



**In re Estate of Consolata Bitu Odero (Deceased) (Succession Appeal
E015 of 2024) [2025] KEHC 12831 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12831 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
SUCCESSION APPEAL E015 OF 2024
DK KEMEL, J
SEPTEMBER 19, 2025**

IN THE MATTER OF THE ESTATE OF CONSOLATA BITU ODERO (DECEASED)

BETWEEN

**PRISCA AWINO ODERO 1ST APPELLANT
MONICA ADHIAMBO ODERO 2ND APPELLANT
JACTON ODERO WAKOYO 3RD APPELLANT
MAUREEN ACHIENG OUMA 4TH APPELLANT
BENSON NYAKWA OTIENO 5TH APPELLANT
SHADRACK OBUYA ODHIAMBO 6TH APPELLANT**

AND

**SAMUEL OUMA OWISO 1ST RESPONDENT
NAOMI GEKONDI NYABOKE 2ND RESPONDENT**

*(Being an Appeal from the Ruling and Order of the Honourable Limo Benjamin Byson
(PM) delivered on the 09/10/2024 arising from the 1st - 6th Objectors' Summons for
Annulment of Grant dated the 12/06/2023 in Siaya CM Succession No. E410 of 2022)*

JUDGMENT

1. The appeal arises from the ruling and order of Honourable Limo Benjamin, (PM) in Siaya CM Succession No. E410 of 2022 delivered on 9/10/2024 and arising from the 1st – 6th Appellants' summons for annulment of grant dated 12th June 2023 wherein he dismissed the same with no order as to costs.



2. Being aggrieved by the aforesaid decision, the Appellants filed their Memorandum of Appeal dated 14/10/2024 wherein they raised the following grounds of appeal:

1. That the learned trial magistrate erred in law by failing to appreciate the provisions of Section 39, 71 (3) & 76 (a) and (c) the Law of Succession Act Cap 160 of the Laws of Kenya and Rules 44 and 73 of the Probate and Administration Rules and the provision of Section 102 of the Children Act 2001 on Guardianship over a minor.
2. That the learned trial magistrate erred in law and in fact in failing to grant the Objectors the prayers sought in the Objectors' summons for annulment of grant dated 12/6/2023 wholly despite the Appellants having adduced sufficient evidence to prove their case on a balance of probability.
3. That the learned trial magistrate erred in law and in fact by failing to take into consideration the Appellants' written submissions and instead based his ruling solely on Respondents' submissions on the summons for annulment of grant thus coming to a wrong conclusion.
4. That the learned trial magistrate erred in law and fact in writing a ruling which is at variance with the available evidence and contrary to the applicable principles established by precedent and relevant statutory provisions of law.

The Appellants therefore prayed that the ruling and order of Honourable B. Limo dated 9/10/2024 be set aside and substituted with an order allowing the Appellants' application dated 12/6/2023 as prayed and that the Appellants be awarded the costs of the appeal.

3. This being the first appellate court, its duty is well spelt out namely to re-evaluate, analyze the evidence tendered before the trial court and subject it to an independent analysis so as to arrive at an independent conclusion as to whether or not to uphold the decision of the trial court. In doing so, the court has to take into consideration the fact that it did not have the benefit of seeing or hearing the witnesses while they testified and that the court will have to provide an allowance for that fact. (See *Selle vs. Associated Motor Boat Company Limited* [1968] EA 123).
4. The lower court record indicates that the 1st Respondent herein had petitioned for letters of grant and was eventually granted the Grant of Letters of Administration Intestate on 6/3/2023 and that he later filed summons for confirmation of grant dated 21/3/2023 which were allowed on 18/4/2023 and that a certificate of confirmation of grant was issued to him wherein land parcel Siaya/Karapul/4410 was allocated to him wholly.
5. The Appellants herein filed summons for annulment of grant dated 12/6/2023 wherein they sought reliefs inter alia; that the Honourable Court be pleased to annul the grant of letters of administration and the certificate of confirmation of grant issued to the Petitioner/Respondent herein; that the Honourable court be pleased to revoke the transfer of land parcel No. Siaya/Karapul Ramba/4410 from the names of Consolata Bitu Odero (deceased) to the name of the Petitioner/Respondent and subsequent transfer of the said parcel of land Siaya/Karapul/Ramba/4410 to the interested Party/Respondent; that an order of rectification of title be issued rectifying the register so as to revert the ownership of Siaya/Karapul Ramba/4410 to the name of Consolata Bitu Odero (deceased); that the Honourable court be pleased to grant any additional or alternative orders that it may deem fit and just to grant in the circumstances.
6. The application by the Appellants is further supported by the grounds set out thereunder and by the supporting affidavit of Prisca Awino Odero and Jacton Odero Wakoyo who are the 1st and 3rd Appellants herein sworn on even date. The Appellants' gravamen is inter alia; that the Appellants



have beneficial/equitable interest in the estate of the deceased on the grounds that they are the closest surviving relatives of the deceased who died without having children; that the 1st Respondent/Petitioner is not related to the deceased in any way; that the 1st Respondent fraudulently obtained the grant of letters of administration as well as certificate for confirmation of grant upon false information in which he excluded the Appellants; that the 1st Respondent later transferred title to land parcel number Siaya/Karapul Ramba/4410 into his name and then sold the same at a throw away price to the 2nd Respondent; that the 1st Respondent's acquisition of the said land was illegal, null ab-initio; that the Appellants had approached DCI Siaya over the acts of fraud committed by the 1st Respondent while filing for letters of grant; that the 1st Respondent had misled the court by giving false information wherein he claimed that he together with his two sisters were children of the deceased yet the deceased died without children; that the actions of the 1st Respondent warrants nullification of the grant obtained by him.

7. The application was also supported by an affidavit sworn by the 1st and 3rd Appellants on even date which was a reiteration of the grounds set out on the face of the application.
8. The 1st Respondent filed a statement dated 24/10/2024 wherein he stated inter alia; that he used to stay with his uncle Peter Ogola Okoda after his father passed on and that his said uncle later married Consolata Bitu Odera and that they took him up as their son and became his guardians and enrolled him in school; that his said uncle died on 30/1/2000 and that he was now left in the care of the deceased herein who continued to pay his school fees and that of his sister; that the deceased later enrolled him in a tailoring course; that the deceased later died in a road accident while travelling to Kisumu town and that after her burial he and his siblings took charge of her properties; that he later filed for grant of letters of administration and later had the grant confirmed and later sold the suit property to the Interested party herein; that the deceased had no children and had adopted him and his siblings and hence they are her dependents and entitled to wholly benefit from her estate; that the title of the interested party to the suit land Siaya/Karapul Ramba/4410 is legitimate and clean; that the process of lodging the succession cause was regular, lawful and legitimate and that the Appellants' claims of fraud are baseless.
9. The 2nd Respondent filed a replying affidavit sworn on 1/11/2023 wherein she averred inter alia; that she had entered into a sale agreement on 4/6/2023 wherein she bought land parcel Siaya/Karapul Ramba/4410 from the 1st Respondent who was the Administrator of the estate of the deceased who had already obtained a confirmed grant and had transmitted the property to himself and that she bought it at Kshs 1, 200, 000/-; that she is an innocent purchaser for value and was not privy to any irregularities on the part of the seller; that the Objectors hold no beneficial interest in the estate of the deceased and who seek to enrich themselves; that the Objectors have not shown that they directly depended on the estate of the deceased so as to have priority over the 1st Respondent; that she relied on the copies of the agreement, search certificate and title which are annexed to her replying affidavit.
10. The parties entered into a consent dated 30/5/2024 wherein they agreed to adopt the Objectors' affidavits as their evidence while the Petitioner's written statement and list of documents as his evidence and that the interested party's replying affidavit was adopted as her evidence. The parties further agreed to canvass the Objectors' application dated 12/6/2023 by way of written submissions. The trial court later considered the issues and dismissed the Objectors' application with no order as to costs. The Objectors therefore filed the present appeal.
11. The appeal was canvassed by way of written submissions. The Appellants' submissions are dated 26/5/2025 while those of the 1st Respondent are dated 17/5/2025.
12. The Appellants submitted that the deceased had died without any child and hence they, being her closest relatives, ought to rank higher and thus entitled to take out letters of grant unlike the 1st



- Respondent who is a stranger to the estate. That the deceased was living on parcel Siaya/Karapul Ramba/4410 and was then staying with the 4th Appellant herein and that the claim by the 1st Respondent that he was staying with the deceased was preposterous. That the trial court ought to have allowed the summons for revocation of grant as the 1st Respondent had given false and misleading/untrue facts to the trial court such as claiming that he was a son to the deceased as well as claiming that his siblings were also children of the deceased. It was submitted that the 1st Respondent thus obtained the grant improperly which warranted a revocation of the same.
13. It was further submitted that the 1st Respondent's assertion that the deceased had adopted him and his siblings must be rejected because the alleged adoption was not in compliance with the provisions of section 102, 104 and 105 of the Children's Act 2001 as he did not present a copy of any deed or guardianship order. Learned counsel further added that the purported copies of letters from Karapul Primary School and Dome Tailoring have no force of law to support the alleged adoption by the deceased.
 14. It was also submitted that the 2nd Respondent's defence of being an innocent purchaser for value without notice must be rejected in that the reliance on a copy of search from the lands registry regarding the status of the ownership of parcel Siaya/ Karapul Ramba/4410 without checking the green card so as to establish the root of the title is not proper due diligence and hence the 2nd Respondent was not a bonafide purchaser for value without notice of a defective grant.
 15. It was also submitted that the trial court failed to apply its mind to the law namely sections 39 and 76 of the Law of Successions Act in that the 1st Respondent was not a biological child of the deceased and that the deceased who died without children had her siblings who include the Appellants and who ought to inherit her estate in line with section 39 of the [Law of Succession Act](#).
 16. It was finally submitted that the impugned grant was confirmed without expiry of six months as provided for under section 71 of the [Law of Succession Act](#) as no sufficient reasons were given to the trial court. Learned counsel urged this court to allow the appeal and set aside the order of the trial court and substitute it with an order allowing the Appellants' summons for revocation of grant dated 12.6/2023 and further award costs of the appeal to the Appellants.
 17. Learned counsel for the 1st Respondent submitted that the Appellants failed to avail evidence that they were siblings to the deceased and further failed to avail evidence that they complied with the provisions of article 57 of the [Constitution](#) as they abandoned the deceased and now want to inherit her property. Learned counsel pointed out that the court has power to consider the provisions of section 28 (e) of the [Law of Succession Act](#) and to consider the conduct of the dependants in relation to the deceased. It was submitted that the trial court had discretion to depart from the order of consanguinity under section 66 of the Act and allow any interested party to file for grant of probate. It was further submitted that the 1st Respondent and his siblings were confirmed by the Appellants as children of the brother of the husband of the deceased herein and that by virtue of the fact they were maintained by the deceased then they are entitled to benefit from her estate. It was further submitted that under section 29(b) of the Act the 1st Respondent and his siblings were taken in as family of the deceased as her own children. It was also submitted that the Appellants had never stayed with the deceased and that they did not take care of her at any point in time during her lifetime and hence their conduct speaks against them and should be rejected by the court under section 28 (e) of the Act while distributing the estate.
 18. I have considered the record of appeal and the submissions filed herein. I find the issue for determination is whether the summons for revocation of grant dated 12/6/2023 filed by the Appellants before the trial court had merit.



19. Revocation and annulment of grants is provided for under section 76 of the Law of Successions Act which provides that: 'A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decided either on application by any interested party or of its own motion- (a) that the proceedings to obtain the grant was defective in substance; (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case; (c) that the grant was obtained by of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.
20. It is noted that the Appellants' main plank in their application dated 12/6/2023 revolve around two key areas namely; that the 1st Respondent and his siblings are not biological children of the deceased and secondly, that the 1st Respondent and his siblings were not legally adopted by the deceased as her children during her lifetime. It was therefore the Appellants' case that the 1st Respondent was a stranger in the estate and could not file for letters of grant and further that the 1st Respondent gave out misleading facts to the court that he and his siblings were children of the deceased yet the deceased died without having any children and thus the grant issued to him and later confirmed ought to be revoked. It was further the Appellants' case that the 1st Respondent had no authority or capacity to pass title to the 2nd Respondent who ended up acquiring the deceased's parcel number Siaya/Karapul Ramba/4410 and thus the 2nd Respondent's title is defeasible.
21. The 1st Respondent while petitioning for letters of grant had indicated himself together with his siblings as children of the deceased. Indeed, the chief's introductory letter dated 16/8/2022 indicated that the deceased was survived by three children namely Samuel Ouma Owiso, Vivian Akoth Owiso and Joan Adoyo Owiso. It is noted that the 1st Respondent proceeded to indicate those names in the requisite forms P&A 5 and went ahead later to have the grant confirmed and distributed the estate comprising of LR No. Siaya/Karapul Ramba/4410 wholly to himself. This then jolted the Appellants to file summons for revocation of grant which were eventually dismissed by the learned trial magistrate. As noted above, the Appellants in their affidavits have deponed that the deceased died without children and that the remaining closest family members should be the 1st and 2nd Appellants who are her blood sisters while the other Appellants are her nieces. As far as the Appellants are concerned, they ought to inherit the estate of the deceased in accordance with Section 66 and 39 of the Laws of Succession Act.
22. Section 39 of the said Act deals with situations where an intestate has left no surviving spouse or children as follows:
 1. Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority.
 - a. Father; or if dead
 - b. Mother; or if dead
 - c. Brothers and sisters, and any child or children of deceased's half-brothers and half-sisters, in equal shares; or if none
 - d. Half-brothers and half sisters and any child or children of the deceased's half-brothers and half-sisters in equal shares; or if none
 - e. The relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.



Under Section 66 of Cap 160, preference to be given to certain persons to administer where deceased died intestate. It provides that;

- “ 66. When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made but shall without prejudice to that discretion, accept as a general guide the following order of preference-
- a. Surviving spouse or spouses, with or without association of other beneficiaries;
 - b. Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
 - c. The Public Trustee; and
 - d. Creditors...”

23. The above provisions guide in the determination as to the persons who are entitled to take out letters of grant and inherit the assets of an intestate who has died without children. Indeed, both the Appellants and the 1st Respondents claim that they are related to the deceased and therefore are entitled to inherit her estate. There is therefore a tag of war between them. Whereas the Appellants maintain that the 1st Respondent and his siblings are children of the brother of the husband of the deceased herein and were neither children to the deceased nor legally adopted by the deceased, the 1st Respondent while confirming that indeed he and his sisters were children of the brother in-law of the deceased, maintain that the deceased took them in after their father died and enrolled them in school and generally took them as her own children. The Appellants have contended that the alleged guardianship by the deceased over the 1st Respondent and his siblings was not conducted in accordance with the provisions of Section 102 of the Children’s Act 2001 which states that one can become a guardian in the following ways: a person appointed by will or deed by a parent of the child or by an order of the court to assume parental responsibility for the child upon the death of the parent of the child either alone or in conjunction with the surviving parent of the child... as described under paragraph 3 above. Again, section 105 of the Children’s Act, provides that the court has power to appoint guardian where the child’s parents are dead or cannot be found under Section 105 of the *Children Act* which states as follows: “ 105. Appointment of guardian by the court ...in addition to the powers of the court to appoint a guardian under subsection (5) or Section 104 the court may appoint a guardian in the following circumstances.
- a. On the application of any individual, where the child’s parents are no longer living, or cannot be found and the child has no guardian and no other person having parental responsibility for him;
 - b. On the application of any individual, where the child is a displaced child within the meaning of Section 119 of this Act.
24. It would appear from the rival affidavits of the Appellants and the 1st Respondent that the deceased used to stay with the 4th Appellant as well as the 1st Respondent and his siblings. The 4th Appellant in her affidavit categorically stated that the deceased was a generous lady who welcomed and provided for family members during her lifetime and that she remained with her until her death. The 1st Respondent



on his part claimed that the deceased enrolled him and his sisters in school after his parents passed on and that the deceased later enrolled him in tailoring course together with his sister. From these assertions, it is clear that the 1st Respondent and his siblings together with the 4th Appellant who is a niece to the deceased were provided for by the deceased under one roof. Even though there was no formal adoption in the real sense of the word the deceased indeed took into her family the 1st Respondent and his siblings as well as the 4th Appellant as her own family members. That being the position, all these persons become dependants of the deceased and therefore the relevant Section for guidance is Section 29 of the Law of Succession Act Cap 160 which defines dependents. It provides as follows: -

For the purpose of this part, dependant means-

- a.
- b. Such of the deceased's parents, step parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death.

25. After a careful analysis of the rival contentions by the parties, it is clear that the 1st Respondent and his siblings were dependants of the deceased and likewise the Appellants' relatives such as the 4th Appellant who were taken care of under one roof by the deceased. It was therefore improper for the 1st Respondent to exclude the deceased's other relatives who include the Appellants herein. Even though the 1st Respondent was entitled to take out letters of grant, he should have included the Appellants as some of the dependants. Again, the 1st Respondent's conduct in indicating that he and his siblings were children of the deceased was not right and therefore he had given false and misleading information to the court which warrants the grant to be revoked. Due to the fact that the 1st Respondent and the Appellants are dependants of the deceased, it would be proper that a fresh grant be issued to some of them and thereafter they will file the requisite summons for confirmation of grant.
26. As regards the claim of the 2nd Respondent, the 1st Respondent having obtained the grant through unprocedural means weakens such a claim to a clean title. Hence, the title held by the 2nd Respondent is defeasible and that the same must be interfered with.
27. As noted in the foregoing paragraphs, the grant having been revoked, then the certificate for confirmation of grant must also be cancelled and that the title to property Siaya/Karapul Ramba/4410 must be cancelled and the same to revert in the name of the deceased Consolata Bitia Odero and be made available for distribution by the beneficiaries.
28. In the result, it is my finding that the Appellants' appeal has merit. The same is allowed. The ruling by the trial magistrate dated 9/10/2024 is hereby set aside and substituted with an order allowing the Appellants summons for revocation of grant dated 12/6/2023 in the following terms:
 - a) The grant of letters issued to Samuel Ouma Owiso on 6/3/2023 is hereby revoked and that a fresh grant be and is hereby issued in the names of Samuel Ouma Owiso, Prisca Awino Odero and Maureen Achieng Ouma.
 - b) The certificate of confirmation of grant dated 18/4/2023 is hereby cancelled.
 - c) The title LR No. Siaya/Karapul Ramba/4410 in the name of the interested party is hereby ordered cancelled and that the same do revert in the name of the deceased Consolata Bitia Odero and be made available for distribution among the dependants.



- d) The new administrators are directed to proceed and file fresh summons for confirmation of the fresh grant within 14 days upon issuance of the fresh grant.
- e) Each party to bear their own cost of this appeal.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 19TH DAY OF SEPTEMBER 2025.

D. KEMEI

JUDGE

In the presence of:

Nyangweso.....for Appellants

N/A Onsongo.....for 1st Respondent

N/A Omondi Were.....for 2nd Respondent

Okumu.....Court Assistant

