Omollo v Olaka & another (Civil Appeal E020 of 2023)
[2025] KEHC 12809 (KLR) (19 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12809 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT SIAYA

CIVIL APPEAL E020 OF 2023

DK KEMEI, J

SEPTEMBER 19, 2025

BETWEEN

GEOFREY ODHIAMBO OMOLLO ..... APPELLANT

AND

KEVIN OTIENO OLAKA ..... 1ST RESPONDENT

WILLIAM OKONGO ONYANGO ..... 2ND RESPONDENT

(Being an appeal from the Ruling of Hon C. Agutu (S.R.M) delivered by Hon. P.Nandi on the 14th August 2023 in Ukwala Succession cause No. 321 of 2019 Re Estate of Athiende Olaka alias Olaka Athiende)

JUDGMENT

1. This appeal emanates from the ruling dated 14/8/2023 Hon. C. Agutu in which the honorable trial magistrate determined/ruled as follows:

> " The application before court for determination is dated 19th February 2021. Both Counsels have put in their submissions. The complexity of the matter is that three deceased patriarchs bear the name Athiende Olaka with no clarification given as to their first or Christian names. The court has perused both submissions and orders that:
>
> - The grant of letters of administration intestate in this matter issued on 6th August 2020 to the Petitioners/respondents herein be revoked.
>
> - That each party to bear their own costs."

2. Aggrieved by the said ruling, the Appellant has appealed to this court on the following grounds:

i. That the trial magistrate erred in law by determining the application vide summons for revocation of grant dated 19th February 2021 when she lacked the jurisdiction to entertain the same as drafted.

ii. The trial magistrate erred in law and fact by failing to analyze the facts as pleaded, the testimonies given, the evidence adduced and the applicable law, identify the issues for determination, make findings and give holdings thereon and reasons for the said holdings.

iii. The trial magistrate erred in law and fact by failing to find and hold that the deceased herein was ascertained as Samuel Athiende Olaka,and instead, erroneously revoked the grant of letters of administration issued to the Appellant on the unfounded assumption that the deceased herein is unascertained and /or was not ascertained.

iv. The trial magistrate erred in law and fact by failing to find and hold that the estate of the deceased herein was indeed ascertained as the larger portion of L.R. No. East Ugenya Ligala/552, and that the grant of the letters of administration issued to the Appellant was exclusively in relation and limited to the said larger portion only.

v. The trial magistrate erred in law and fact by failing to find and hold that the 1st Respondent's claim relates only to the ascertained smaller portion of L.R. No. East Ugenya Ligala/552 to which the grant of letters of administration issued to the Appellant does not relate to, as expressly admitted by the 1st Respondent.

vi. The trial magistrate erred in law and fact by revoking the grant of letters of administration issued to the Appellant without evidence of any interest adverse to the estate of the deceased herein.

vii. The trial magistrate erred in law and fact by failing to find and hold that the Respondents had no interest in the estate of the deceased herein notwithstanding the 1st Respondent's express admission of that fact.

viii. The trial magistrate erred in law and fact by revoking the grant of letters of administration issued to the Appellant notwithstanding the 1st Respondent's express admission that the Respondents have no interest in the estate of the deceased herein.

ix. The trial magistrate erred in law and fact by failing to find and hold that the Respondents lacked locus standi to seek revocation of the grant of the letters of administration in respect to the deceased herein.

x. The trial magistrate erred in law and fact in failing to lift the caveat lodged by the 2nd Respondent over L.R. No. East Ugenya Ligala/552, apportion whereof comprises the estate of the deceased.

3. Being a first appeal, i have a duty to appreciate the entire evidence by subjecting it to a fresh exhaustive scrutiny and arrive at my own independent conclusion. I have to bear in mind that i did not have the opportunity to hear or see the witnesses and must give an allowance for that. (See Selle & Another v Associated Motor Boat Company Ltd & others [1968] 1EA 123; Peters v. Sunday Post Ltd(1958)EA 424;Mary Wanjiku Gachigi v Ruth Muthoni Kamau(Civil Appeal No. 172 of 2000.(Tunoi, Bosire & Owuor JJA);Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another Civil Appeal No. 345 of 2000.(Okubasi, Githinji & Waki JJA).

4. At the lower court, the objectors' case proceeded as the plaintiff's case and called one witness to testify while the Petitioner's case had five witnesses.

5. In a nutshell the objectors' case was that they filed an objection in the belief that the grant of letters of administration related to their father, one Daniel Athiende Olaka. On cross-examination, the Respondent/objector's witness stated that if the grant did not concern the estate of Daniel Athiende Olaka, then they did not have a problem with it. They agreed that the borne of contention was on the title number L.R. No. East Ugenya Ligala/552 registered in the names of Athiende Olaka and Angil Olaka.

6. On the other hand, the Appellant/Petitioner's side adduced evidence inter alia; that the parties herein belong to a large extended family where three deceased members shared the name Olaka Athiende; that first one Samuel Athiende Olaka- the deceased subject hereof-was the Appellant/Petitioner's elder brother and that the second, Daniel Athiende Olaka was the 1st Objector's husband while the third one was a patriarch who predeceased both whose name was Samuel Athiende Olaka, after whom the Appellant/Petitioner's brother (the deceased herein) was named; that it was the Appellant's evidence at trial that the suit property L.R. No. East Ugenya /Ligala/552 is registered in the joint names of "Olaka Athiende" and "Angil Olaka "and that the proprietors' Christian names are not captured in the title; that the Appellant contended that the Athiende Olaka in the title is his brother Samuel Athiende Olaka alias Athiende Olaka and went on to adduce evidence that the grant of letters of administration related to the estate of his elder brother Samuel Athiende Olaka who died without a child at the age of 35 years and that he was appointed the administrator thereof and a grant issued to him on 16th August 2020 and that he filed an Amended summons of confirmation of grant on 22/3/2022 which was pending hearing; that the Appellant adduced further evidence through exhibits 1-24 in the order they appear on the list of documents attached to his replying affidavit dated 30th August 2021 and filed on 31st August 2022 which was adopted as his evidence in chief; that the death certificate of his elder biological brother Samuel Athiende Olaka was annexed at page 27 of the bundle of documents; that Daniel Athiende Olaka was his grandfather's cousin since Afwande Ojoo was his grandfather; that the suit property L.R. No. East Ugenya Ligala/552 belonged to his grandfather who bequeathed his wife Leonida Maroo Afwande who then bequeathed the suit land to the Appellant's elder brother Samuel Athiende Olaka-(the deceased herein); that his family tree is produced as exhibit 1 at page 26 of the bundle of documents; that Leonida, the grandmother to the Petitioner gave Juliana, the grandmother to the 2nd objector, seven footsteps in breath, a sketch of the same produced as exhibit 11 found at page 36 of the bundle of documents; that Juliana wrote her son's name Angil Olaka which was placed on the strip of land; that Athiende Olaka alias Samuel Athiende Olaka was to have the bigger portion of the suit land; that he was issued with a grant for the larger portion which formed his brother's estate; that he does not claim and is not interested in the smaller portion; that William Okongo (interested party) is a neighbor who was interested in the portion of the petitioner but they refunded the money and that an mpesa statement was produced as exhibit 21 found at page 53-56 of the bundle of documents; that the 1st Objector put a caution on the suit property; that the court helps him remove the caution and restrictions.

7. Besides the Petitioner, four other witnesses testified for the petitioner's case stating that they witnessed Leonida bequeath the larger portion to the Petitioner's elder brother Samuel Athiende Olaka and the smaller strip to Juliana. That to date, the family of the Petitioner have been using the larger partition while the family of Juliana has been using the smaller portion without any quarrels.

8. The appeal was canvassed by written submissions. It is only the Appellant who complied.

9. The Appellant has made very concise submissions to wit that the ruling of the trial magistrate was defective for failure to contain statement of the case, points for determination, the decision thereon and

the reasons for the decision. The Appellant relied on a myriad of authorities including South Nyanza Sugar Co. Ltd v. Omwando [2011] eKLR where Asike-Makhandia J (as he then was) held as follows:

> "I do not think that, the judgment as crafted by the learned magistrate really qualifies for a valid judgment. Ordinarily and in law a judgment should deal with issues raised and should not be scanty. A judgment must comply with the mandatory provisions of Order 21 rule 4 of the Civil Procedure Rules which provide that a judgment in a defended suit shall contain a concise statement of the case, points for determination, the decision thereon and the reasons for such decision. In the circumstances of this case, it cannot be said from the extract of the judgment I have set out above the trial magistrate complied with this mandatory provision of the law. The trial magistrate by not setting out the points for determination and reasons for his decision contrary to the aforesaid provisions of the law abdicated his judicial responsibility. As a judicial officer he was under duty to state in writing the reasons which made him arrive at a particular decision on liability and the apportionment thereof. It could not have been done in vacuum. Any judgment that does not contain the aforesaid essential ingredients is not a judgment and an appellate court will frown at such a judgment and indeed impugned it as I hereby do. This ground alone would have been sufficient to dispose the appeal."

10. It was likewise the Appellant's submissions that Samuel Athiende Olaka, the deceased herein, was his biological elder brother. He had called witnesses at the trial court who testified that they knew and interacted with Samuel Athiende Olaka prior to his demise.

11. Finally, the Appellant submitted that the Objectors merely denied knowing Samuel, but they did not rebut the evidence of Samuel's eye witnesses. That in any event, the 2nd Objector/1st Respondent approximately 36 years old was barely 4 years old when Samuel died in 1992 and therefore could not have been in a position to appreciate anything as a child.

12. I have considered the record, the proceedings, affidavits submissions and the authorities relied on. I find the issue for determination is whether the appeal has merit.

13. Order 21, rule 4 of the Civil Procedure Rules stipulates that Judgments in defended suits shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

14. In the case of South Nyanza Sugar Co. Ltd v. Omwando [2011] eKLR (Supra) Makhandia J (as he then was) held that failure to comply with order 21 rule 4 of the Civil Procedure Rules by the trial magistrate is a ground enough to allow an appeal and i totally agree. The learned judge held as follows:

> "I do not think that, the judgment as crafted by the learned magistrate really qualifies for a valid judgment. Ordinarily and in law a judgment should deal with issues raised and should not be scanty. A judgment must comply with the mandatory provisions of Order 21 rule 4 of the Civil Procedure Rules which provide that a judgment in a defended suit shall contain a concise statement of the case, points for determination, the decision thereon and the reasons for such decision. In the circumstances of this case, it cannot be said from the extract of the judgment I have set out above the trial magistrate complied with this mandatory provision of the law. The trial magistrate by not setting out the points for determination and reasons for his decision contrary to the aforesaid provisions of the law abdicated his judicial responsibility. As a judicial officer he was under duty to state in writing the reasons which made him arrive at a particular decision on liability and the apportionment thereof. It could not have been done in vacuum. Any judgment that does not contain the aforesaid

essential ingredients is not a judgment and an appellate court will frown at such a judgment and indeed impugned it as I hereby do. This ground alone would have been sufficient to dispose the appeal."

15. The Appellant through his very elaborate evidence during trial and his submissions on appeal has showed and explained to this court that the name Athiende Olaka that appeared on the title of the suit property is that of his elder brother Samuel Athiende Olaka –the deceased herein. The objectors on the other hand did not adduce evidence to rebut the overwhelming evidence of the Petitioner. In the same breath i find that on a balance of probability, the Petitioner proved his case. It is instructive that the Appellant and his witnesses gave a full description of what was obtaining physically on the ground and thus their evidence was not theoretical and with conjectures. Even if there was a common name used by the deceased persons, the Objectors were required to present the physical occupation of the parcels and ought not to be allowed to use common names to acquire properties that did not belong to them. Indeed, the Objectors attempted to use the confusion in the nomenclature to interfere with the Appellant's lawful possession and distribution of his late relative's parcel of land. The Objectors did not come out as honest and candid in their quest to acquire land whose owner's name resembled that of their relative. If indeed the Objectors wanted the court to believe them, then they ought to have called officials from the lands offices who would then shed light as to who owned the land in dispute and which could then be backed up by the evidence of those residing thereon at the time of the enquiry. It is my view that the Objectors were trying to stretch their luck but did not succeed. I find that the entire objection raised by the Objectors did not meet the threshold of proof and thus the finding by the learned trial magistrate was in error and must be interfered with.

16. In view of the foregoing observations, it is my finding that the Appellant's appeal has merit. The same is allowed. The orders by the learned trial magistrate dated 14/8/2023 are hereby set aside and substituted with an order dismissing the Objectors' summons for revocation of grant dated 19/2/2021 with no order as to costs. As parties are relatives, i order each to bear their own costs of this appeal

    Orders accordingly.

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

D. KEMEI

JUDGE

In the presence of:

Awuor.....for Appellant

N/A Odhiambo Odera.....for Respondents

N/A.....for Interested Party

Okumu .....Court Assistant