



REPUBLIC OF KENYA



**In re Estate of Gaudensia Okola Watula (Deceased) (Probate & Administration 8 of 2023) [2025] KEHC 8811 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8811 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
PROBATE & ADMINISTRATION 8 OF 2023**

**DK KEMEL, J**

**JUNE 20, 2025**

**IN THE MATTER OF THE ESTATE OF GAUDENSIA OKOLA WATULA (DECEASED)**

**AND**

**IN THE MATTER OF CONFIRMATION OF GRANT BY**

**BETWEEN**

**EVERLYNE ANYANGO ODUOL ..... ADMINISTRATOR**

**AND**

**FREDRICK ODHIAMBO WATULA ..... RESPONDENT**

**AND**

**ELVIS OUMA OWINO ..... BENEFICIARY**

**AND**

**ONYANGO JOHN FREDRICK ..... INTERESTED PARTY**

**RULING**

1. The administrator filed summons for confirmation of grant dated 27/2/2024 wherein she proposed that the only asset of the deceased namely Central Alego/Nyalgunga/2800 be allocated to her to hold it in trust for minors and other dependants Silvester Odongo Watula and Kelvin Ouma Owino.
2. The Petitioner's gravamen in the summons for confirmation of grant dated 27/2/2024 is inter alia; that the late Gaudensia Okola Watula died on 9/9/2009; that the grant of letters of administration intestate issued to Fredrick Odhiambo Watula (deceased) and Dominic Odhiambo Odongo was revoked via a court order dated 29/6/2023; that Fredrick Odhiambo Watula is now deceased; that the court on 29/6/2023 ordered that Dominic Odhiambo Odongo be removed from being an administrator of



the estate of the deceased's estate and that the Applicant herein be enjoined as a co-administrator. That more than six (6) months had lapsed since the grant was issued and that the same is due for confirmation; that it is in the interest of justice that this application be allowed; that the court directed that Fredrick Odhiambo and the Applicant herein be enjoined as co-administrators as they both rank equally in priority of those who could apply for letters of administration to the deceased's estate; that the co-administrators Fredrick Odhiambo and the Applicant herein be enjoined as co-administrators as they both rank equally in priority of those who could apply for letters of administrators to the deceased's estate; that the co-administrator Fredrick Odhiambo Watula died on 15/7/2023 and that a copy of death certificate was attached; that the remaining beneficiaries to the estate of the deceased are Everline Anyango Oduol- daughter, Silvester Odongo Watula – son, Kelvins Ouma Owino-Grandson, Fosia Atieno Owino-Granddaughter(minor), Natasia Akinyi Owino – Granddaughter (minor), Shinis Awuor Owino – Granddaughter (minor); that the identification and shares of all persons beneficially entitled to the said estate have been ascertained and determined; that LR No. Central Alego/Nyalgunga/2800 be apportioned to Everline Anyango Oduol to hold in trust for the minors and other dependants, Silvester Odongo Watula and Kelvins Ouma Owino; that there is no objection and/or protest made lodged in this cause; that there exists no duty payable in relation to the deceased estate.

3. The Protestor filed affidavits of protest dated 21/5/2025 and 20/11/2024 wherein he averred inter alia; that the administrator herein is an aunt to the protestor; that the deceased administrator (1<sup>st</sup> Respondent herein) one Fredrick Odhiambo Watula is the protestor's late uncle while the 2<sup>nd</sup> Respondent is his grandfather; that that the administrator/Applicant herein is not being candid with this court and the current application by way of summons for confirmation of grant dated 27/2/2024 as filed is malicious, wanting to have the grant confirmed in her name to hold in trust for Elvins Ouma Owino and Silvester Odongo Watula who is the protestor's brother; that it is apparent that the Administrator/Applicant herein is not being candid with this court and that the current application by way of summons for confirmation of grant dated 27/2/2024 as filed is malicious wanting to have the grant confirmed in her name to hold in trust for the protestor and his brother Silvester Odongo Watula stating that they are minors while the protestor and his brother are adults; that he prays this court does order the protestor to hold the property in trust for himself and his brother one Silvester Odongo Watula and for the sake of the protesters family since the protestor has children to take care of being that the purpose of succession dated 27/2/2024 is to confirm the grant. He urged this court to find merit in his affidavit of protest dated 21/5/2024 and allow it with costs.
4. The Protestor herein Elvins Ouma Owino in his further affidavit of protest in response to the Administrator's replying affidavit dated 26/6/2024 averred inter alia; that the Administrator/Applicant herein one Everline Anyango Oduol is malicious by stating that the protestor acknowledged to one George Owino Watula being the Protesters late father and her brother respectively and thus a beneficiary to his share of the property being LR No. Central Alego/Nyalgunga/2800 pursuant to Section 38 and 66 of the *Law of Succession Act*, Cap. 160, Laws of Kenya; that the late Fredrick Odhiambo Watula was his uncle and left a wife by the name Domitila Omondi and five children whom he inherited as per the Luo Customs and Traditions sometimes in the year 2012, facts which are known by Applicant/Administrator and who also stands to inherit her late husband's share of the property; that the Protestor knows that LR No. Central Alego/Nyalgunga/2800 belonged to the protestor's late grandmother Gaudensia Okola Watula to whom it was registered on 20<sup>th</sup> August 2007; that the Protestor also knows that his late uncle Fredrick Odhiambo Watula conducted this succession cause with the oral consent of the protestor's aunt one Everline Anyango Oduol and the other family members prior to it being revoked on 29/6/2023 by Hon. J. Kamau, Judge; that the late Fredrick Odhiambo Watula had this succession cause gazetted and that the Kenya Gazette of 14/11/2014 had a



first grant form P&A 41 issued on 19/1/2015 and a last Grant form P&A 54 on 18/12/2015; that the Protester knows that his late uncle sold this land to 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties herein one Onyango John Fredrick and Sophia Awuor Ohayo on 14/1/2016 at a consideration price of Kshs600,000/=; that his late uncle sold this land after succession to cater for his medical bills and foremost the operation at Siaya Referral Hospital having been involved in a road accident which broke his spinal cord and left him bedridden till his death sometimes in July 2024; that the Administrator/Applicant's intention is clear and malicious as she wants to solely own the entire estate at the detriment of other beneficiaries; that one Sylvester Odongo Watula is no longer a minor but an adult hence capable of having his own share of the property and that this court should equitably distribute the estate.

5. The Petitioner filed a response vide affidavit dated 27/1/2025 wherein she averred inter alia; that she is the aunt to the beneficiary herein Elvins Ouma Owino; that in her response at paragraph *para\_3 3*, the late Fredrick Odhiambo Watula is the uncle to the beneficiary/Applicant herein; that the beneficiary/Applicant's father is George Owino Watula (deceased) and that his grandfather is Samuel Watula (deceased) and not Dominick Odhiambo Odongo as he (protester) has stated in paragraph 3 of his affidavit of protest; that the Grant of Letters of Administration Intestate issued on 29/6/2015 should be revoked but amended to reflect the change to the effect that the 2<sup>nd</sup> Petitioner (Dominick Odhiambo Odongo) be and is hereby removed from being an administrator of the deceased's estate; that in response to paragraph *para\_4 4*, Sylvester Odongo Watula is the uncle to the beneficiary/Applicant herein; that the beneficiary/Applicant herein willfully refused to submit his national identification card to the area chief when they were getting the beneficiaries' letter for purposes of filing summons for confirmation of grant; that in response to paragraph *para\_5 5*, the beneficiary/Applicant herein is the son to George Owino Watula (father – deceased) and Florence Akinyi Owino (Mother) and should therefore inherit from the mother who is the rightful beneficiary to raise a claim on the estate of the deceased herein; that the matter before the Honourable court has demonstrated goodwill by including the entire family who are beneficiaries of the deceased estate; that she urges the court to confirm the grant as per the mode of distribution proposed and agreed upon by all the beneficiaries, in the affidavit supporting summons for confirmation of grant dated 27/2/2024; that the affidavit of protest dated 21/5/2024 is frivolous, bad in law and an abuse of the court process and that she prays for its dismissal with costs.
6. The Applicant/Administrator filed a further reply to further affidavit of protest wherein she averred inter alia; that she got the beneficiary's Identity Card through his mother, Florence Akinyi Owino; that the beneficiary herein had been listed as a beneficiary in the chief's letter dated 16/2/2024; that Fredrick Odhiambo Watula never married and never sired any child; that the LRNo. Central Alego/Nyalgunga/2800 measuring approximately 1.48 HA is in the name of Gaudensia Okola Watula, her late mother; that the alleged succession done and grant of letters administration intestate issued to Fredrick Odhiambo Watula and Dominic Odhiambo Odongo on 19/1/2015 was done without her knowledge and consent; that the said grant issued on 19/1/2015 was revoked and/or amended via a court order dated 29/1/2023; that she has shown utmost good faith in the matter before this court and has as well demonstrated goodwill by including all family members as beneficiaries of the deceased's estate; that the further affidavit of protest dated 20/11/2024 is frivolous, bad in law and an abuse of the court process and prays that it be dismissed with costs.
7. The protest was canvassed by way of written submissions. Both parties duly complied.
8. Petitioner's submissions are dated 18/2/2025.
9. It is the administrator's submission that the protestor/applicant wilfully refused to submit his national identification card to the area chief when the administrator was getting the beneficiaries letter for purposes of filing summons for confirmation of grant. It is not disputed that the protestor/applicant's



father is George Owino Watula (deceased) and his mother is Florence Akinyi Owino who is still alive and who has been living/ residing in a portion of the deceased's estate herein with her son (protestor/ applicant) and her late husband George Owino Watula.

10. It was further submitted that the law stipulates that the holder of a grant that is yet to be confirmed shall apply for the confirmation of such grant at the expiry of a period of six months from the date of the grant of representation as provided in Section 71 of the *Law of Succession Act*. It was submitted that the surviving administrator should be allowed to distribute the estate of the deceased. As regards the table of consanguinity as provided under the 2nd Schedule of the Probate and Administration Rules, it was submitted that the Administrator ranks in the 1st degree of consanguinity and therefore justified to administer the estate of the deceased.
11. It was submitted that having complied with the procedure as stipulated under Rule 40 of the Probate and Administration Rules, the summons for confirmation of grant dated 27<sup>th</sup> February, 2024 clearly identifies and ascertains the dependants to the estate of the deceased as per the introductory letter from the Area Chief and hence, the administrator has therefore, made a full and frank disclosure to this Honourable court of all the dependants of the deceased's estate. It was submitted that the administrator's proposal that the estate of the deceased to devolve to the administrator holding it in trust for the other surviving dependants of the deceased is proper and that in the event that this Honourable court may be inclined to depart from the administrator's proposed mode of distribution, then the court is urged to make a finding that the protestor should inherit a portion of the deceased's estate from his parent. Reliance was placed in the case of *in re Estate of Joyce Kanjiru Njiru (Deceased)* [2017] KEHC 1435 (KLR) which placed reliance on the case of *Estate of Veronica Njoki Wakagoto (Deceased)* (2013) eKLR where Justice Musyoka J stated that:

“..... grandchildren can only inherit their grandparents indirectly through their own parents, the children of the deceased. The children inherit first and thereafter the grandchildren inherit from the parents. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”
12. Learned counsel for the Administrator urged this court to confirm the grant as per the mode of distribution proposed and agreed upon by all the beneficiaries, in the affidavit supporting summons for confirmation of grant dated 27<sup>th</sup> February 2024. However, in the event this court is persuaded to depart from the administrator's proposed mode of distribution, the court to distribute the deceased's estate in a just and fair proportion considering all the dependants of the deceased as follows; LR No. Central Alego/Nyalgunga/2800 (measuring 1.48 Ha) – Everlyne Anyango Oduol to get 0.493 Ha. LR No. Central Alego/Nyalgunga/2800 (measuring 1.48 Ha) – Everlyne Anyango Oduol 0.493 Ha (to hold it in trust for the other dependant; Silvester Odongo Watula being the son to the deceased herein who is mentally incapacitated) LR No. Central Alego/Nyalgunga/2800 (measuring 1.48 Ha) – Florence Akinyi Owino 0.493 Ha (to hold it in trust for her son; Elvins Ouma Owino being the grandson to the deceased herein and the protestor).
13. Finally, it was submitted for the Administrator that pursuant to the ruling dated the 29<sup>th</sup> June 2023, it is clear that the Administrator has shown utmost good faith in the matter before this Honourable Court and has demonstrated goodwill by including all the beneficiaries of the deceased's estate and therefore the summons for confirmation of grant dated 27<sup>th</sup> February 2024 should be allowed and mode of distribution proposed in paragraph 10 of this affidavit be adopted by this Court.



14. Vide submissions dated 25/2/2025, learned counsel for the Protestor submitted that the Protestor and his sibling one Silvester Odongo Watula have both come of age as adults with identity cards and are adults in their own right and should be allowed to own their shares under the estate. It was submitted that it is erroneous for the Administrator to continue holding in trust the property.
15. It was also submitted that the Protestor is entitled by law to inherit property belonging to his father George Owino Watula who was a son to the deceased and that the said George Owino Watula ranged in the same degree and priority with the Administrator but for the fact that he is now deceased.
16. I have considered the Administrator's summons for confirmation of grant aforesaid and the rival affidavits as well as the submissions. It is not in dispute that the two interested parties herein have not participated in these proceedings and that their interest if any will be addressed by the persons who had sold properties to them once the grant herein is confirmed. It is also not in dispute that the Administrator is a daughter to the deceased herein and ranks in priority to take up letters of grant of administration in the estate of the deceased. It is also not in dispute that the Protestor herein is a son to George Owino Watula who has since died and that the Protestor is a grandson to the deceased. It is also not in dispute that the Protestor's late father being a son to the deceased ranked equally with the Administrator regarding the right to take up letters of grant of administration intestate. It is also not in dispute that the share of the Protestor and one Silvester Odongo Watula has been provided for in the proposed schedule of distribution by the Administrator. It is also not in dispute that the Protestor herein and one Silvester Odongo Watula who had been minors have since come of age and are now adults in their own right. The only point of departure is whether the Administrator should continue to hold the share of the Protestor and Silvester Odongo Watula in trust.
17. As noted above, the point of departure between the Administrator and Protestor is in regard to the question whether the Administrator should continue to hold the shares of the Protestor and one Silvester Odongo Watula or allow them to have their shares while she continues with her own. The Protestor and Silvester Odongo Watula have maintained that they are no longer minors as had earlier on been the case since they have acquired national identity cards. Indeed, once beneficiaries come of age, they are deemed as adults in their own right. The Administrator does not deny the fact the Protestor is a son of her late brother George Owino Watula and therefore I find no prejudice will be suffered by the Administrator if the Protestor and Silvester Odongo Watula get their shares from the estate. I am not persuaded by the Administrator's suggestion that the Protestor should claim from his mother yet the Administrator has not even proposed that the shares be taken up by the Protestor's mother. It beats logic that the Administrator should shun the Protestor's mother and proceed to hold his share in trust yet he is an adult. Up to that point, I am inclined to agree with the Protestor's concerns that the Administrator is not acting in good faith. I find that there will be prejudice or harm caused to the administrator if the Protestor and Silvester are allowed to have their shares while she remains with her own share. I have seen the proposed schedule by the protestor which indicates that the Administrator, Protestor and Silvester Odongo Watula are each to have 0.493Ha out of LR Central Alego/Nyalyunga/2800. The shares of the Protestor and Silvester Odongo Watula have been proposed by the Administrator to be held in trust by herself.
18. Even though the Administrator has contended that the Protestor should not come in regarding property belonging to his grandparent, I am persuaded that he has a right to inherit property that is and was due to his parents. In re Estate of Joyce Kanjiru Njiru (Deceased) [2017] KEHC 1435 (KLR)



which placed reliance on the case of Estate of Veronica Njoki Wakagoto (Deceased)(2013) eKLR where Justice Musyoka J stated that:

“..... grandchildren can only inherit their grandparents indirectly through their own parents, the children of the deceased. The children inherit first and thereafter the grandchildren inherit from the parents. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

19. As the Administrator has admitted that the Protestor is a son of her late brother. Further, she confirms that the share to his late brother is 0.493 Ha. That being the position, I find that it is proper for him to have the share that was due to his father from the deceased. I am persuaded that the Administrator should not hold on to the share of both Protestor and Silvester Odongo Watula but should relinquish them as they are adults in their own right. I find the Administrator’s hold on those shares to be motivated by some ulterior reasons. She must understand that the purpose of filing the succession cause herein was to distribute the estate of the deceased among the beneficiaries. There is no reason why the Administrator should continue to act as a caretaker to the Protestor and Silvester Odongo Watula even after the exercise of the distribution of the estate has been concluded. I find that the Administrator should relinquish her unbridled desire to continue her chokehold on the Protestor and Silvester Odongo Watula. She should let go so that each beneficiary can move on and deal with their shares. Hence, the proposed mode of distribution by the Administrator is not proper and must be rejected. The mode of distribution by the Protestor is appropriate and must be allowed.
20. In view of the foregoing observations, it is my finding that the Protestor’s protest dated 21/5/2024 has merit. The summons for confirmation of grant dated 27/2/2024 are allowed in the following terms.
- i) The grant issued to Everlyne Anyango Oduol on 29/6/2023 is hereby confirmed and a certificate of confirmation of grant is to issue forthwith.
  - ii) The estate of the deceased herein comprising of land parcel Number Central Alego/ Nyalgunga/2800 is hereby distributed as follows:
    - a) Everlyne Anyango Oduol.....0.493Ha
    - b) Elvins Ouma Owino.....0.493 Ha
    - c) Silvester Odongo Watula.....0.493 Ha
  - iii) As parties are members of one family, each party to bear their own costs.

**DATED AND DELIVERED AT SIAYA THIS 20<sup>TH</sup> DAY JUNE 2025**

**D.KEMEI**

**JUDGE**

In the presence of:

Otieno.....for Administrator

Ochanyo.....for Protestor

Achieng.....Court Assistant

