



**In re Estate of Walter Odhach Arudhi alias Odhach Arudhi (Deceased) (Succession Appeal E019 of 2023) [2025] KEHC 12860 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12860 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
SUCCESSION APPEAL E019 OF 2023**

**DK KEMEL, J**

**SEPTEMBER 19, 2025**

**IN THE MATTER OF ESTATE OF WALTER ODHACH ARUDHI ALIAS ODHACH ARUDHI  
AND  
IN THE MATTER OF REVOCATION OF GRANT OF LETTERS OF ADMINISTRATION**

**BETWEEN**

**WILSON ARIKA OORO ..... 1<sup>ST</sup> APPELLANT**

**MOSES OKENDO OORO ..... 2<sup>ND</sup> APPELLANT**

**MARGARET ADHIAMBO OORO ..... 3<sup>RD</sup> APPELLANT**

**AND**

**SOPHIA OGA ODHACH ..... RESPONDENT**

*(Being an appeal from the Ruling of Hon. Stella Wanjiku Mathenge, PM at Bondo, delivered on 4th July 2023 in Succession Cause No. 331 of 2021)*

**JUDGMENT**

1. Walter Odhach Arudhi (Deceased) passed away on 5<sup>th</sup> December 2006. The Respondent herein, Sophia Oga Odhach, in the capacity of a wife to the deceased, petitioned for Letters of Administration Intestate, which was issued on 29<sup>th</sup> November 2021 in Succession Cause No. No. E331 of 2021 at Bondo law courts and thereafter confirmed vide a Certificate of Confirmation of Grant dated 3<sup>rd</sup> October 2022. The Chief's letter dated 7<sup>th</sup> December 2020 by Chief J.P. Odongo, Chief East Uyoma Location, indicates that the deceased was survived only by the Respondent.
2. The Summons for Confirmation of Grant dated 13<sup>th</sup> September 2022 lodged by the Respondent herein was supported by her affidavit wherein she averred that the parcel of land number Uyoma/



Rageng'ni/1658(the suit parcel of land) be transferred to her. The Certificate of Confirmation of Grant indicated the Respondent was to get the whole share of the suit parcel of land while in the Chief's letter, it was indicated Okech Arudhi was to get ½ share and Odhach Arudhi a ½ share of the suit parcel of land . The application was supported vide a consent signed by Lucia Achieng Oswago, Mary Aoko Odhach, Carolyne Anyango Oyugi, James Ngesa Ajuma, and Paul Achieng Okwach.

3. The 1<sup>st</sup> to 3<sup>rd</sup> Appellants herein (Applicants) filed Summons for Revocation of Grant dated 6<sup>th</sup> February 2023 seeking: revocation of the Grant of Letters of Administration intestate issued to Sophia Oga Odhach in respect of the estate of Odhach Arudhi (Deceased); stay any dealings with all that parcel of land known as Uyoma/Ragengni/1658 pending the hearing and determination of the application and the succession of the late Isaka Arudhi Ochaka; and costs of the application.
4. The application was based on the grounds supported by the 1<sup>st</sup> Appellant's affidavit, that: the Applicants are the widow and biological sons of the late James Ooro Arudhi a beneficiary of the Estate of the late Isaka Arudhi Ochaka, father to the late Walter Odhach Arudhi, the late James Ooro Arudhi and the late Okech Arudhi; Grant of Letters of Administration issued on 26<sup>th</sup> November 2021 and confirmed on 3<sup>rd</sup> October 2022 was obtained without full disclosure of the material facts to the Court; the Applicants were excluded from participating in the Succession cause yet the parcel of land Uyoma/Ragengni/1658 subject of the succession is the property of the late Isaka Arudhi Ochaka; the parcel of land was fraudulently registered in the names of the late Walter Odhach Arudhi and the late Okech Arudhi; Oketch Arudhi died on 10<sup>th</sup> October 1942 before the adjudication process in the area began and also before their father Isaka Arudhi Ochaka who died on 12<sup>th</sup> June 1964; the late Odhach Arudhi alias Walter Odhach Arudhi registered the said parcel in his name and that of the late Oketch Arudhi in a bid to disinherit the late James Ooro Arudhi; no prejudice would be suffered by the Respondents since the Applicants have always been ready and willing to share the estate of the late Isaka Arudhi Ochaka that the said Odhach Arudhi alias Walter Odhach Arudhi is entitled to; the Applicants are beneficiaries of the said estate of Isaka Arudhi Ochaka; and it is in the interest of justice that the orders sought are granted.
5. The 1<sup>st</sup> Appellant averred that they filed Succession Cause No. E558/2021 and issued with Letters of Administration on 28<sup>th</sup> March 2022 which is yet to be confirmed; the Chief's letter used to file the said succession cause is not correct as the original letter is dated 23<sup>rd</sup> January 2019; Sophia Oga Odhach had nine children yet they were not mentioned in the Chief's letter dated the December 2020 in the said succession cause, the children being Oyaro Odhach(Deceased), Adem Odhach(Deceased), John Atweng'a Odhach (Deceased), William Odhach Arudhi (Deceased), Apollo Okuyu Odhach alias Apollo Oselu Odhach (Deceased), Mary Aoko Odhach, Caroline Anyango Oyugi, Aketch Odhach (Deceased), Luica Achieng Oswago; the Respondent attended the meeting held on 27<sup>th</sup> August 2015 by the family of the late Isaka Arudhi Ochaka in the presence of the Assistant Chief Ragengni Sub Location where it was agreed on how the said parcel of land was to be divided; Respondent is not eligible to apply for the Grant when there are other beneficiaries to the estate without seeking their consent; no prejudice will be suffered by the Respondent if the said grant issued on 3<sup>rd</sup> October 2022 is revoked; they only got to know about the said Grant when Jacob Owiti Odundo inquired about the said parcel of land as he was interested in purchasing the same and upon conducting a search discovered a caution on the property registered by the late James Ooro Arudhi; Jacob Owiti Odundo gave him a copy of the Certificate of Confirmation of Grant dated 3<sup>rd</sup> October 2022; beneficiaries to the estate as well as those who are the grandson to Odhach Arudhi from his sons John Atwenga Odhach, William Oketch Odhach and Apollo Okuyu Odhach alias Apollo Oselu Odhach to wit: Samuel Otieno Atweng'a Odhach, Omondi Atweng'a; George Otieno Okwach, Bernard Odhiambo Okwach, and John Onyango Okuyu were left out of the said succession; other beneficiaries to the



estate of Isaka Arudhi Ochaka filed Succession Cause No. 131 of 2021 Estate of Okech Arudhi, where the subject property was the suit parcel of land herein, was revoked on 6<sup>th</sup> October 2022 after the Appellants filed an application dated 9<sup>th</sup> September 2022; and it is in the interest of justice that the orders sought are granted and have the proper succession cause filed regarding the estate of the late Isaka Arudhi Ochaka.

6. In opposition, the Respondent filed a replying affidavit sworn on 28<sup>th</sup> February 2023. She averred that: the application is malicious, abuse of court process and an attempt to invite the trial Court to vest itself with jurisdiction it does not have; it has not been demonstrated why the Appellants failed to raise an objection within 30 days mandatory period; after confirmation of grant by the court on 3<sup>rd</sup> October 2022, she proceeded to register the estate of her late husband into her names and certificate of title deed issued upon her by the Land Registrar, therefore the application is overtaken by events, and it is an invitation of this Court to revoke/cancel the said title deed and this Court does not have the jurisdiction; grounds for revocation are purely ELC matters; grounds raised by the Appellants do not meet the threshold for grounds for revocation of grant as envisaged under Section 76 of the Law of Succession Act; the Appellants have not attached anything corroborating their averment that the subject parcel of land belongs to their stated relatives; the Appellants failed to demonstrate to court why James Ooro Arudhi who died in the year 2021 failed to personally initiate any cause of actions in an ELC Court against the Respondent's husband Walter Odhach Arudhi who passed away in the year 2006, while he was still alive; the Appellants in collaboration with the then administrator and other individuals took advantage of her old age of 100 years and sickness and unable to walk or hear properly as seen in their purported letter dated 27<sup>th</sup> August 2015 to intermeddle with her husband's parcel of land, a situation that was illegal, detrimental to her and other beneficiaries of the estate of her husband; James Ooro Arudhi birth certificate has not been tendered in support of the Appellants averments as proof that they were related to her husband or that they were born of the same father/mother; the families/beneficiaries of Walter Odhach Arudhi alias Odhach Arudhi have not been included in the succession cause of the estate of James Ooro Arudhi yet it is alleged they were related to Walter Odhach Arudhi; the issues raised can best be canvassed in an ELC Court; the application is an invitation to the Court to cancel/revoke the Respondent's title deed duly issued by the Land Registrar; and the application should be dismissed with costs to the Respondent.
7. In response, the 1<sup>st</sup> Appellant filed a further affidavit sworn on 13<sup>th</sup> March 2023 wherein he averred that: they had no knowledge that the Respondent had petitioned the Court for grant of letters of administration until the inquiry by one Jacob Owiti Oundo about the parcel of land he was interested in purchasing; the Respondent did not disclose material facts to the court as per the Chief's letter dated 20<sup>th</sup> July 2011 which indicated all the beneficiaries of estate of the late Walter Odhach Arudhi alias Odhach Arudhi; a search of 1<sup>st</sup> March 2023 confirmed the parcel of land had been transferred to Sophia Oga Odhach as per the Certificate of Confirmation of Grant in which she allocated herself the whole parcel to the exclusion of Okech Arudhi's kin and the Appellants; the Title Deed in respect of the parcel of land attached to the replying affidavit shows it was registered in the names of Sophia Oga Odhach and Okech Arudhi contrary to the Certificate of Official Search; a search established that the parcel of land was transferred to Sophia Oga Odhach; the caution registered by James Ooro Arudhi was removed and the transfer effected to the Respondent without notice to the administrators of the estate of James Ooro Arudhi; the registration disinherited all the beneficiaries to the said estate including estate of Okech Arudhi; the Respondent is 91 years as per the National ID and not 100 years as at 2015 when the meeting was held on 27<sup>th</sup> August 2015; the Respondent is the only legal wife of Walter Odhach Arudhi except that other beneficiaries have been left out of the said succession; alleged donee James Ngesa Ajuma who had been intermeddling with the estate since the Respondent is senile with a condition which she has had for a reasonable amount of time; the Respondent cannot consent to or



sign any documents as she cannot even recognize her own children, a condition that is known by her family, the Chief as well as the residents; no evidence has been tendered that the said Power of Attorney was registered at the Lands Office as required by law; the Power of Attorney does not conform to the required form as there is no photograph, copy of the donor's ID or KRA Pin Certificate and/or those of the donor which is a mandatory requirement, thus the same should be struck off the record.

8. In her ruling, the learned trial Magistrate found that the contention by the Respondent that half of the share of 1658 was left by the deceased herein and the other half to his brother Okech Arudhi and by virtue of James Ooro, placing a caution on the parcel of land, were issues that should be resolved through the Civil process in a Civil Court and not Probate Court. According to the learned trial Magistrate, it was not for the trial Court to determine whether the parcel of land 1658 belonged to the deceased Walter Odhach Arudhi or his father Isaka Arudhi Ochaka, or whether there was fraudulent registration or not, or if the parcel of land was held for the family of the said Isaka. The learned trial Magistrate observed that the Applicants annexed a Green Card showing the first entry as that of Walter Odhach Arudhi and Okech Arudhi, and that there was no indication of ownership by one Isaka Arudhi Ochaka. The learned trial Magistrate found no decree from the Civil or Environment and Land Court was presented to show a different determination other than that Uyoma/Ragengni/1658 was owned by the deceased and Okech Arudhi, with each having  $\frac{1}{2}$  a share from 20<sup>th</sup> August 1976, thus the estate free for distribution was the half share of 1658. The learned trial magistrate found that in all the letters from the Chief in support of the application, none of the children claimed to be for the Respondent were listed or appeared in court or filed an affidavit. According to the learned trial Magistrate, since the deceased Walter Odhach Arudhi died in 2006, and a meeting was held in August 2015 to discuss ownership of parcel of land 1658, all the dealings relating to the division of his half of the parcel of land constituted intermeddling. Upon reviewing the DCI Report and the responses, the learned trial Magistrate found that the Respondent committed no fraud regarding the land transmission, as she succeeded only to the share left by her husband.
9. In the upshot, the learned trial Magistrate held that the Appellants failed to prove: the land belonged to one Isaka Arudhi Ochaka; they were dependants on the estate of the deceased pursuant to Section 29 of the Law of Succession Act having described themselves as nephews of the Respondent and deceased and the 3<sup>rd</sup> Appellant as their sister in law by virtue of marriage; the Respondent circumvented the law when filing the Petition; any fraud against the deceased as regards his succession process; to give court valid reasons for it to stop any transactions regarding the entire parcel of land or even share of the deceased; why the court should stop such transactions pending the outcome of the succession of a different person. The application was dismissed with costs to the Respondent for lack of merit.
10. Aggrieved, the Appellants have lodged the present appeal vide the Memorandum of Appeal dated 27<sup>th</sup> July 2023 wherein they contended that:
  1. The learned trial Magistrate erred in law and in fact in failing to appreciate the import of Rule 41(3) of the Probate and Administration Rules when she failed to revoke the grant issued to the Respondent herein.
  2. The learned trial Magistrate erred in law and in fact in disregarding the evidence of the Appellants in support of the position that the said parcel of land Uyoma/Rageng'ni/1658 belonged to the late Isaka Arudhi Ochaka and was fraudulently registered in the names of Odhach Arudhi, alias Walter Odhach Arudhi and Oketch Arudhi, who died before the land adjudication was commenced in the area.
  3. The learned trial Magistrate erred in law and in fact in disregarding the fact that the grant issued in Succession Cause 331 of 2021 distributed the whole of the property to the Respondent



herein, and a search conducted confirmed the same, but upon filing of the Summons for revocation, the particulars of the property changed to half share for the Respondent.

4. The learned trial Magistrate erred in law and in fact in disregarding the fact that other beneficiaries of the estate, the late Isaka Arudhi, who filed succession cause 131 of 2021 which the Hon. Magistrate revoked, have been disinherited together with the Appellant herein.
5. The learned trial Magistrate erred in law and in fact in disregarding the evidence of the Appellants in support of the position that the said parcel of land Uyoma/Rageng'ni/1658 belonged to the late Isaka Arudhi Ochaka.
6. The learned trial Magistrate erred in law and fact in stating that it was not the duty of the court to determine whether there was fraudulent registration on the parcel known as Uyoma/Rageng'ni/1658 and disregarding evidence tendered by the Applicants, yet ultimately ruling that the Applicants failed to prove fraud.
7. The learned trial Magistrate erred in law and in fact in considering the Power of Attorney issued to one James Ngesa, which did not conform to the law.
8. The learned trial Magistrate's decision albeit a discretionary one, was plainly wrong.
11. The appeal was canvassed by way of written submissions. Both parties duly complied.
12. The Appellants submit that they have a beneficial interest in all that parcel of land known as Uyoma/Rageng'ni/1658, having occupied the same for a period of more than 50 years. According to the Appellants, the parcel of land belonged to their grandfather, Isaka Arudhi Ochaka, who left an oral will that the parcel of land should be registered in the names of his two surviving sons, Odhach Arudhi, alias Walter Odhach Arudhi, to represent the 1<sup>st</sup> House and James Ooro Arudhi to represent the 2<sup>nd</sup> House. The Appellants submit that the learned trial Magistrate failed to take into account the agreement made at the area Chief's Office on 27<sup>th</sup> August 2015, which created a constructive trust, and the fact that the DCI Report, after investigation, found that the Respondent, through her nephew James Juma Ngesa, was culpable for conspiracy to defraud. The Appellants submit that they produced a birth certificate for the late Okech Arudhi, indicating that he died on 10<sup>th</sup> October 1942, 32 years before the adjudication began in the area, as the entry made in the adjudication register was created on 24<sup>th</sup> April 1974. It is submitted that the late James's family has been in occupation of the parcel of land and tilling a portion of the land for over 50 years, and that the estate of Okech Arudhi, who is to benefit from the parcel, filed for a grant which was revoked upon the application of the Appellants. The Appellants submit that upon searching, they discovered that the parcel of land was registered in the name of the Respondent. It is submitted that the confirmed Grant indicated the whole of the parcel of land was given to the Respondent. The Appellant raises questions of how the name of Okech Arudhi was included in the title, yet his estate has not undertaken succession. The Appellants assert that the beneficiaries of the estate of Odhach Arudhi were left out in Succession Cause No.331 of 2021, but the Court disregarded that fact on the basis that there were no documents and/or an affidavit of the alleged beneficiaries. According to the Appellants, the Respondent is the paternal aunt and sister in law to the Appellants. The Appellants submit that they lived in harmony with the Respondent during the lifetime of their late father, James Ooro Arudhi, and they only began to have issues after his death in January 2021. It is submitted that during this period, the Respondent's grandson, James Ngesa Ajuma, was never in the area. The Appellants submit that the former Chief East Uyoma Location in the year 2019 made a letter listing all the beneficiaries of the estate after a meeting they had on the 27<sup>th</sup> August 2015, in which all the beneficiaries' share was indicated and thereafter occupied. The Appellants submit that the current Chief J.P. Odongo made another letter, which was used to



commence succession cause No. 331 of 2021, yet he knew there was a letter made previously by the then Chief. The Appellants submit that the trial Court had a duty to determine the issue of fraud as the said evidence was adduced to assist the Court in revoking the Grant, the Respondent having concealed material facts from the Court that there were other beneficiaries of the said parcel of land. According to the Appellants, at the time of adjudication, Okech Arudhi was not present as he had died about 30 years prior. It is submitted that the Respondent failed to inform the Court of the meeting held on 27<sup>th</sup> August 2015, where each entitled beneficiary was given a share of the parcel of land and that the minutes of the meeting were attached thereto. According to the Appellants, the registration disinherited other beneficiaries of the estate. The Appellants submit that the Confirmed Grant issued the whole parcel to the Respondent, but the title deed issued allegedly on 8<sup>th</sup> February 2023 indicated a half share to the Respondent and a half share to the late Okech Arudhi. The Appellants submit that the Power of Attorney produced by James Ngesa Ajuma did not conform to the requirements as set out by the law. It is submitted that the Respondent did not have the capacity to issue the same, as she is elderly and can barely recognize her children. According to the Appellants, James Ngesa Ajuma would prepare the said documents and visit the Respondent to fix her thumbprint, yet the Respondent could not understand the import of such attestation. It is submitted that James Ngesa has sold several portions of the parcel of land to the detriment of the Respondent as well as other beneficiaries of the said estate.

13. The Respondent submits that she followed the due process of law while administering the estate of her late husband, Walter Odhach Arudhi. According to the respondent, there is no indication in the registry records that the parcel of land belongs to the late Isaka Ochaka Arudhi. The Respondent asserts that the Appellants claim to be dependent on the estate of the late Walter Odhach, the initial owner of a half share of the parcel of land, without attachments of documentary evidence, like green cards and/or an official search of the parcel of land. It is submitted that there is nothing substantial attached to show the Appellant's father, James Ooro Arudhi, was the proprietor of the suit estate. She asserts that with respect to the Certificate of Confirmation of Grant, she only succeeded the half share of the estate of Walter Odhach Arudhi, with the other half share still indicated in the names of Okech Arudhi, who the Appellants are not dependents of the estate. According to the Respondent, Okech Arudhi's half share is still indicated in the title deed for the parcel of land, and his family is still alive; thus, the Appellants lack the locus standi to litigate on their behalf unless they have a formal authority from the Okech Arudhi family. The Respondent submits that the Appellants failed to prove they are dependents of the estate of Walter Odhach Arudhi within the terms of Section 29 of the *Law of Succession Act*. According to the Respondent, the grounds for revocation under Section 76 were not proved; thus, the learned trial Magistrate did not err in law in failing to revoke the grant issued to the Respondent. The Respondent submits that the certified copy of the green card, official search, original title deed, and the Chief's letter confirmed that the parcel of land was registered under Walter Odhach Arudhi and Okech Arudhi with each to have a half share and not Isaka Ochaka Arudhi. According to the Respondent, when the Appellants aver that the late Walter Odhach Arudhi fraudulently registered the parcel of land in his name to the detriment of James Ooro Arudhi, their father, this is purely an ELC matter that ought to be addressed by the Environment and Land Court (ELC) with proper jurisdiction to do so, and not this Court. It is submitted that most of the grounds raised by the Appellants are purely ELC issues which can only be addressed by the ELC. The Respondent submits that the Appellants ought to have instituted a criminal case against Walter Odhach Arudhi before his demise for fraud allegations in the year 2006, but they have not illustrated why they did not do so. The Respondent asserts that she is the one who has been signing the documents and not James Ngesa Ajuma, and that she donated the Power of Attorney due to her sickness, being unable to walk, causing her to be in and out of the hospital, thus the sole work of James Ngesa Ajuma has been to attend the court proceedings. According to the Respondent, James Ngesa Ajuma is a dependent of the estate of the deceased, whom the Appellants are seeking revocation of its Grant, and therefore, as an Interested Party, nothing was illegal for him



to attend court and follow the proceedings and take directives of the trial Court and this Court. The Respondent urges this Court to dismiss this appeal with costs.

### Determination

14. I have considered the appeal in light of the evidence on record and written submissions filed on behalf of the parties herein.
15. The dispute between the parties herein is in respect of the suit parcel of land known as Uyoma/Ragengni/1658. The Appellants contend that the parcel of land belongs to their grandfather, Isaka Arudhi Ochaka. The Appellants contend the parcel of land was fraudulently registered in the names of the late Walter Odhach Arudhi and the late Okech Arudhi in a bid to disinherit their late father, James Ooro Arudhi. On her part, the Respondent claims that she succeeded the half share of the estate of Walter Odhach Arudhi, her husband, with the other half share being for the late Okech Arudhi and not Isaka Arudhi Ochaka. The Respondent is contesting the jurisdiction of this Court in respect of the grounds of appeal enumerated in the Memorandum of Appeal. According to the Respondent, when the Appellants aver that the late Walter Odhach Arudhi fraudulently registered the parcel of land in his name to the detriment of James Ooro Arudhi, their father, this is purely an ELC matter that ought to be addressed by the Environment and Land Court(ELC) with proper jurisdiction to do so, and not this Court. The Respondent submits that most of the grounds raised by the Appellants are purely ELC issues which can only be addressed by the ELC.
16. The learned trial Magistrate found the Appellants had failed to prove that the land belonged to one Isaka Arudhi Ochaka. The learned trial Magistrate observed that the Applicants annexed a Green Card showing the first entry as that of Walter Odhach Arudhi and Okech Arudhi, and that there was no indication of ownership by one Isaka Arudhi Ochaka. According to the learned trial Magistrate, since the deceased Walter Odhach Arudhi died in 2006, and a meeting was held in August 2015 to discuss ownership of parcel of land 1658, all the dealings relating to the division of his half of the parcel of land constituted intermeddling. In a nutshell, the suit parcel of land belonged to Walter Odhach Arudhi and Okech Arudhi, each with a half share.
17. A question of jurisdiction of this Court has been raised by the Respondent; thus, the duty of this Court in the first instance is to determine whether it has the requisite jurisdiction. In her ruling, the learned trial Magistrate noted that it was not for the trial Court to determine whether the parcel of land 1658 belonged to the deceased Walter Odhach Arudhi or his father Isaka Arudhi Ochaka, or whether there was fraudulent registration or not, or if the parcel of land was held for the family of the said Isaka.
18. It is important to restate the words of Nyarangi J.A. in *The Owners of Motor Vessel "Lilian S" –vs- Caltex Kenya Ltd (1989) K.L.R* that;  

“ Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of Law downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.”
19. In the Supreme Court decision in *Samuel Kamau Macharia & Another v KCB & 2 Others*, Application No. 2 of 2011, the Court held that:  

“ a Court's jurisdiction flows from either *the Constitution* or Legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the Constitution* or both or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it



by law.....where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

20. In the case of Joseph Muthee Kamau & Another vs David Mwangi Gichure & Another (2013) eKLR the court held:

“When a suit has been filed in a court without jurisdiction, it is a nullity.....We hold that jurisdiction cannot be conferred at the time of delivery of judgment. Jurisdiction does not operate retroactively. Jurisdiction must exist at the time of filing suit or latest, at the commencement of the hearing.”

21. The establishment and functions of this court are well illuminated under Article 165 of *the Constitution*, 2010.

22. Article 165(5) (b) provides as follows:

The High Court shall not have jurisdiction in respect of matters— (a) ..... or (b) falling within the jurisdiction of the courts contemplated in Article 162 (2).

23. Article 162(2) provides as follows:

Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to— (a) employment and labour relations; and (b) the environment and the use and occupation of, and title to, land.

24. The jurisdiction under Article 162(2) (b) lies within the purview of the Environment and Land Court, which is also set out under Section 13 of the *Environment and Land Court Act* and Section 150 of the *Land Act*.

25. Section 13 provides as follows:

#### Jurisdiction of the Court

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to the environment and land.
- (2) In exercise of its jurisdiction under Article 162(2) (b) of *the Constitution*, the Court shall have power to hear and determine disputes –
  - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals, and other natural resources;
  - (b) relating to compulsory acquisition of land;
  - (c) relating to land administration and management;
  - (d) relating to public, private, and community land and contracts, choses in action, or other instruments granting any enforceable interests in land; and
  - (e) any other dispute relating to the environment and land.”

26. Section 150 provides as follows:

#### Jurisdiction of the Environment and Land Court



The Environment and Land Court is established in the *Environment and Land Court Act*, and the subordinate courts, as empowered by any written law, shall have jurisdiction to hear and determine disputes, actions, and proceedings concerning land under this Act.”

27. The Appellants’ contention that the learned trial Magistrate failed to appreciate the import of Rule 41(3) of the Probate and Administration Rules, raises a question of jurisdiction of the trial Court as the issue of ownership of the suit parcel of land was germane in the summons seeking revocation of the Grant. It is not in dispute that the Certificate of Confirmation of Grant indicates the whole share was to go to the Respondent but a search from the Lands Office and the title deed show the suit parcel of land was to be shared between Walter Odhach Arudhi and Okech Arudhi.

28. The Rule provides as follows –

Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or property comprising it to abide the determination of the question in proceedings under ... the Civil Procedure Rules ...’

29. In the matter of the estate of Alice Mumbua Mutua (deceased)(2017)eKLR , Musyoka J held that:

“26... The *Law of Succession Act*, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and the distribution of the assets.

27. Disputes of course do arise in the process. The provisions of the *Law of Succession Act* and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the *Law of Succession Act* and the Probate and Administration Rules. Such have to be resolved through the structures created by the *Civil Procedure Act* and Rules, which have elaborate rules on suits by and against executors and administrators.”

30. Regarding the import of Rule 41(3), J.R. Karanja In re Estate of Teresia Jemaiyo Bitok (Deceased) (Probate & Administration 11 of 2021) [2024] KEHC 8819 (KLR) (17 July 2024) (Ruling) held that:

“This court’s opinion is that the foregoing provision provides a window for stay of proceedings in a succession cause, but only with regard to the part of the estate property which is in dispute. In that way, the entire proceedings would not be subjected to an order of stay if it is granted regard being given to the fact that stay of proceedings is a matter of judicial discretion which is normally exercised in the interest of justice taking into consideration



the need for expeditious disposal of cases, whether the Applicant has an arguable case and whether the application has been brought expeditiously. As a matter of necessity, the estate property must always be properly identified, and where issues of ownership of the estate property are raised in a succession cause, they ought to be resolved before such property is distributed. Such issues must, however, be “prima facie” valid, and this is the more reason why Rule 41(3) of the Probate and Administration Rules exists.

31. The Appellants and Respondent separately lodged Petitions seeking to be issued with Letters of Administration intestate in the estate of Isaka Arudhi Ochaka and Walter Odhach Arudhi, respectively, in respect of the same parcel of land herein. The Appellants contend that they did not consent to the Petition by Respondent, while the Respondent contends that she was not involved in the Petition filed by the Appellants. The court notes that no explanation had been given by the Respondent as to how the information in the Certificate of Confirmation of Grant issued on 3<sup>rd</sup> October 2022, in particular, on the share to be distributed, appeared differently in the title deed and official search. The Respondent is to get the whole share in the estate of Walter Odhach Arudhi, but in the title deed, it was indicated that she was to get ½ share and Okech Arudhi ½ share. Though the Appellants never tendered any title document to show their late grandfather, Isaka Arudhi Ochaka, the Appellants attached stamped minutes by the Assistant Chief Ragengni Sub location, which show that the Respondent was present and an agreement was reached on how the suit parcel of land was to be subdivided. Though the Appellants did not attach birth certificates to show that James Ooro Arudhi was the brother of Walter Odhach Arudhi, as averred by the Respondent, an official search dated 30<sup>th</sup> January 2023 did show that there was a caution in favour of James Ooro Arudhi.
32. The Appellants' summons for revocation of the Grant was premised on grounds inter alia that the parcel of land was fraudulently registered in the names of the late Walter Odhach Arudhi and late Okech Arudhi. Having found the information in the Certificate of Confirmation of Grant as to ownership differed from the entries in the Title Deed dated 8<sup>th</sup> February 2023, the Court finds that ownership was in contention; thus, the proper forum to adjudicate this appeal would be the Environment and Land Court pursuant to Section 16A of the *Environment and Land Court Act*.
33. In *Kenya Ports Authority vs Modern Holding [EA] Limited [2017] eKLR*, it was held as follows:-

“We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage and even on appeal, though it is always prudent to raise it as soon as the occasion arises. It can be raised at any time, in any manner, even for the first time on appeal, or even viva voce, and indeed, even by the court itself, provided that where the court raises it suo moto, parties are to be accorded the opportunity to be heard.”
34. With that in mind, this Court is bereft of jurisdiction to hear and determine this appeal as filed by the Appellants. The appropriate forum is the Environment and Land Court where the Appellants can ventilate their grievances regarding the ownership of Parcel Uyoma/Ragengni/1658.
35. In view of the foregoing observations, it is my finding that the appeal herein lacks merit for want of jurisdiction by this court. The same is dismissed. Each party to bear their own costs.

It is so ordered.

**DATED, SIGNED, AND DELIVERED AT SIAYA THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**D. K. KEMEI**

**JUDGE**



In the presence of:

M/s Odero.....for Appellants

N/A Sophia Oga Odhach...for Respondent (represented by Paul Okwach – a relative)

Okumu.....Court Assistant

