



**In re Estate of Owiti Olala (Deceased) (Succession Cause  
435 of 2015) [2023] KEHC 1655 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1655 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
SUCCESSION CAUSE 435 OF 2015**

**KW KIARIE, J**

**MARCH 9, 2023**

**IN THE MATTER OF THE ESTATE OF OWITI OLALA(DECEASED)**

**BETWEEN**

**MAURINE ADHIAMBO (SUING ON BEHALF OF ATIENO  
OWITI) ..... APPLICANT**

**AND**

**ROSE ANYANGO MAENDE ..... RESPONDENT**

**RULING**

1. Maurine Adhiambo, suing on behalf of Atieno Owiti, the applicant herein, moved the court by summons for revocation or annulment of grant dated March 31, 2022 under section 76 (d) (11) of the *Law of Succession Act*. She is seeking the following orders:
  - a. That the grant of letters of administration issued to Rosa Anyango Maende the petitioner/ respondent herein on the January 5, 2016 and confirmed on the July 27, 2000 be revoked.
  - b. That a new grant of letters of administration be issued in the name of the applicant.
  - c. That costs be borne out of the estate.
2. The application was premised on the following grounds:
  - a. 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.
  - b. 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.
  - c. That the estate of the deceased is bound to suffer if the grant of letters of administration in favour of the petitioner is not revoked.



- d. That it is expedient and in the interest of justice and beneficiaries of the estate of the deceased that the grant of letters of administration herein be revoked.
3. The respondents in opposing the application raised the following grounds:
  - a. That the respondent was a daughter of the deceased herein.
  - b. That the application lacks merit.
4. During cross examination, the respondent conceded that the applicant was a granddaughter of Owiti Olala, the deceased herein. She also conceded that she was not provided for in distribution of the estate.
5. It was equally established that the respondent was a daughter of Owiti Olala.
6. Grandchildren can only inherit their grandparents' estate if they are representing their parents' estate and have letters of administration to that effect. In the case of *Estate of Veronica Njoki Wakagoto (deceased)* (2013) eKLR it was stated (Musyoka J.):
7. ...grandchildren can only inherit their grandparents indirectly through their own parents, the children of the deceased. The children inherit first and thereafter the grandchildren inherit from the parents. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.
8. In the instant application, it was not demonstrated that the applicant had obtained letters of administration in respect of her mother's estate. In the interest of justice I will revoke the grant herein issue grant to the administrator herein (respondent) so that the distribution can factor in the share of Atieno Owiti whose interest the applicant is representing.
9. The application for fresh distribution ought to be filed within 30 days. Each party will meet own costs.

**Delivered and signed at Homa Bay this 9<sup>th</sup> day of March, 2023**

**KIARIE WAWERU KIARIE**

**JUDGE**

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