



REPUBLIC OF KENYA



**Rachuodho v Akoo (Family Appeal E005 of 2022)
[2024] KEHC 6053 (KLR) (23 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6053 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
FAMILY APPEAL E005 OF 2022
DO OGEMBO, J
MAY 23, 2024**

BETWEEN

FRANCIS OKELLO RACHUODHO PLAINTIFF

AND

JAEI APONDI AKOO DEFENDANT

*(Being an appeal from the ruling of the magistrate court, before the
Hon. Lester Simiyu, dated 27/4/2022 in Succession Cause No. 35 of 2018)*

JUDGMENT

1. This appeal arises from the judgment of the lower court issued on 27/4/2022 in the above succession cause in which the court ordered as follows:-
 - i. That letter of administration intestate issued to Francis Rachuodho on 14/3/2018 and confirmed on 28/3/2018 be annulled.
 - ii. That the confirmation of grant in Siaya PM succession cause No. 36 of 2018 and the certificate of confirmation of grant issued therein be cancelled and or revoked.
 - iii. That the title deed issued to Francis Okello Rachuodho and other beneficiaries in parcel numbers South/Ugenya/Simenya/687, South Ugenya (Simenya/688 and South Ugenya (Simenya 689 are revoked and the parcel is reverted to the original South Ugenya/Simenya/97 to await proper administration in all estates of the deceased owners.Costs of the application were awarded to the objector.
2. The appellant has appealed to this court against the said orders of the trial court. The memorandum of appeal filed herein and dated 10/11/2022 lists the following grounds of appeal:-



1. That the magistrate erred in fact by not critically analyzing the issue of dependence of the Respondent to the estate of the deceased.
2. That the Resident magistrate erred in law and in fact in wholly believing the submissions of the Respondent and disregarding the evidence and submissions of the appellant.
3. The appellant pleads that this appeal be allowed with costs. The Respondent opposes this appeal.
4. Guided by the authority of *Okeno v R* (1972) EA 32, the jurisdiction of this court as a first appellate court is to re-evaluate and re-assess the evidence before the trial court and for this court to come up with its conclusions. It is therefore essential that the court delves into such evidence as was produced by the parties.
5. From the record of proceedings, PW1 (objector), Jael Apondi Akoo, adopting her statement filed in court, testified that William Omollo is her brother, while the appellant, Okello Rachuodho is her cousin that her father was William Ogola. Tat her late brother, James Aggrey Omollo had four children, Solla Auma, Christine, Sella Chieng and Marcus Oduor. She produced the respective birth certificates, letter of the chief and search certificates. That Francis did not inform her that he was filing for succession. She called no witness.
6. The appellant, on the other hand testified that deceased was his nephew, son of his brother, ie William Omollo is son of his brother Willim Ogolla. He denied knowing the four children of the deceased and did not know why the area chief lied on the children of the deceased. He also denied any knowledge of the Respondent, adding that William Omollo had no brother nor sisters. His evidence was that William Omollo lived in town and he did not know if he had any children. He also called no witness.
7. Section 76 of the [Law of Succession Act](#) gives incidences when a grant may be revoked including:-
 - i. That the grant was obtained through a defective process e.g petitioner not qualified,
 - ii. If it is obtained by fraud or misrepresentation or concealment of material facts.
 - iii. That the grant has run into difficulties and become imperative.
8. This matter is related to Succession E006/2022 in which the parties and the subject cause and estate is the same. In the same, the court already found that the grant issued to the appellant was obtained by way of misrepresentation and concealment of material facts. The same position pertains herein.
9. From the evidence of the parties during trial, it is clear that the case of appellant was based on the letter of chief (DEXH – 3) which was full of contradictions leaving no doubt that the chief did not even know the deceased or his family and children. The appellant himself also confessed that since the deceased stayed in town away from home, he did not know deceased family or children.
10. The Respondent on the other hand relied on a letter of the area Assistant Chief (PEXH-2) listing the children and beneficiaries of the estate of the deceased. The Respondent also produced certificates of birth of the deceased’s four children and which clearly show the deceased as the father of the four children and which names conform with the names contained in the letter of the Assistant chief.
11. This court therefore is convinced that the letter of the Assistant chief produced by the Respondent is truthful and more authentic than the letter of the chief produced by the appellant in evidence.
12. If the appellant applied for and was issued with a grant of letters of administration in respect of the estate of the deceased without giving notice and or providing for the children and or beneficiaries of the deceased, then the appellant clearly obtained such rant of letters of administration



by way of misrepresentation or concealment of material facts. And the same was therefore issued in contravention of the law and is therefore up for annulment and or revocation under Section 76 of the [Law of Succession Act](#).

13. In the circumstances, I am convinced that the learned trial magistrate reached a fair and proper determination of this matter and that the appeal of the appellant, filed herein and dated 10/11/2022 lacks in any merit. I dismiss the same with costs to the Respondent. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 23RD DAY OF MAY, 2024.

D. O .OGEMBO

JUDGE

23/5/2024

Court

Judgment read out in court in presence of Mr. Agina for Appellant and Mr. Ochanyo for Respondent.

D. O. OGEMBO

JUDGE

23/5/2024

