



REPUBLIC OF KENYA



**Rachuodho v Akoo (Family Appeal E006 of 2022)
[2024] KEHC 6060 (KLR) (23 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6060 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
FAMILY APPEAL E006 OF 2022
DO OGEMBO, J
MAY 23, 2024**

BETWEEN

FRANCIS OKELLO RACHUODHO APPELLANT

AND

JAEI APONDI AKOO RESPONDENT

JUDGMENT

1. This appeal arises from the judgment of the lower court (Hon. L. Simiyu, PM), in the above case delivered on 27/4/2022. In the said judgment, the trial court made at least three determinations, namely:-
 - i. That letters 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 be revoked.
 - iii. That the title deed issued to Francis Okello Rachuodho and other beneficiaries in parcel number 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 deceased registered owners.Costs of the course were awarded to the objector.
2. Aggrieved with the said finding of the court, the Appellant has filed this appeal before this court. In the memorandum of appeal filed herein and dated 10/11/2022, the appellant has listed the following grounds of appeal.
 1. That the magistrate erred in facts 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. That the appeal be allowed and the orders for having the titles reverted to the original number set aside.
3. This appeal is opposed by the Respondent. This court is seized of this matter as a first appellate court. The jurisdiction of a first appellate Court are well settled in *Okeno VS- R, 1972, EA32*. It is to re-evaluate and analyze the evidence before the trial court and to come to its own conclusion. In determining this appeal, this court must therefore consider the whole evidence tendered by the parties before the trial court, re-evaluate and analyze the same and accordingly make its determination.
 4. From the record of proceedings, the Respondent, Jael Apondi Akoo, was PW1. Relying on her statement, her testimony was that she is a daughter to one William Ogolla while the Appellant is a son to a step brother to her father (uncle), one Barrack Rachuodho. That parcel No. 97 was for Barrack and his three (3) sons and William Ogolla and his one son. That William Ogolla had two children, Jael Apondi and James Aggrey Omollo Ogolla. Her plea is that the portion of her father reverts. She produced a letter of the area Assistant Chief showing that the two of them are children of William Ogolla.
 5. The Appellant, Francis Okello Rachuodho was DW1. He also relied on the statement he filed in court. In court, he testified that William Ogolla resided in Simenya, but he did not know the Respondent. He also denied having stated in related case No. 35/2018 that Respondent is related to the deceased. And that the Assistant Chief lied to the court. He otherwise confirmed that William Ogolla was his brother, but that the Respondent is not a child of Ogolla. And to his knowledge, Ogolla had no wife.
 6. This appeal was canvassed by way of written submissions. On the side of the appellant, it was submitted that the Respondent's case had been based on a letter of Assistant Chief and not the chief. That the Respondent does not show any proof that she is daughter of William Opondo alias William Ogolla and her Identity card show she is of Yala Division, North Gem location, and not Simenya sub-location. That Respondent did not even disclose who her mother was or her death certificate.
 7. Counsel relied on *NJOROGE –VS- R, (1987) KLR 19*, on the role of a first appellate court. It was further submitted that even at 74 years old, the Respondent has never visited Simenya neither did she attend the burial of the deceased, William Ogolla Opondo.
 8. Counsel further referred to Section 29 of the Law of Succession Act on defining of dependants and also the case of *IN THE MATTER OF THE ESTATE OF LAK (DECEASED) (2014) eKLR*, on revocation under Section 76 of the Law of Succession Act. And also the decision of the court of Appeal in *MATHEKA & ANOTHER –VS- MATHEKA (2005) 2KLR 455*, that;

A grant may be revoked either by application by an interested party or by the court on its own motion. Even when revocation is by court on its 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 the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of fact essential to point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with administration of the estate.”

9. That the Respondent has failed to prove any of the above. That since the Respondent is not related to the family, she does not have any locus standi to contest the estate of William Ogolla Opondo. It was therefore submitted that the petition for revocation of the grant ought to have been dismissed.



10. The Respondent on the other hand, has submitted that the Respondent has annexed her Identity card, chief's letter dated 11/2/2019 to depict her relationship to the deceased. That Section 66 of the Law of Succession Act gives order of preference for grant of letters of administration. Based on the decision *Immaculate Wangari Munyaga –vs- Zachary Waweru Ileri*, (2016) eKLR, (Mativo J.), a chart depicting degrees of consanguinity and affinity was shown.
11. That the Respondent, being the only surviving daughter of the late William Ogolla Opondo alias William Ogola, false in the first degree of consanguinity, whereas the appellant, (brother to the deceased), is in the second degree of consanguinity. That the appellant obtained the grant and named as beneficiaries himself, George Otieno alias George Otieno Rachuodho, Anjeline Obonyo Ogalo and Dorcas Odando Ochieng leaving out the Respondent, who is the sole beneficiary of William Ogolla Opondo alias William Ogola. That in the process the Respondent has been disinherited. The Respondent has urged that this court do confirm the finding of the lower court and dismiss this appeal with costs.
12. I have considered this appeal. I have also considered the proceedings before the lower court and the submissions made by the two sides herein. This cause relates to the estate of the late William Ogolla Opondo alias William Ogola who died intestate. And it is in regard to his 1/5 share in the original parcel number LR No. South Ugenya/Simenya/97, measuring 12.786 Ha, and which is alleged to have since been sub divided into South Ugenya/Simenya/687, registered in the name of the Respondent, South Ugenya/Simenya/628, in the name of George Otieno Rachuodho and South Ugenya/Simenya/689 in the name of Anjeline Obonyo Ogola respectively.
13. Section 66 of the Law of Succession Act, Cap 160 Laws of Kenya, gives directions as to whom a grant of letters of administration shall be given in respect of deceased's estate. Same states:-

Preference to be given to certain persons to administer where the 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 interest of all concerned, be 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
- d. Creditors

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

14. The Law of Succession Act, at Section 29 defines dependents who are in the following terms:-

For the purposes of this part, dependent means;

- a. The wife or wives or former wife or whether or not maintained by the deceased immediately prior to his death,
- b. Such of the deceased parents, step parents, grandparents, grandchildren, step children, his family as his own, brothers and sisters and half-brothers and half-sister as were being maintained by the deceased immediately prior to his death, and



- c. Where the deceased was woman, her husband if he was being maintained by her immediately prior to the date of her death.
15. The above provisions of the Law of Succession Act, are therefore clear on who is entitled to petition for grant of letters of administration intestate and also who would be considered as beneficiaries of the estate of the deceased who has died intestate.
16. The issue herein, as submitted by the two sides is whether the objector is a beneficiary of the deceased's estate. It is the contention of the Respondent that she is the only surviving daughter to the deceased William Ogola Opondo and the only surviving beneficiary and dependent of the deceased. She has attached copy of her national identity card to prove her case. She has also attached a letter dated 11/2/2019, of the Assistant Chief, Simenya sub-location stating that the objector is daughter of the deceased who hailed from and was buried within the sub-location.
17. The Appellant, has on the other hand, maintained that the Respondent is a total stranger to the deceased's estate. That the deceased died intestate and left no survivor having not married and had no children. That the Respondent has not exhibited any evidence to show she is daughter of the deceased and the identity card annexed shows she is a resident of Yala Division, North Gem location, Ndere sub-location. Also that the Respondent has not disclosed who her mother is, she has never visited Simenya and did not even attend the burial of the deceased.
18. The appellant has exhibited a letter from the chief, South Ugenya location dated 7/2/2018 confirming that the deceased never married and had no children and that beneficiaries of the deceased's estate are only Francis Okello Rachuodho (brother), George Otieno Rachuodho (brother), Anjeline Obonyo Ogalo (sister in law) and Dorcas Odando Ochieng (sister in law), the Respondent has exhibited the letter of the area Assistant Chief attended to above, confirming that he is daughter and only surviving beneficiary of the estate of the deceased. The issue is therefore which of the two sides gave credible evidence over the other. The pleadings filed by the respective parties and the evidence tendered in court are relevant in determining this issue.
19. The replying affidavit filed by the appellant and sworn on 21/6/2019 at paragraph 10 is material. The same states:
- That the deceased herein had only one child one William Omolo alias Omolo William who succeeded his father's estate but unfortunately he also passed on, on 14/7/2009 before succession proceedings were even filed in respect of his father's estate. In his life time, the said William Omolo had never married nor had he ever sired any child, thus I together with my other siblings were and still remain the rightful and sole heirs to the estate of the deceased and hence the contents of paragraph 6 are hereby refuted."
20. From the evidence before the court, the Respondent gave sworn evidence that the appellant, is son to a step brother to her father. She was able to physically identify him in court, thereby dispelling the evidence of the appellant that the Respondent is a total stranger unknown in the family.
21. And in the evidence of the appellant in defence, the appellant clearly stated that William Ogola used to reside in town while the appellant lived at Simenya. And that the appellant did not know if William Ogola had more than one child. And that he never even visited Ogola where he lived, while confessing that nowadays people marry in secrecy.
22. The import of the evidence of the appellant at the trial is that he is one who was not close to the deceased. He never at any time visited the deceased either did we ever engage the deceased on whether the deceased was ever married or had any children. The evidence of the appellant disowning the



Respondent therefore is only based on the fact that he did not know if the deceased was married or had any child, the same deceased he never even visited where he resided. This evidence clearly leaves a possibility that the deceased in fact left a child and that the Respondent could in fact be the child of the deceased.

23. And then there are the glaring contradictions between the evidence of the appellant and that of his witness, DW2, the area Chief and which has been captured in the judgment of the trial court. That the evidence of the appellant, and DW2, the deceased William Ogola Opondo, alias William Ogola is the father of William Omolo. The letter of the chief in support of the Petition for grant of letters of administration, however, shows that the deceased William Ogola Opondo alias William Ogola had no children. This is clearly proof that the area Chief did not know the deceased well with the end result that the said grant was issued to the appellant through concealment of a material facts on the part of the petitioner. If so, then the said grant was issued in the manner that contravenes Section 76 of the Laws of Succession Act.
24. A further contradiction in the case of the appellant relates to a letter written by the same chief on the same date in support of petition in respect to the estate of William Omollo, and in which the same chief confirmed in writing that the appellant is brother of William Omolo. This contradiction clearly depicts a clear intention on the part of both the chief and the appellant to falsify the facts and in the process obtain the grants by mis-representation of the material facts.
25. On the part of the case of the Respondent, I find no such contradiction between the evidence of the Respondent, the statement in the affidavit filed by the respondent and the attached letters of the assistant chief dated 11/2/2019. It is worth noting in any case that deceased hailed from the sub-location of the jurisdiction of the Assistant Chief. And in the evidence of the appellant himself, the office of the Assistant chief is the nearest administration office to their home. I am convinced that the assistant chief would in the circumstances better placed to know the family of the deceased than the chief of the location.
26. The foregoing analysis, convinces this court that the Respondent has proved on a balance of probabilities that she is a beneficiary in the deceased's estate and that the grant of letters of administration in respect of the deceased's estate issued to the appellant on 14/3/2018 and confirmed on 28/3/2018 was obtained fraudulently consentment of material facts, and must be annulled under Section 76 of the Law of Succession Act. I so find.
27. The sum total is that this appeal of the appellant filed and dated 10/11/2022, lacking in any merit, is dismissed, costs of this appeal are awarded 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

