



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ogal & another v Owenje (Civil Appeal E009 of 2023)  
[2024] KEHC 5336 (KLR) (17 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5336 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E009 OF 2023  
RE ABURILI, J  
MAY 17, 2024**

**BETWEEN**

**FRANCIS OBIERO OGAL ..... 1<sup>ST</sup> APPELLANT**

**KENNETH OTIENO OGUTU ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JAFETH OUMA OWENJE ..... RESPONDENT**

*(An appeal arising out of the Judgment of the Honourable J.K. Mukhwana in the Principal Magistrate's Court at Nyando delivered on the 9th August 2023 in Nyando MCSUCC No. E223 of 2022))*

**JUDGMENT**

**Introduction**

1. The respondent Jafeth Ouma Owenje is the brother to the deceased Zakayo Ondoro Owenje whose estate is the subject of these proceedings. Vide chamber summons dated 11<sup>th</sup> November 2022, he sought orders of revocation of grant of representation issued to the appellants' herein Francis Obiero Ogai and Kenneth Otieno Ogutu to administer the estate of the deceased Zakayo Ondoro Owenje on the 20<sup>th</sup> July 2022 and the subsequent certificate of confirmation of grant issued on the 20<sup>th</sup> August 2022 by the lower court.
2. The respondent further sought orders that upon revocation of the said grant, the grant and Certificate of confirmation of grant of representation in the deceased's estate be issued to him.
3. The respondent averred that he was the closest surviving relative of the deceased with prior right to grant of representation to the deceased's estate and that the appellants without any notice to him and with the intention to disinherit him of the only asset of the deceased's estate Land Parcel No. Kisumu/ East Koguta/1572, petitioned for grant of representation and subsequently had the grant confirmed.



4. It was the respondent's further averment that the appellants while applying for the grant, they fraudulently forged his signature on the consent form while making the application for grant of representation and further that during confirmation of grant of representation, the appellants misled the court into issuing confirmation of grant prior to the lapse of the statutory 6 months by stating that they were female adults and buyers whose homes were destroyed by the floods and that they were paralyzed and the deceased's land was the only source of income to the family.
5. In response, the appellants jointly swore a replying affidavit on the 2nd November 2022 that they are jointly registered proprietors of the land parcel No. Kisumu/Koguta East/1572 having purchased it from their cousin, the deceased, on the 1.9.1993 for Kshs.5,000 and that they had since been in occupation of the suit land. It was their contention in deposition that prior to applying for grant of letters of administration, the respondent had demanded for Kshs. 120,000 in order to allow the process to proceed, which money was paid to him by Daniel Otieno Oketch, the appellant's family friend
6. They further deposed that upon the deceased's demise on the 27.7.2003, the deceased had not married and neither did he have any child hence they, the appellants, were his closest relatives being the deceased's cousin and nephew respectively. It was the appellants' case that the respondent was a fraudster whose intention was to defraud the respondent and that his intention was to detain land forcibly hence he should be investigated.
7. In his judgement, the trial magistrate found that the appellants did not disclose to the court that the deceased had a brother and sister besides them as relatives and this was a material fact that should not have been kept from the court as the respondent ranked in priority in order of consanguinity to the deceased's estate.
8. Aggrieved by the said ruling, the appellants filed a memorandum of appeal dated 8<sup>th</sup> September 2023 raising the following grounds of appeal:
  - a. The learned trial magistrate erred in law and fact in revoking the grant of letters when there was no grounds/evidence adduced by the applicant/objector to warrant the revocation/nullification of the grant.
  - b. The learned trial magistrate erred in law and in fact in failing to appreciate that the petitioners/administrators were purchasers, beneficial owners and occupiers of the only asset of the estate of the deceased hence entitled not only to have the property transmitted to and registered in their names but also administer the deceased's estate.
  - c. The learned trial magistrate erred in law and in fact by failing to appreciate that the administrator's interests as persons not only in possession of the only asset of the deceased and also as buyers rank higher than interest of the applicant/objector.
  - d. The findings of the learned trial magistrate goes against the weight of the material placed before court.
9. The appellant filed written submissions to canvass the appeal herein while the respondent indicated that he would rely on the submissions filed in the lower court in support of his case.

### **The Appellants' Submissions**

10. The appellants submitted that they disclosed that the Respondent/Objector together with Ruth Anyango were the surviving brother and sister to the deceased, respectively whereas they were the cousin and nephew respectively of the deceased as was borne out by the Chief's letter dated 16<sup>th</sup> May,



2022 which is on record and thus the Learned Trial Magistrate was in error in finding and holding that there was material non-disclosure or concealment of these basic facts.

11. It was submitted that the Respondent/Objector did not prove that his signature was forged and that the Learned Trial Magistrate's finding on this aspect was not based on any evidence at all.
12. The appellants submitted that the circumstances and the nature of the deceased's estate are such that there is need to ascertain the status of the only asset of the estate available and the rightful beneficiaries thereof and that even if the grant had been properly revoked, the Learned Trial Magistrate should have ordered that the process was to start afresh.

### **The Respondent's Submissions.**

13. The respondent relied on his submissions made before the trial court that he was the closest surviving relative of the deceased with prior right to grant of representation to the deceased's estate and further that the appellants while applying for the grant fraudulently forged his signature on the consent form while making the application for grant of representation and further that during confirmation of grant of representation, the appellants misled the court into issuing confirmation of grant prior to the lapse of the statutory 6 months by stating that they were female adults and buyers whose homes were destroyed by the floods and that they were paralyzed and the deceased's land was the only source of income to the family.
14. It was further submitted before the trial court that the appellants had forged the respondent's signature on the consent which matter had been reported at Katito Police Station via OB No. 10/29/08/2022 at 1400hrs, a fact which had not been disputed by the appellants.
15. The respondents further submitted that even if the appellants were purchasers, they had no right to commence succession in the deceased's estate as there was no citation and leave granted by the court.

### **Analysis and Determination**

16. I have considered the evidential material placed before the trial court, the grounds of appeal herein and submissions for and against this appeal. This being a first appellate court, it is expected reassess and re-evaluate the evidence vis-à-vis the applicable law and legal principles and arrive at its own conclusion – see *Abok James Odera & Associates v John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR.
17. Upon reviewing the Memorandum of Appeal, the Submissions by counsel and the material placed before the Nyando Senior Principal Magistrate's Court Succession Cause record, I find that the only issue for determination is whether the trial court erred in revoking the grant of letters of administration issued to the appellants.
18. Revocation of grants is provided for under section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya. Rules 44 and 73 of the Probate and Administration Rules are also relevant. Section 76 provides that:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any first applicant or of its own motion—

- (a) that the proceedings to obtain the grant were 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 means 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;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
  - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
  - (ii) to proceed diligently with the administration of the estate; or
  - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.”

19. In *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] eKLR (Achode J) discussed circumstances under which a grant can be revoked as follows and I concur that:

“ 11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of a first applicant or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

20. It is not in doubt that the appellants herein presented themselves before the trial court as the sole heirs of the deceased’s estate. The Sigoti Location Chief’s letter dated 16<sup>th</sup> May, 2022 listed the respondent and his sister Ruth Ayango yes, but the appellants were stated to be persons who had expressed interest in the deceased’s estate as cousin and uncle respectively.

21. It is therefore also not in dispute that the respondent is the brother to the deceased while the appellants are the cousins and nephew of the deceased respectively. It is also not in dispute that the appellants have not defended the contention that they never sought and obtained consent of the respondent and neither did they cite him to take out letters of administration in respect of his late brother’s estate, so that they could claim their legitimate interest as purchasers of the sole property in the estate of the deceased.

22. For the aforesaid reasons, therefore, the grant as issued and confirmed in favour of the appellants is amenable for revocation. This is so because Rule 26 of the Probate and Administration Rules provides as follows:

“ 26(1). Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.



(2). An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equally or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.”

23. Rule 26(1) (2) applies where representation is sought by a person with equal or lesser right to others who have not petitioned like him. In such cases, the intending petitioner is expected to notify all such persons with superior or equal entitlement. The individuals with superior or equal entitlement who have not applied for a grant of representation would signify that they had been notified of the petition by either executing their renunciation of their right to administration or by signing consents in Forms 38 or 39, depending on whether the deceased died testate or intestate.
24. Where a consent or renunciation is not forthcoming, then the petitioner should file an affidavit, ostensibly addressing these issues, that is, by indicating that notice was given to all the other persons equally entitled and with prior right, and perhaps demonstrating that such persons had failed or refused to renounce their rights or to sign consents to allow him to go ahead with his petition.
25. The appellants in the instant Cause relied on a consent alleged to have been signed by the respondent and his sister Ruth Anyango on Form 38. However, the respondent asserted that his signature was forged. The respondent produced in evidence an OB report made to the police alleging that his signature had been forged although no investigations results were availed.
26. I Have examined the said Consent Form 38 and all other documents filed together with the petition and make the following observations:
  - a. whereas the Form 38 from a casual look at it requires that it be commissioned, the one filed and which has initials of the persons allegedly consenting was never commissioned and neither was it dated hence it is not known when and where and or before whom it was signed. Apart from the initials J.OO and R.A appended as signatures, the national identity cards of the persons allegedly consenting were never provided to the court yet the identity card copies of other persons such as guarantors were filed.
  - b. P&A 5 which is an affidavit form in support of the petition which lists the beneficiaries and assets of the estate was never commissioned and or signed under oath therefore it cannot be called an affidavit even if it listed the respondent and his sister as the beneficiaries of the estate of their late brother, which listing was merely cosmetic identification.
  - c. P&A 12 the affidavit of justification of proposed administrator was never commissioned or taken under oath hence defective.
  - d. The main petition which is P&A 80 as filed was only signed by the appellants with no one witnessing it as the persons listed as witnessing the signatures, namely, Mary Auma Sewe and Carolyne Awino Ouma never signed on the petition witnessing the appellants’ signatures.
27. The *Law of Succession Act* is very specific on what forms to be filed in petitioning for grant whether testate or intestate, which forms are also provided for at the end of the Act.
28. In addition, the Act is supplemented by the Probate and Administration Rules. Rule 7 of the P&A Rules elaborately provides as follows:

“7. Application for grant: general provisions



(1)

Subject to the provisions of subrule (9), where an applicant seeks a grant of representation to the estate of a deceased person to whose estate no grant or no grant other than one under section 49 or a limited grant under section 67 of the Act has been made, the application shall be by petition in the appropriate Form supported by an affidavit in one of Forms 3 to 6 as appropriate containing, so far as they may be within the knowledge of the applicant, the following particulars —

(a)	the full names of the deceased;
(b)	the date and place of his death, his last known place of residence and his domicile at date of death;



(c) whether he died testate or intestate and, if testate, whether his last will was written or oral, and the place where and the date upon which it was made;

(d) a full inventory of all his assets and liabilities at the date of his death (including such, if any, as may have arisen or become known since that date) together with an



	<p>estimate of the value of his assets movable and immovable and his liabilities;</p>
	<p>(e) in cases of total or partial intestacy —          (i) the names, addresses, marital state and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child, like</p>



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(f) for the purposes of determining the degree of consanguinity reference shall be made to the table set out in the Second Schedule;

(i) the names, addresses, marital state and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child,



		<p>like particulars of such person or persons who would succeed in accordance with section 39(1) of the Act;</p>	
	(ii)		<p>whether any and if so which of those persons is under the age of eighteen years or is suffering from any mental disorder, and, if so, details of it;</p>
	(iii)		<p>for the purposes of determining the degree of consanguinity reference</p>



	shall be made to the table set out in the Second Schedule;
(f)	the relationship (if any) which the applicant bore to the deceased or the capacity in which he claims;
(g)	if the deceased died testate leaving a written will, the names and present addresses of any executors named therein; and
(h)	the postal and residential addresses of



	the applicant.			
(a)	the full names of the deceased;			
(b)	the date and place of his death, his last known place of residence, and his domicile at date of death;			
(c)	whether he died testate or intestate and, if testate, whether his last will was written or oral, and the place where and the date upon which it was made;			
(d)	a full inventory of all his assets and liabilities at the date of his death (including such, if any, as may have arisen or become known since that date) together with an estimate of the value of his assets movable and immovable and his liabilities;			
(e)	<p>in cases of total or partial intestacy—</p> <table border="1"> <tr> <td>(i)</td> <td>the names, addresses, marital state and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child,</td> </tr> </table>		(i)	the names, addresses, marital state and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child,
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	(iii)	<p>for the purposes of determining the degree of consanguinity reference</p>	



		shall be made to the table set out in the Second Schedule;
(i)	the names, addresses, marital state and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child, like particulars of such person or persons who would succeed in accordance with section 39(1) of the Act;	
(ii)	whether any and if so which of those persons is under the age of eighteen years or is suffering from any mental disorder, and, if so, details of it;	
(iii)	for the purposes of determining the degree of consanguinity reference shall be made to the table set out in the Second Schedule;	
(f)	the relationship (if any) which the applicant bore to the deceased or the capacity in which he claims;	
(g)	if the deceased died testate leaving a written will, the names and present addresses of any executors named therein; and	
(h)	the postal and residential addresses of the applicant.	
(2)	There shall be exhibited in the affidavit a certificate or a photocopy of a certificate of the death of the deceased or such other written	



evidence of the death as may be available.
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(3)	<p>The petition may be filed in the principal registry or a High Court district registry or, in the case of a deceased the gross value of whose estate does not exceed one hundred thousand shillings, in a resident magistrate's registry or, in the case of an application to the Resident Magistrate's Court under section 49 of the Act, in a resident magistrate's registry within the area of that court in which the deceased had his last known place of residence;</p> <p>and upon its being so filed and until it has been considered and determined, the court may, upon request and payment of the prescribed fee, afford inspection of the will or copy will to any person having an interest in the estate; and any such inspection shall take place during office hours in the registry in the presence of an officer of the registry.</p>
(4)	<p>The registrar shall cause to be inserted, at the cost of the applicant, in the Gazette and, if he so decides, in a daily newspaper, and to be exhibited conspicuously in the courthouse attached to the registry where the application is intended to be made, a notice of the application for the grant in Form 60 inviting objections thereto to be made known to that registry within a period, to be specified in the notice, of not less than thirty days from the date of the last of such publications.</p>



(5)	Where the grant sought is one of probate of a written will or of letters of administration with the written will annexed there shall be lodged in the registry on the filing of the petition the original of the will or, if the will is alleged to have been lost or destroyed otherwise than by way of revocation or for any other reason cannot be produced, then a copy authenticated by a competent court or otherwise to the satisfaction of the court.
(6)	Where the grant sought is one of letters of administration with a written will annexed the applicant shall satisfy the court before the issue of the grant that every executor appointed by the will who is living at the time of the application either has consented in writing to the issue of the grant to the applicant, or has renounced his executorship, or has been issued with a citation calling upon him either to renounce his executorship or to apply for a grant of probate of the will.



(7)

Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has—

(a)	renounced his right generally to apply for a grant; or
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(b)	consented in writing to the making of the grant to the applicant; or
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(c)	been issued with a citation
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	calling upon him either to renounce such right or to apply for a grant.	
(a)	renounced his right generally to apply for a grant; or	
(b)		consented in writing to the making of the grant to the applicant; or
(c)	been issued with a citation calling upon him either to renounce such right or to apply for a grant.	
(8)	Where a grant of administration is sought jointly by more persons than one (but not exceeding four) the provisions of this rule shall apply to all applicants save that the affidavit need be sworn by one only.	
(9)		This rule shall not apply to applications brought under the provisions of rule 36, 37, 42 or 48. [emphasis added]

The supporting affidavit (Form 5) must verify in sufficient detail the contents of paragraphs 1 to 3 of this petition: rule 7(1).



29. The Act and Rules mandate that a petition in Form 80 must be supported by an affidavit duly sworn providing facts stated thereunder and among the mandatory information to be contained in the sworn affidavit are that:

“ Every person having an equal or prior right to a grant of representation herein has consented hereto (or has renounced such right or has been issued with a citation to renounce such right and apply for a grant of representation and has not done so).”

30. The appellants did not adduce any evidence to show that the respondent and his sister who are siblings to the deceased ever consented to the appellants petitioning for grant or that the said siblings renounced their right to petition.

31. The P&A 5 form which was filed as an affidavit was never commissioned and therefore whatever the appellants are saying that they petitioned for grant is no petition at all. The petition was materially defective not just in form but also on substance.

32. In addition, there was no evidence that the respondent signed the consent. The appellants failed to rebut the allegation of forgery raised by the respondent who even reported the matter to the police and was issued with a Police Occurrence number.

33. The allegations that the respondent is a fraudster who had demanded money from the appellants and that who had been paid Kshs 120,000 by the appellant’s family friend was not substantiated and therefore the allegation remained just that. Further, the allegations that the respondent was in any case the administrator of his own father’s estate as shown by the annexed certificate of confirmation of grant is immaterial as these proceedings relate to the estate of the respondent’s brother and not father.

34. In the end, I find and hold that the proceedings to obtain the grant were thus fatally defective and in addition, the appellants had no authority and capacity to institute the succession proceedings whatsoever. Since they lacked capacity to institute the succession proceedings in the first instance, the powers they obtained from the grant were false and pretended, and any acts done by them, using the grant were of no effect, and any transaction based on them including transfer of the land belonging to the deceased was a nullity and the said transfer is hereby annulled and revoked. The Land Registrar is therefore directed to deregister the appellants or any other person as proprietors of the said parcel of land and revert the title in the name of the deceased Zakayo Ondoro Owenje alias Zakayo Ondoro.

35. The next question is whether the court erred in issuing a grant of representation to the respondent. It is undisputed that the respondent is the person, together with his sister Ruth Anyango entitled to petition for grant to the estate of the deceased Zakayo Ondoro Owenje who dies intestate. He came alone to object to the succession proceedings. this does not mean that he has a superior right to his sister Ruth Anyango who is still alive. Both of them have equal rights to petition for grant. that being the case, the trial court could not issue the grant in favour of the respondent without the consent of his sister Ruth Anyango who has not renounced her right to petition.

36. Section 66 of the [Law of Succession Act](#) gives a list of persons to whom a grant in intestacy can be made. The section provides as follows:

“

“ 66. Preference to be given to certain persons to administer where deceased died intestate-

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:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

37. The courts have variously addressed the purport of section 66. In *In re Estate of Gamaliel Otieno Onyiego (Deceased)* [2018] eKLR, the court stated:

“ 18. Under Part V referred under Section 66(b), the persons given priority over an intestate are the surviving spouse and children. That where the intestate has unfortunately left no surviving spouse and children, the provisions of Section 39 of the *Law of Succession Act* stipulate the net intestate shall devolve upto the kindred of the intestate in manner of order of priority.”

38. Section 39(1)(2) of the *Law of Succession Act* is relevant for the purposes of the instant cause as the deceased was neither survived by a spouse nor children, and the next in line would be his parents and siblings. The said section is as follows:

“ 39.

- (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 brothers and sisters, in equal shares; or if none
  - (d) half-brothers and half-sisters and any child or children of deceased 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.
- (2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.”



39. In this case, the respondent is the surviving brother of the deceased and there is undisputed evidence that he also has a sister Ruth Anyango and as such the grant ought to have been issued to him and his sister or to either of them with the consent of the other. In the absence of such consent or renunciation by Ruth Anyango, the respondent would end up in the same position as the appellants are, which position the court cannot compound. Furthermore, the issuance of the grant in favour of the respondent by the trial court suo moto is likely to exclude the respondent's sister Ruth Anyango from being of equal right to petition for the grant. That order is therefore amenable for setting aside.
40. This court however accepts the holding by the trial court that the appellants can prove their legitimate interest in the estate of the deceased before the Environment and Land Court unless there is an agreement between them and the said administrators to transfer the land title to them, amicably. I say so because even the agreement allegedly entered into between the appellants and the deceased Zakayo Ondoro on 8/8/1993 is written in Dholuo language and was never translated and a certificate of translation filed into court hence the court cannot purport to understand the terms thereof.
41. The upshot of all the above is that this appeal is found to be devoid of merit as far as revocation of grant and its confirmation is concerned. I uphold the decision of the trial court revoking the grant issued and confirmed in favour of the appellants herein.
42. On whether this court is justified in ordering for cancellation of the title Kisumu/East Koguta/1572 as registered in the name of the appellants following revocation of grant as confirmed in their favour, I am fortified by the decisions in various cases among them, the case of Santuzza Bilioti alias Mei Santuzza (Deceased) v Giancarlo Falasconi [2014] eKLR where the court held that:
- “...the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancellation of the title deed. Further, a succession court can order a cancellation of a title deed if a deceased's property is being fraudulently taken away by non-beneficiaries such as where the property is being sold before a grant is confirmed.”
43. In this case, it is clear that the appellants were not legally entitled to petition for grant of representation of the estate of the deceased and that the proceedings leading to the issuance of the grant and confirmation thereof were fatally defective in substance. It is equally suspicious that upon obtaining the grant on 20<sup>th</sup> July 2022, they expeditiously sought and obtained confirmation of the said grant on 4<sup>th</sup> August 2022 although in the body of the certificate, it states that confirmation was made on 20<sup>th</sup> August, 2022 and on 23<sup>rd</sup> August 2022, they had the title of the land registered in their names jointly.
44. For that reason, I order that the transfer of Land parcel number Kisumu/East Koguta/ 1572 in the names of the appellants and any other third parties be and is hereby annulled and revoked and the Land Registrar is directed to deregister and revert the said title to the names of the deceased Zakayo Ondoro alias Zakayo Ondoro Owenje, upon service of this judgment and order upon him. Finally, the only aspect of the appeal that is successful is that the order issuing the grant in favour of the respondent is hereby set aside and quashed and substituted with an order that the respondent and his sister Ruth Anyango, being persons who are legally entitled to petition for grant shall, unless they agree to allow one of them to petition, jointly petition for such grant afresh to administer the estate of the deceased Zakayo Ondoro Owenje.
45. I order that each party bear their own costs of the appeal.
46. This file is closed.



47. The lower court file with copy of judgment herein to be returned.

48. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 17TH DAY OF MAY, 2024**

**R.E. ABURILI**

**JUDGE**

