

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**SUCCESSION MISC. APPLN NO. E031 OF 2024**  
**(Arising From Succession Cause No. 514 of 2001)**

**IN THE MATTER OF THE ESTATE OF WASHINGTON OGOLA OWITI**  
**– DECEASED**

**IN THE MATTER OF AN APPLICATION BY MARY ANYANGO**  
**OMBURA – ADMINSTRATRIX OF THE ESTATE OF OGOLA OWITI -**  
**DECEASED**

**AND**

**IN THE MATTER OF REVOCATION/ANNULMENT OF GRANT OF**  
**LETTERS OF ADMINISTRATION ISSUED TO HELLEN ADHIAMBO**  
**OKELLO**

**BETWEEN**

**MARY ANYANGO OMBURA ..... APPLICANT/OBJECTOR**

**-VERSUS -**

**HELLEN ADHIAMBO AKELLO ..... PETITIONER/ RESPONDENT**

**RULING**

*“What’s in a name? That which we call a rose by any other name would still  
smell as sweet.”*

*William Shakespeare*

1. In a Certificate of Death No. **1232588** dated **29/3/2022**, it was alleged that one **OGOLA OWITI** was aged **70 years** when he died on **4/1/1970** at Manyatta ‘B’ Kisumu.

2. In a letter by the Senior Chief West Kolwa Location dated **11/4/2022**, given to **Mary Onyango Ombura** (“the applicant”) to pursue succession of the estate of the said **Ogola Owiti**, the beneficiaries thereof were alleged to be; **Mary Onyango Ombura, Joseph Owiti Ogola (deceased), Silvanus Onyango Ogola (deceased) and Benedetta Otieno (deceased)**.
3. From the evidence on record, a property known as **Kisumu/Manyatta “B”/735 (“the suit property”)** was noted in the name of **Ogola Owiti** in **1979** during the process of adjudication of Manyatta “B” Adjudication Section.
4. Following the said introductory letter by the Chief of Kolwa Location, in **July, 2022**, the applicant applied for Letters of Administration Intestate for the estate of the said **Ogola Owiti**. The same was issued to her on **19/7/2022** by the Winam Court in **Winam SPMC Succ Cause No. E056 of 2022**. In the application, the suit property was shown to be the only asset of the estate of the said **Ogola Owiti**.
5. In the Affidavit in support of the application for confirmation of grant sworn on an undisclosed date but court stamped on **19/1/2023**, the applicant stated on oath as follows: -

**“4. THAT the Deceased was at the time of his death survived by the following**

**MARY ANYANGO OMBURA ... DAUGHTER ... ADULT**

***5. THAT the estate of the deceased has the following assets***

***L.P.NO. KISUMU MANYATTA 'B'/735***

***...”***

5. On the other hand, that **Ogola Owiti**, was alleged to be a brother of one **Daudi Opudo Obudi**. One of the sons of the said **Daudi Opudo Obudi** was **Norbutus Owiti Opudo** (“**Norbutus**”). **Norbutus** was married to **Gaudencia Owiti** in 1963 and they bore one son, **Washington Ogola Owiti** (“**the deceased**” in this Cause).
6. On 4/11/1975, the deceased married **Helen Adhiambo Ogola** (“**the respondent**”) and begot two children, **Christine Atieno Ogola** and **Agunight Anyango Ogola**. The deceased died on 14/6/2001 aged 32 years and left behind the respondent and the two daughters.
7. In 2004, the respondent took possession of the suit property, constructed her permanent home and established an Academy (School) thereon. She continued to be in possession thereof with her children until 2022 when she and her Mother-in-law, **Gaudencia Owiti** were summoned to the area Chief’s office.
8. At the area chief’s office, they learnt that the applicant and **Syprosa Auma Owiti Panyako**, had claimed that **Gaudencia Owiti** had reneged on a promise to share part of the suit property to **George Owiti** and wanted the area Chief to arbitrate on that dispute. **Gaudencia Owiti** and the respondent

denied the allegation and the Chief sent them home to go and settle the same.

9. Before then, on **20/8/2001**, the respondent had applied for grant of Letters of Administration Intestate for the estate of her late husband, the deceased in this Cause and named her children and herself as the only beneficiaries. In **Form P&A5**, she disclosed title number **Kisumu/Manyatta “B”/2320** and benefits from Cussons and Company Limited as the only assets forming the estate. A grant was issued to her on **23/10/2001**. After receiving the benefits from Cussons and Company, she never pursued the Succession any further.
10. On **14/3/2023**, the respondent applied for confirmation of the grant and added the suit property as part of the assets of the estate of her late husband. The grant was confirmed by **Kamau J** on **25/7/2022**. The suit property and **Kisumu/Manyatta “B”/2320** were wholly distributed to the respondent.
11. By a Summons for revocation and annulment of grant dated **22/5/2024**, the applicant sought to have the grant issued to the respondent on the **25/7/2022** and dated **28/7/2022** revoked and all the consequential orders and transactions thereafter nullified.
12. The Summons was brought under the provisions of **sections 3 and 3A of the Civil Procedure Act, Order 51 rule 1 of the Civil Procedure Rules 2010, sections 47 and 76 of the Law of Succession Act and Rules 44 and 73 of the Probate and Administration Rules.**

13. The Summons was supported by the applicant's affidavit sworn on the 22/5/2024. She contended that she was the daughter and administratrix of the estate of the late **Ogola Owiti**. That while initiating the process of succession of the estate of the late **Washington Ogola Owiti**, the respondent implied and impersonated the late **Washington Ogola Owiti** to be the same as **Ogola Owiti** and fraudulently misled the Court to confirm the grant based on false information.
14. That consequently, the suit property was erroneously included as part of the estate of the late **Washington Ogola Owiti** whereas it formed part of the estate of the late **Ogola Owiti**.
15. In response, the respondent relied on a replying affidavit sworn on the 3/8/2024. She deposed that she was the only widow to the late **Washington Ogola Owiti**. That the name **Ogola Owiti**, referred to by the applicant, referred to her late husband, **Washington Ogola Owiti**, who was not the applicant's father.
16. That the applicant's father was **Jeremiah Ogola Obudi** who was a brother to her husband's grandfather, one **Daudi Opudo Obudi**. That the deceased was given the suit property and **Kisumu Manyatta "B"/2320** by his late father, **Norbutus**. That during adjudication and registration of the suit property, the deceased's name was entered as **Ogola Owiti** omitting the Christian name, **Washington**.

17. That she took possession of the suit land in **2004** after the same was pointed out to her by her father in law **Norbutus** and thus when she petitioned for letters of administration of the deceased's estate way back in **2001**, she had not known the title number therefor.
18. That consequently, when she discovered the title number, she included it in the application for confirmation of grant. That the applicant was trying to disown her own father, **Jeremiah Ogola Obudi**, and impose herself as the daughter of **Ogola Owiti** so as to dispose her of her home and rightful inheritance.
19. The Summons was ordered to be determined through *viva voce* evidence. The applicant testified as **Aw1** adopting her statement dated **1/10/2024** and the supporting affidavit sworn on the **22/5/2024** as her evidence in chief and produced the bundle of documents as **AExh1**.
20. She denied that **Jeremiah Ogola Obudi** was her father and reiterated that **Ogola Owiti** was her father. She further testified that **Ogola Owiti** and **Washington Ogola Owiti** were not the same person. That **Ogola Owiti** was an old man while **Washington** was a grandson to **Ogola Owiti**.
21. In cross-examination, she testified that she knew **Washington Ogola Owiti** and that his mother was **Gaudencia Oloo (Rw2)** and the father was **Norbutus Owiti**. That the adjudication record indicated that the landowner of the suit property was **Ogola Owiti** and the said record was signed by

**Norbutus Owiti** as “His father”. She denied **Norbutus** being the father of **Ogola Owiti** but stated that it was her father who gave **Norbutus** the suit property.

22. She stated that when she applied for her national identity card, she provided the name **George Owiti** as the name of her father. She admitted that the petitioner was in occupation of the suit property whereon she had constructed a school and her home. That her father died when she was 10 years old at which time he had already shown her the suit property. She denied being aware of any adjudication process taking place in Manyatta “B” in 1979.

23. Aw2 **James Charles Odonglo**, the Chief and previous assistant chief of West Kolwa Location testified that **Washington Ogolla Owiti** and **Ogolla Owiti** were two different persons. That in 2022, the 2 families led by the applicant and **Syprosa Auma Owiti** and the respondent and her mother-in-law approached his office for arbitration over the suit property but he was unable to solve the problem. That in 1979 Washington was only 10 years old and thus could not be given land during adjudication. That he himself was barely 5 years at that time.

24. In cross—examination, he admitted that he did not know when **Ogolla Owiti** died. That if he died in 1970 as alleged, then adjudication of Manyatta

“B” must have been done when he was already dead and that **Norbutus** could not have given land to a dead person.

**25.Aw3 Syprosa Auma Owiti Panyako** adopted her witness statement dated **1/10/2024** as her evidence in chief. She testified that the applicant’s father was **Ogolla Owiti** and her mother was **Benedetta Otieno**. That **Norbutus** was a cousin to **Ogolla Owiti** and **Norbutus** had one child, **Washington Ogolla Owiti**. In cross-examination, she admitted that most of what she had stated was hearsay as she had been told about it.

**26.Aw4 George Otieno Owiti** adopted his witness statement dated **1/10/2024** as his evidence in chief. He stated that the applicant was his auntie while the respondent was her in-law. In cross-examination, he similarly admitted that most of the things he testified on had been told to him. That **Norbutus** could not give land to **Ogolla Owiti** as the latter was his father.

**27.**The respondent testified as **Rw1**. She adopted her replying affidavit dated **3/8/2024** and witness statement dated **28/10/2024** as her evidence in chief and produced her documents as **RExh1**. She reiterated what is already stated above and stated that no one had prevented from putting up her home and school on the suit property. That the only claim was by the applicant in **2024**.

**28.**In cross-examination, she reiterated that **Washington Ogolla Owiti** and **Ogolla Owiti** were one and the same person. That she was married to the

deceased on the **4/11/1995** and the deceased passed away in **June 2001**. That she became aware of the title to the suit property in **2004** by which time she had already petitioned for letters of administration over the deceased's estate.

**29.Rw2 Gaudencia Oloo Owiti** adopted her statement made on the **3/8/2024** and **18/10/2024** as her evidence in chief. She testified that she was married to **Norbutus Owiti Opudo** and that the deceased was her son who had married the respondent.

**30.**That the applicant's father was **Jeremiah Ogolla Obudi**, a brother to **Daudi Opudo Obudi**. That the suit property was registered in the name of her son **Washington Ogolla Owiti** who is the same as **Ogolla Owiti** and that he got the land from his father, her husband **Norbutus**. That she witnessed the adjudication process in **1978**. She gave a detailed account how the adjudication process took place culminating in her husband minuting her son, the deceased as owner of the suit property.

**31.**That her husband did sign the adjudication form as owner of the property and father to **Ogolla Owiti**. That it was not possible for her husband to refer to the applicant's father as **Ogolla Owiti** as her father was not alive as at **1979** having died in **1966**. That there was no way that her husband would give his uncle land and deny his son as alleged by the applicant.

32. That she used the suit property from **1963** until **2004** when she surrendered it to the respondent who has been in occupation since then to-date. That when registering the suit property during adjudication, her husband forgot to put the deceased's baptismal name.

33. **Rw3 Rose Aoko Onyango** adopted her witness statement dated **3/8/2024** as her evidence in chief. She testified that the applicant was her sister in law as she was a sister to her deceased husband, **Silvanus Onyango Ogola**. That during her husband's lifetime, **Silvanus** never disclosed to her that their father had bequeathed the applicant the suit property or that the same belonged to his father.

34. In cross-examination, she stated that **Washington Ogolla Owiti** and **Ogolla Owiti** were one and the same person. That she witnessed the adjudication process and that **Norbutus** noted **Ogolla Owiti** on the suit property. That the applicant's father was **Jeremiah Ogolla Obudi** and that she knew this because her own son was named after the applicant's father.

35. **Rw4** was the County Land Adjudication Officer **Mary Akoth**. She testified that according to the demarcation sketch, the suit property was owned by **Ogolla Owiti**. That there were no disputes recorded against the suit property both at demarcation and adjudication stages as required by the law.

36. That the said **Ogolla Owiti** must have been alive to have been recorded as owner and further that, it was not prohibited to register minors as land

owners by their parents. She confirmed that deceased persons are not noted as owners during adjudication, only living persons.

37. I have considered the record in totality. The primary order sought by the applicant is revocation of grant issued to the respondent on the 25/7/2022 and dated 28/7/2022.

38. The *Law of Succession Act* (“*the Act*”) provides for revocation of grants under *section 76*, which provides: -

*“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 interested party 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.”*

**39.**In this regard, under the above provision, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on an application by a party. A grant of letters of administration may be revoked on three general grounds.

**40.**The first is where the process of obtaining the grant was marred by several irregularities. Where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation were not competent or suitable for appointment, or the

deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or *vice versa*. It could also be that the process was marred by fraud and misrepresentation or concealment of material facts, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons.

**41.**The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required.

**42.**The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.

**43.**In the present case, the applicant's claim was based on the allegation that the respondent obtained the grant fraudulently by misleading the court that **Washington Ogolla Owiti** and **Ogolla Owiti** were one and the same person.

44. *Section 107 of the Evidence Act* provides that: -

*“(1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove those facts exist.”*

45. The Court has considered the evidence adduced in its totality. The applicant’s testimony was contradictory at best. She alleged that **Washington Ogolla Owiti** and **Ogolla Owiti** were different individuals and that **Ogolla Owiti** was her father. However, she could not explain why when she applied for her identification card she gave the name of her father as **George Ogolla**.

46. The applicant admitted that **Norbutus** and **Gaudencia Oloo** were the parents to **Washington Ogolla Owiti**. She further admitted that the adjudication form showed that it was signed by **Norbutus Owiti**, as the father of **Ogolla Owiti**, who was designated as the owner of the suit property. She was also in agreement that **Silvanus Onyango Ogolla** was her elder brother and that though his land **Kisumu/Manyatta “B”/734** bordered the suit property, at no time did anyone lay any claim over the suit property.

47. **Rw3**, the wife to **Silvanus** on her part testified that at no time did her husband, **Silvanus** ever disclose to her that their father had bequeathed the suit property to the applicant. What she knew was that the suit property belonged to the father of **Washington Ogolla Owiti**. That the deceased was

also known as **Ogolla Owiti**. That **Washington Ogolla Owiti** and **Ogolla Owiti** were one and the same person.

48. That she witnessed the adjudication process and that **Norbutus** noted his son **Ogolla Owiti** as owner of the suit property. That the applicant's father was one **Jeremiah Ogolla Obudi** and that she knew this because her own son was named after the applicant's father. That she was married to the Kogola Clan in 1971 by which time, her father in law, **Jeremiah Ogolla Obudi** had died.

49. It should be noted that, it was the applicant and her witnesses who testified as to the existence of the said **Ogolla Owiti** and his death of 1970. **Rw2 Gaudencia Oloo Owiti** and **Rw3 Rose Aoko Anyango** aged 81 and 70 years, respectively, testified that they were married to the **Kogola Clan** in 1963 and 1971, respectively.

50. According to the two, one **Daudi Opudo Obudi** was the father of **Norbutus**, the husband to **Rw2**. The said **Daudi Opudo Obudi** had a brother by the name **Jeremiah Ogolla Obudi**, the father of **Silvanus Onyango Ogola**, the husband of **Rw3**. That the applicant was a sister to; **Silvanus Onyango Ogola**, **Joseph Owiti Ogola**, **Obudi Ogola**, **Amingo Ogola**, **Roselida Olweny** and **Monica Apiyo**. Of all these, **Silvanus Onyango Ogola** was the last to pass on in 2008.

51. The applicant did not dispute or deny this evidence. When asked by the Court who her other siblings were, she became evasive only named **Silvanus Onyango Ogola and Joseph Owiti Ogola**. The testimonies of **Rw2 and Rw3** was not seriously challenged. They remained consistent and firm. If **Silvanus Onyango Ogola (who was the last of the applicant's siblings to die in 2008)** was the applicant's brother and his father was **Jeremiah Ogola Obudi** who died in **1966**, then it follows that the applicant's father was the same **Jeremiah Ogola Obudi**. The testimonies of **Rw2 and Rw3** which the Court believed, was that his wife was one **Benedette Otieno Ogola**.

52. The only evidence on record to show that someone by the name of **Ogola Owiti** (apart from **Washington Ogola Owiti**) ever existed is the Death Certificate No. **1232588** dated **29/3/2022**. Despite allegedly dying in **1970**, the death was only being reported on **29/3/2022**. This was only 12 days before the Chief's letter of **11/4/2022** was written to commence the Succession of his estate. The Chief's letter disclosed the survivors as **Joseph Ogola Owiti (deceased) Silvanus Onyango Ogola (deceased), Benedette Otieno (deceased)** and **Mary Anyango Ombura**.

53. One other issue, ordinarily such letters disclose all the children of a deceased person, both living and those already deceased. In the present case, that letter disclosed the names of 3 deceased beneficiaries and the applicant alone. It later turned out that the applicant had other siblings who were likewise

deceased. Why didn't that letter include all the children of the alleged deceased. When **Aw2** testified, he stated that it was necessary to list all the Children of a deceased person in such an introductory letter. He did not know why his predecessor did not list them. Neither did he know any of the other children of the alleged **Ogola Owiti**.

54. The death of the said **Ogola Owiti** was reported on **29/3/2022** by **Syprosa Auma Owiti (Aw3)**. It is clear that she had an interest with such reporting in that, **Aw2** testified that in **2022**, the two families reported a case before him which required arbitration. The case was that, **Syprosa Auma Owiti (Aw3)** and the applicant reported **Gaudencia Oloo (Rw2)** and **Helen Adhiambo Okelo (Rw1)** of having failed to keep their promise to share land, the suit property to **Aw3's** son, **George Owiti (Aw4)**

55. The applicant also alleged that her "father" **Ogolla Owiti** died in **1970**. **Rw4**, the County Land Adjudication Officer, was categorical that during adjudication, land cannot be registered in the name of someone who is already dead. That the village committee and the adjudication officers physically identify the land on the ground with their respective claimants before minuting the ownership thereof.

56. As at **1979** when adjudication was being undertaken in Manyatta "B", the only **Ogola Owiti** alive was **Washington Ogola Owiti**. He was the only son

of **Norbutus Owiti** who signed his name into the adjudication register and indicated that he was his father.

**57.Aw3** and **Aw4** both caved in cross-examination and stated that their testimony was based on what they were told. It matters not who told them what to testify. The effect of their admission was that their testimony amounted to hearsay and thus inadmissible.

**58.**I saw the witnesses testify. Unlike those of the applicant, **Rw2** and **Rw3** were coherent, consistent and firm. I did not believe the witnesses of the applicant. All had an interest in the outcome of their testimony. They had an interest.

**59.**On the other hand, although **Rw2** was the mother in law of the respondent, at **81 years** she showed no interest in the outcome of the matter except to have the truth come out. Further, both **Rw3** and **Rw4** were independent witnesses who had no interest whatsoever in the outcome of the case.

**60.**From the entire evidence on record and having carefully observed the witnesses testify, the irresistible conclusion the Court made was that; the applicant was the daughter of one **Jeremiah Ogola Opudo**. She was a sister to **Silvanus Onyango Ogola** the husband to **Rw3** and owner of **Kisumu/Manyatta "B"/734**. The applicant was married off from the family way back in the early 1970s. Her father died in **1966**. **Norbutus Owiti** registered his son's name **Ogola Owiti** in **1979** as the owner of the suit

property during adjudication but forgot to include his baptismal name of ‘Washington’.

**61.**For reason that the only male child in the **Norbutus** family, **Washington Ogola Owiti** had died in **2001** and had left no male child and, for reason that the respondent had only girls, **Aw1 and Aw3**, with the knowledge of how **Norbutus Owiti** had registered his son’s interest on the suit property, connived to get it fraudulently.

**62.**After **Aw3 and Aw4** failed to get a share of the suit property from **Rw2** through the area Chief’s office in **2022**, **Aw1 and Aw3** must have hatched a plan to procure a death certificate in the name of **Ogola Owiti**, apply for his succession and wrestle the suit property from the respondent.

**63.**It should be recalled that no one objected to the respondent possession of the suit property since 2004. No one objected to her constructing thereon a permanent home and a school for **16years** until **Aw1 and Aw3** sprung up in **2022**. Why wait for people who knew the truth like **Silvanus Onyango** to pass on before laying the fake claim? To say the least, having seen the applicant with her witnesses in the witness box, the Court did not believe them. The affidavit sworn by her in the lower court, which the Court referred to at the beginning of this judgment, tells it all.

- 64.**The Court also finds that there is no way **Norbutus** could have noted a person who had been dead for more than 10years as the owner of the suit property.
- 65.**The effect of the forgoing is that, on a balance of probabilities **Washington Ogolla Owiti** and **Ogolla Owiti**, who was noted as the owner of the suit property during adjudication by **Norbutus** as his father in **1979**, are one and the same person.
- 66.**That consequently, the respondent followed the right process in her application for letters of administration leading up to the issuance of the grant to her on the **25/7/2022** and dated **28/7/2022**.
- 67.**The Court finds that there is no basis that was demonstrated by the applicant to warrant the revocation of grant herein. To the contrary, the grant that should be revoked is the one made in the lower court in favor of the applicant.
- 68.**Accordingly, the Summons for Revocation of Grant dated **22/5/2024** is hereby dismissed. The Court will make no order as to costs as this is a family matter.

It is so decreed.

**DATED** and **DELIVERED** at Kisumu this 24<sup>th</sup> day of **October, 2025**.

**A. MABEYA, FCI Arb**  
**JUDGE**