisumu/Muhoroni/339 measuring approximately 3.7 Ha
- d. Kisumu/Muhoroni/739 measuring approximately 1.4 Ha
- e. Kisumu/Municipality Block 4/36-Tom Mboya Estate
- f. LR No. 40B Chemelil including rental units



- g. LR No. 24B Chemelil including rental units
  - h. Kisumu/Wathorego/1219 measuring approximately 0.38 Ha (under litigation in Kisumu Mcele No. 73 of 2022)
4. They averred that during his lifetime, the deceased herein built separate houses for his two wives within Muhoroni sub-Coutny and further allocated/distributed his properties to the two households as follows:
- 1<sup>st</sup> House
    - a. Kisumu/Muhoroni/71 measuring approximately 3.3 Ha
    - b. Kisumu/Muhoroni/471 measuring approximately 1.7 Ha
    - c. Kisumu/Municipality Block 4/36-Tom Mboya Estate
    - d. 3 houses on LR No. 24B Chemelil
  - 2<sup>nd</sup> House
    - a. Kisumu/Muhoroni/339 measuring approximately 3.3 Ha
    - b. Kisumu/Muhoroni/739 measuring approximately 1.7 Ha
    - c. LR No. 40 Chemelil (including the 7 houses on the property)
    - d. 3 houses on LR No. 24B Chemelil
5. They averred that the two houses have been living in peace and utilizing the properties as allocated/distributed to them by the deceased during his lifetime and all the beneficiaries agreed to respect the wishes of the deceased
6. They averred that prior to the death of Silibia Kore Odero, 2<sup>nd</sup> widow, she and her household had signed a consent agreement dated 22<sup>nd</sup> August 2022, acknowledging and confirming the properties allocated to her by the deceased and those allocated to the 1<sup>st</sup> house.
7. They averred that the deceased never allocated/distributed the property known as Kisumu/Wathorego/1219 during his lifetime
8. They urged this Court to respect the wishes of the deceased and propose that the deceased's estate be distributed in terms of the amended consent to the mode of distribution dated 12<sup>th</sup> January 2024, as follows:

1<sup>st</sup> House

- a. Kisumu/Muhoroni/71 measuring approximately 3.3 Ha
  - 1. Thomas Amonde Odero-0.55 Ha (Section 'A')- to be sold to offset the debts of the estate.
  - 2. Ismael Nyagol Odero (deceased)-1.1 Ha (Section 'C') (to be held in trust by Gorretty Nyagol alias Goretty Odero for all the children of Ismael Nyagol Odero (deceased))- to be sold to offset the debts of the estate.
  - 3. Dorice Achola Odero-0.55 Ha (Section 'B')



4. Pamela Auma Odero-0.55 Ha (Section 'B')
- b. Kisumu/Muhoroni/471 measuring approximately 1.7 Ha
  1. Moses Calvins Otieno Odero-whole
- c. Kisumu/Municipality Block 4/36-Tom Mboya Estate
  1. Dorice Achola Odero -shared equally
  2. Pamela Auma Odero-shared equally
- d. LR. No. 24B Chemelil
  1. Thomas Amonde Odero-1 house
  2. Ismael Nyagol Odero (deceased)-1 house  
(to be held by in trust by Gorretty Nyagol alias Goretty Odero for all the children of Ismael Nyagol Odero (deceased))
  3. Moses Calvins Otieno Odero-1 house

2<sup>nd</sup> House

- a. Kisumu/Muhoroni/339 measuring approximately 3.7 Ha
  1. Tom Odhiambo Odero (deceased)- 1.23 Ha (Section 'A')  
(to be shared equally amongst Henry Odhiambo Odero, George Odhiambo Ogolla and Andrew Ngore Odhiambo)
  2. Elisha Omer Odero-1.23 Ha (Section 'B')
  3. Ann Atieno Odero-0.24 Ha (Section 'C')
  4. Sofia Anyango Odero-0.25 Ha (Section 'C')
  5. Monica Achieng Odero-0.25 Ha (Section 'C')
  6. Poline Akinyi Odero (deceased)-0.25 Ha (Section 'C')  
(to be shared equally amongst Micheal Oluoch Akatch and Cynthia Atieno Akatch)
  7. Perez Aluoch Odero-0.25-(Section 'C')
1. Kisumu/Muhoroni/739 measuring approximately 1.7 Ha
  1. Tom Odhiambo Odero (deceased)- 0.48 Ha  
(to be shared equally amongst Henry Odhiambo Odero, George Odhiambo Ogolla and Andrew Ngore Odhiambo)
  2. Elisha Omer Odero-0.48 Ha
  3. Grace Awour Odero-0.22 Ha
  4. Elizabeth Auma Odero-0.22 Ha
2. LR No. 24B Chemelil



1. Tom Odhiambo Odero (deceased)- 2 Houses  
(to be shared equally amongst Henry Odhiambo Odero, George Odhiambo Ogolla and Andrew Ngore Odhiambo)
2. Elisha Omer Odero- 1 House
3. LR No. 40 Chemelil
  1. Ann Atieno Odero-1 House
  2. Sofia Anyango Odero-1 House
  3. Monica Achieng Odero-1 House
  4. Poline Akinyi Odero (deceased)-1 House  
(to be shared equally amongst Micheal Oluoch Akatch and Cynthia Atieno Akatch)
  5. Grace Awour Odero-1 House
  6. Elizabeth Auma Odero-1 House
  7. Perez Aluoch Odero- 1 House
4. Kisumu/Wathorego/1219 measuring approximately 0.3 Ha (under litigation in Kisumu MCELE No. 73 of 2022)

It was agreed that once the matter is determined and the outcome is in favour of the estate, the property shall be sold and the proceeds shared equally between the children of the deceased.

9. They averred that that the liabilities of the estate of the deceased were as follows:
  - a. Kshs. 146,549/= plus 10% interest owed to Dorcas Achola Odero and Pamela Auma Odero as per the annexed agreement between them and the estate of the deceased marked as PSG4.
  - b. Advocates fees.
  - c. Kshs. 12,800/= being land rates on LR. NO. 24B Chemilil (between 2018-2022).
  - d. Kshs. 12,800/= being land rates on LR. NO. 40B Chemilil (between 2018-2022).  
Annexed the demand notices for land rates on LR NO. 24B & 40B Chemili marked as PSG 5(a) & PSG 5(b).
  - e. Kshs. 100,000/=used to prepare allotment of Kisumu/Municipality Block 4/36. Annexed hereto and marked PSG6 is the copy of the cheque plus allotment letter.

Total debts (exclusive of legal fees) = Kshs. 272, 149/=

10. They averred that as Administrators of the estate of the deceased, they were not able to settle the debts as the rental and sugarcane proceeds generated from the properties of the deceased were being collected by Thomas Amonde Odero, Gorrety Nyagol and Moses Calvins Otieno Odero who refused to account for the monies. They averred that the following are the monies collected so far from Kisumu/Municipality Block/4/36 by Thomas Amonde Odero, Gorrety Nyagol and Moses Calvins Otieno Odero vide Jowi Venture Consultants:



- a. 1<sup>st</sup> February 2003-4<sup>th</sup> May 2011 (100 months)-Kshs. 20,000 per month×100 months =2,000,000/=.
  - b. 5<sup>th</sup> May 2011-5<sup>th</sup> October 2018 (85 months)-as per the tenancy agreement marked PSG7-Kshs. 20,000 ×85 months =Kshs. 1, 700,000/=.
  - c. 5<sup>th</sup> October 2018-5<sup>th</sup> July 2023 (64 Months)-as per the agreement executed as PSG 8 (a) for management of the property marked as PSG8 (b)-Kshs. 25,000 × 64 months=Kshs. 1,600,000/ =
11. They averred that Thomas Amonde Odero, Gorrety Nyagol and Moses Calvins Otieno Odero have also been collecting sugarcane proceeds from Kisumu/Muhoroni/71 without accounting to the estate and in addition Thomas Odero was also collecting rent from some houses on LR 24B and 40B Chemilil as per the annexed sugarcane purchase statement for Thomas Odero dated January 2002 and marked as PSG 9.
  12. The averred that due to lack of adherence to Court orders directing Thomas Amonde Odero, Gorrety Nyagol, Ann Wanjiru Muriuki t/a Jowi Ventures Consultants and Moses Calvins Otieno Odero to account for the monies received in respect to Kisumu/Municipality Block 4/36, and continuance intermeddling with the estate of the deceased. The Administrators to the estate of the deceased alleged that it was agreed that Thomas Amonde Odero, Gorrety Nyagol and Moses Calvins Otieno Odero shall account/refund to the estate all the monies collected by them and the same shall be used to settle the estate's debts with the surplus being distributed equally to the beneficiaries from the 1<sup>st</sup> Household. Annexed the Court order marked as PSG 10.
  13. The averred that it was also agreed that, the shares of Thomas Amonde Odero and Ismael Nyagol Odero (deceased) to be sold off/ deducted for purposes of settling the estate's debts.
  14. Vide Court orders issued on 19<sup>th</sup> December 2023, the Summons for Confirmation of Grant dated 27<sup>th</sup> July 2023, was to be canvassed by way of viva voce evidence.

### **Petitioners hearing**

15. Pet.PW1 Pamela Awor Odero testified that she is one of the Administrators of the estate of the deceased and that the Administrators of the estate of the deceased filed their Summons of Confirmation of Grant dated 27<sup>th</sup> July 2023 and a Supplementary Affidavit sworn on 12<sup>th</sup> January 2024. At her request the Court adopted the Summons of Confirmation of Grant and a Supplementary Affidavit as her evidence in chief. She told the Court that the deceased herein was her father and that he had 2 wives. The 1<sup>st</sup> wife was Christina Opiyo Odero and the 2<sup>nd</sup> wife was Slyiva Okoyo Odero. The deceased had already distributed his properties amongst the two households and that she is the daughter of the 1<sup>st</sup> wife. According to her the estate is yet to settle its debts and the same be recovered from the shares Thomas Amonde Odera and Ismael Nyagol. She told the Court that the shares of Ismael Nyagol should go to his children as their mother has not been attending Court sessions or family meetings.
16. Pet.PW2 Grace Awuor Odera testified that she is the daughter of the deceased herein, an Administrator of the deceased person's estate and that she hails from the 2<sup>nd</sup> house. She affirmed the Court that there exists no dispute between the 1<sup>st</sup> and 2<sup>nd</sup> House and that it was agreed that the debts of the estate should be catered by the distributed shares of Thomas Amonde Odera and Goret Nyagol. She told the Court that they had instructed that the shares of the late Ismael Nyagol to be distributed to his wife Goret Nyagol but due to her lack of attendance of Court sessions, she wants the shares to be distributed directly to the children of the late Ismael Nyagol.



17. On cross-examination by the Court, she told the Court that Gorett has other business and is not entitled to any share of the estate of the deceased and that with Thomas Odera, Gorett has been collecting rent to date but the other beneficiaries have not received anything.
18. At the close of the Petitioners case, the Court vide directions issued on 1<sup>st</sup> July 2024, directed them to file their respective written submissions and they complied.
19. On my critical perusal of the Court record, none of the other beneficiaries filed a response to the Summons application.

### **Analysis and determination.**

20. The application for determination is a summons for confirmation of grant. Grants are confirmed under Section 71 of the *Law of Succession Act*, which states as follows:

#### “ Confirmation of Grants

##### 71. Confirmation of grants

- (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.
- (2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may —
  - (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or
  - (b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 of this Act, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be administered; or
  - (c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or
  - (d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is



satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.”

21. I have considered the averments of the Petitioners, and the mode of distribution of the deceased’s estate as proposed. I have also considered the Petitioners viva voce evidence and submissions. In my view, the only issue for determination is which is the appropriate mode of distribution of the deceased’s estate?
22. This inheritance is by descent. The claims of descent and all existing models and rules are set forth in the *Law of Succession Act* covering both real and personal property.
23. The deceased, as evidenced by a certificate of death filed herein, died on the 17<sup>th</sup> June 1993 intestate and that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Administrators started the Petition process in 2022. It follows that under Section 2(1) of the *Law of Succession Act* the law applicable is the *Law of Succession Act*. The deceased died intestate after the Act came into force on 1<sup>st</sup> July, 1981.
24. From the foregoing evidence of the parties, it is not in dispute that the deceased had distributed his estate during his lifetime between the two households. Further, the consent filed together with the Supplementary Affidavit in Support of the Summons for Confirmation of Grant of Letters of Administration indicate that the 2<sup>nd</sup> House was in support of the Petitioners/Administrators proposed mode of distribution. The others beneficiaries did not challenge the evidence as presented by the Petitioners/Administrators thus casting no doubt on their case.
25. This Court has inherent powers under Rule 73 of the Probate and Administration Rules. Rule 73 provides as follows;

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
26. Attached to the amended consent to the mode of distribution of the deceased not all the beneficiaries signed the same. Failure by some of the parties in signing the amended consent to the mode of distribution can only mean that they were not in agreement with the terms as indicated. Further having considered the contents of the Supplementary Affidavit in support of the Summons for Confirmation of Grant, it is evident that each party gets a fair share of the estate of the deceased.
27. The law that guides this Court are Sections 38 and 40 the *Law of Succession Act*. Section 40 of the Act provides as follows;

“(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”



28. Section 38 provides as follows;

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children”.

29. In my view, there is no good reason to relook the mode of distribution. The Summons of Confirmation of Grant and the proposed mode of distribution were unopposed by the other beneficiaries, and this gives the Court the impression that all the beneficiaries to the estate of the deceased are satisfied. The provisions of Section 38 as provided above is clear that the net intestate estate shall be divided equally among the surviving children. This simply means that the Petitioners/Administrators are directed under law to settle the deceased’s estate’s liabilities prior to commencing the distribution exercise and not the contrary.

30. In the result, it is my finding that the Petitioners/Administrators Summons for Confirmation of Grant dated July 27, 2023 has merit. The same is allowed and the estate of the deceased shall be distributed as per the proposed mode of distribution annexed to the supplementary affidavit sworn jointly by Pamela Auma Odero, Sofia Anyango Odero and Grace Awuor Odero on January 12, 2024, as outlined hereunder:

1<sup>st</sup> House (Christina Odero & Her Household)



Name of Beneficiaries	Description of Properties	Shares of Beneficiaries	
Thomas Amonde Odero	Kisumu/ Muhoroni/71	1.1ha of Section 'A' less 0.55ha to be sold to offset the debts of the Estate of the Deceased.	
Goretty Nyagol alias Goretty Odero (to hold in trust for all the children of Ismael Nyagol Odero(Deceased))	Kisumu / Muhoroni/71	1.1ha of Section 'C' less 0.55ha to be sold to offset the debts of the Estate of the Deceased.	
Dorice Achola Odero Pamella Auma Odero	Kisumu / Muhoroni/ 71 Kisumu / Muhoroni/ 71	0.55ha 0.55ha	(Section 'B')
Moses Calvins Otieno Odero	Kisumu / Muhoroni/471	Whole	
Dorice Achola Odero Pamella Auma Odero	Kisumu/ Municipality Block 4/36	Shared equally	
Thomas Amonde Odero	LR No.24 B, Chemelil	1 unit	
Goretty Nyagol alias Goretty Odero(to hold in trust for all the beneficiaries of Ismael Nyagol Odero(Deceased))	LR No.24 B, Chemelil	1 unit	



Moses Calvins Otieno Odero	LR No.24 B, Chemelil	1 unit
2 <sup>nd</sup> House (Silibia Odero & Her Household)		
Henry Odhiambo Odero, George Odhiambo Ogolla, and Andrew Ngore Odhiambo (children of Tom Odhiambo Odero(Deceased)	Kisumu/ Muhoroni/339	1.23ha(Section 'A')
Elisha Omer Odero	Kisumu/ Muhoroni/339	1.23ha(Section 'B')
Ann Atieno Odero	Kisumu/ Muhoroni/339	0.24ha
Sofia Anyango Odero	Kisumu/ Muhoroni/339	0.25ha
Michael Oluoch Akatch & Cynthia Atieno Akatch (children of Poline Akinyi Odero (Deceased)	Kisumu/ Muhoroni/339	{{IMG }}0.25ha Section C
Monica Achieng Odero	Kisumu/ Muhoroni/339	0.25ha
Perez Aluoch Odero	Kisumu/ Muhoroni/339	0.25ha



Henry Odhiambo Odero, George Odhiambo Ogolla & Andrew Ngore Odhiambo (children of Tom Odhiambo Odero(Deceased)	Kisumu/ Muhoroni/ 739	0.48ha
Elisha Omer Odero	Kisumu/ Muhoroni/ 739	0.48ha
Grace Awuor Odero	Kisumu/ Muhoroni/ 739	0.22ha
Elizabeth Auma Odero	Kisumu/ Muhoroni/739	0.22ha
Henry Odhiambo Odero, George Odhiambo Ogolla & Andrew Ngore Odhiambo (children of Tom Odhiambo Odero(Deceased)	LR No. 24 B, Chemelil	2 units
Elisha Omer Odero	LR No. 24 B, Chemelil	1 unit
Ann Atieno Odero	LR No. 40 B, Chemelil	1 unit



Sofia Anyango Odero	LR No.40 B, Chemelil	1 unit
Monica Achieng Odero	LR No. 40 B, Chemelil	1 unit
Michael Oluoch Akatch & Cynthia Atieno Akatch (children of Poline Akinyi Odero (Deceased))	LR No. 40 B, Chemelil	1 unit
Grace Awuor Odero	LR No. 40 B, Chemelil	1 unit
Elizabeth Auma Odero	LR No. 40 B, Chemelil	1 unit
Perez Aluoch Odero	LR No. 40 B, Chemelil	1 Unit
Kisumu/Wathorego/1219		
Since this property is subject of a Court proceeding in Kisumu MCECL No.E073 of 2022, it has been agreed that once determined and the outcome is in favour of the Estate the property shall be sold and the proceeds shared equally amongst the children of the Deceased.		

30. The petitioners shall bear their own costs.

**DATED AND DELIVERED AT BUNGOMA THIS 9<sup>TH</sup> DAY OF APRIL 2025.**

**M.S.Shariff**

**Judge**

In the presence of :

Ms Ochieng holding brief for Mr Nyamori for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Administrators/Petitioners

N/A by 2<sup>nd</sup> Administrator

Diana & Juma -Court Assistants

