

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**HCFA NO. E004 OF 2025**

**HELINDA AKOTH MUGANDA (Suing on her behalf and as  
Administrator to the estate of Muganda Odunga**

**Omolo (Deceased).....1<sup>ST</sup>**

**APPELLANT**

**JOSEPH ONYANGO MUGANDA.....2<sup>ND</sup>**

**APPELLANT**

**TITUS OWINO MUGANDA.....3<sup>RD</sup>**

**APPELLANT**

**GEORGE ODHIAMBO MUGANDA.....4<sup>TH</sup>**

**APPELLANT**

**JOSEPH AKOHT OMOLLO.....5<sup>TH</sup>**

**APPELLANT**

**MICHAEL OTIENO MUGANDA.....6<sup>TH</sup>**

**APPELLANT**

**STEPHEN OTIENO AWUOR (ANDWI).....7<sup>TH</sup>**

**APPELLANT**

**VERSUS**

**DANIEL MUGA.....1<sup>ST</sup>**

**RESPONDENT**

**CHARLES WILLIS OGOLA ODUOR.....2<sup>ND</sup>  
RESPONDENT**

**MIKE ODUOR NYAKURE.....3<sup>RD</sup> RESPONDENT**

**FREDRICK OWUOR.....4<sup>TH</sup>  
RESPONDENT**

**MANFRED OMONDI NYAKURE.....5<sup>TH</sup>  
RESPONDENT**

**VINCENT OWINO ALOO.....6<sup>TH</sup>  
RESPONDENT**

**CHARLES OTIENO MUGAH.....7<sup>TH</sup>  
RESPONDENT**

**ELIJAH ODHIAMBO MUGAH.....8<sup>TH</sup>  
RESPONDENT**

**JOSEPH ODUOR MUGAH.....9<sup>TH</sup>  
RESPONDENT**

**ANN JUMA GUMBA.....10<sup>TH</sup>  
RESPONDENT**

**JAKIM OHUONO ODUOR.....11<sup>TH</sup>  
RESPONDENT**

***(Being an appeal from the ruling of Siaya Magistrates  
Court (Hon. Benjamin Limo) delivered on 16<sup>th</sup> December  
2024 in Siaya Succession Cause No. 9 of 1986)***

**BETWEEN**

- DANIEL MUGA.....1<sup>ST</sup>  
APPLICANT**
- CHARLES WILLIS OGOLA ODUOR.....2<sup>ND</sup>  
APPLICANT**
- MIKE ODUOR NYAKURE.....3<sup>RD</sup>  
APPLICANT**
- FREDRICK OWUOR.....4<sup>TH</sup> APPLICANT**
- MANFRED OMONDI NYAKURE.....5<sup>TH</sup> APPLICANT**
- VINCENT OWINO ALOO.....6<sup>TH</sup> APPLICANT**
- CHARLES OTIENO MUGAH.....7<sup>TH</sup>  
APPLICANT**
- ELIJAH ODHIAMBO MUGAH.....8<sup>TH</sup>  
APPLICANT**
- JOSEPH ODUOR MUGAH.....9<sup>TH</sup>  
APPLICANT**
- ANN JUMA GUMBA.....10<sup>TH</sup>  
APPLICANT**
- JAKIM OHUONO ODUOR.....11<sup>TH</sup>  
APPLICANT**

**AND**

**HELINDA AKOTH MUGANDA (Suing on her behalf and as  
Administrator to the estate of Muganda Odunga**

**Omolo(Deceased).....1<sup>ST</sup>**

**RESPONDENT**

**JOSEPH ONYANGO MUGANDA.....2<sup>ND</sup>**

**RESPONDENT**

**TITUS OWINO MUGANDA.....3<sup>RD</sup>**

**RESPONDENT**

**GEORGE ODHIAMBO MUGANDA.....4<sup>TH</sup>**

**RESPONDENT**

**JOSEPH AKOTH OMOLLO.....5<sup>TH</sup>**

**RESPONDENT**

**MICHAEL OTIENO MUGANDA.....6<sup>TH</sup> RESPONDENT**

**STEPHEN OTIENO AWUOR(ANDWIYO).....7<sup>TH</sup>**

**RESPONDENT**

### **JUDGMENT**

1. The appeal arises from the ruling of Hon. Benjamin Limo delivered on 16/12/2024 in Siaya CM Succession Cause No. 9 of 1996 wherein he allowed the Respondents summons for revocation of grant dated 14/9/2022 and issued orders inter alia; that the grant of letters of administration intestate issued to one Muganda Odunga Omollo on 22/9/1986 be revoked and or annulled; that the Land Registrar Siaya is ordered to forthwith cancel all entries in the land register on Cr. Siaya /Nyandiwa/1874, 1881 and

1759 and any subsequent sub divisions and to revert them back in the name of the original owner one Onyango Apoli for distribution by the beneficiaries; that an order of permanent injunction be and is hereby issued prohibiting eviction or interference with the Respondents possession or occupation on land parcels Siaya/Nandiwa/1874,1881 and 1759 pending fresh petition and conclusion of succession proceedings to the estate of Onyango Apoli.

2. Aggrieved by the aforementioned ruling, the Appellants filed their Memorandum of Appeal dated 23/1/2025 wherein they raised the following grounds of appeal namely;

- 1) That the learned magistrate erred in law and in fact by failing to judiciously exercise his discretionary power to revoke the grant issued in the estate of the deceased.
- 2) That the learned magistrate erred in law and fact by ordering the land registrar Siaya to cancel all entries in the land register in respect of land parcels Siaya/Nyandiwa/1874, 1881 and 1759 and subsequent sub divisions if any and further ordering the land revert back in the name of the deceased.
- 3) The learned magistrate erred in law and fact by issuing permanent injunction prohibiting the eviction or interference with the Appellants possession or occupation in land parcels Siaya /Nyandiwa/1874, 1881 and 1759 on unfounded grounds.

- 4) That the learned magistrate erred in law by failing to consider that the Respondents were not beneficiaries of the estate of the deceased and therefore had no locus to be granted the orders they obtained.
- 5) That the learned magistrate erred in law by ignoring the Appellants submissions that there was already existing land matter namely ELC 30A of 2020 in which the Respondents had raised similar issues and that the ELC court is well clothed to determine the issues therein.
- 6) That the learned magistrate erred in law by ignoring that the deceased's property under had already undergone succession in another court of similar jurisdiction and a final and confirmed grant issued to his beneficiaries therefore the trial court had no jurisdiction to act as an appellate court.
- 7) The learned magistrate erred in law by not considering the Appellants case, evidence produced and submissions leading to an erroneous judgment and consequential orders.

The Appellants therefore prayed that the ruling of the learned magistrate be set aside together the consequential orders arising therefrom.

3. This being the first appellate court, its duty is to re-evaluate the evidence tendered before the trial court and subject it to an independent analysis so as to arrive at its own conclusion as to whether or not to uphold the decision

of the trial court. This court should also take note of the fact that it neither saw nor heard the witnesses as they testified and therefore must provide due allowance for that. See **Selle Vs Associated Motor Boat Co. Ltd [196] EA 123.**

4. **Daniel Muga (OW1)** relied on his witness statement dated 15/4/2024 as his evidence in chief. He also relied on the list of documents dated 6/10/2022. He stated that he and the other Applicants are the ones in occupation of the suit properties and thus needed the order of revocation of grant and injunction to stop the intended eviction.

On cross examination, he stated inter alia; that he did not know Muganda Aloo; that land title No. 1759 is a communal land; that he was not aware if the grant was confirmed; that the request for cancellation was to allow proper succession of the suit land; that the deceased Onyango Apoli was related to him as he was his uncle and was thus his dependant; that they had sought for DNA test; that Muganda Odunga Omolo is buried in Ugenya; that Land Parcel No. 1874 was registered in 1884; that he did not know the date when the land was registered in the name of Muganda Odunga Omollo; that during the life time of the said Muganda Odunga Omollo, no one claimed ownership of the said property; that Muganda did not lay claim to the land; that he was not aware if the estate of Muganda Odunga Omollo has been succeeded; that the Respondents are heirs to the estate of Muganda Odunga

Omollo; that they are occupying the land which was owned by Onyango Apoli; that Onyango Apoli was his great grandfather.

The said objector was later recalled for further cross examination. He stated inter alia; that he had green cards for parcel number 1874, 1881 and 1759; that the documents refers to Omollo's property; that the application does not refer to any property; that Onyango Apol and Onyango Apoli are two different people; that he has the green card for 1881 and that the owner is Onyango Apol; that he does not know how Onyango Apoli got registered as the owner of 1881; that the Respondents have registered themselves as current owners of the property and as heirs of Muganda; that he checked the record from the civil registry regarding ELC No. 831 of 2015 which was a concluded case; that no claim was raised against the estate of Muganda; that green card for parcel 1759 is registered in the name of Muganda Odunga Omollo as the administrator while green card for 1881 the deceased was Onyango Apol; that the deceased before court should be reading Onyango Apoli; that the second entry indicates the name of Muganda Odunga Omollo.

On re-examination, he stated inter alia; that he is closely related to the deceased in the proceedings in case number 9 of 1986; that the green card regarding parcel 1759 there

is a transfer but the Land Board consent was not obtained; that there is an element of fraud in that the land was irregularly transferred.

5. The parties later on 1<sup>st</sup> October 2024 recorded a consent to the effect that the witness statement of Charles Muga and Elijah Muga both dated 20<sup>th</sup> May 2024 were adopted as evidence/testimonies in chief and that the Objectors/Applicants' case was closed.
6. The counsel for the Respondents indicated to the court that they were not availing witnesses but were relying on their replying affidavits dated 19<sup>th</sup> July 2023 and therefore their case was closed.
7. Parties filed and exchanged submissions which were considered by the trial court leading to the impugned ruling.
8. The appeal was canvassed by way of written submissions. Both parties complied.
9. The Appellant's submissions are dated 17<sup>th</sup> September 2025.
10. The Appellants gave a brief background on the matter and submitted that the Respondents herein moved the lower court through summons for revocation of grant dated 14/9/2022. That the grounds of the application were that

Muganda odunga Omollo did not get consent from the Silwal clan to obtain a grant over the estate of Onyango Apoli and that he consequently obtained registration of the properties known as Siaya Nyandiwa/1874, Siaya Nyandiwa/1818 and Siaya Mulaha 1759 to his name thereafter. That the Respondents alleged in their application that they were on the verge of being evicted from the said parcels of land however they did not substantiate the allegations or attach any evidence to prove their allegations.

It was also submitted that the Appellants opposed the application by their Preliminary Objection dated 1/2/2023 on grounds that the application was bad and misconceived in law having been brought after a grant had been issued in 1986 and that the Applicants had not demonstrated that they had locus standi in accordance with Section 29 of the Law of Succession Act. That the Preliminary Objection was also on the point that the orders sought in the application were barred by Section 7 of the Limitation of Action Act in that the claim was stale since the same was being raised several years afterwards.

11. It was submitted that the Appellants having raised the appropriate preliminary objection on grounds that the Respondents lacked locus standi as well as the fact that the claim was being made too late in the day in contravention of Section 7 of the Limitations of Actions Act, the trial court should have addressed these issues first

before embarking on hearing the matter so as to establish whether the court had the requisite jurisdiction. Reliance was placed in the case of **Apex Finance International Limited & Another V Kenya Anti-Corruption Commission (Judicial Review 64 of 2011) [2012] (KLR) (3 February 2012) (Ruling)** where the court held that a court is competent to hear a matter when the parties before it has the capacity to institute the application. The court cited with approval a decision of the Supreme Curt of Nigeria the court stated:

***“Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided. The defect is extrinsic to the adjudication. If the court is competent, the proceedings are not a nullity, but they may be attacked on the ground of irregularity in the conduct of the trial; the argument will be that the irregularity was so grave as to affect the fairness of the trial and the soundness of the adjudication. It may turn out that the party complaining was to blame, or had acquiesced in the irregularity; or that it was trivial in which case the appeal court may not think fit to set aside the judgment. “Goodwill and Trust Investment Ltd & Another Vs. Witt & Bush Ltd [Nigerian Sc. 266/2005].”***

12. It was submitted that the Respondent did not demonstrate the locus standi before the trial court. Further, it was argued that the Respondents did not present evidence that they belonged to the Silwal clan as alleged and therefore they are deemed to be strangers to the said clan since they did not attach a letter of introduction from the Area Chief to back their claims that the deceased herein Muganda Odunga Omollo was not a member of the Silwal clan and therefore not entitled to inherit the land. In the case of **Re Estate of Mutaba Kioko alias Michael Mutava Kioko (deceased) Succession Appeal E004 of 2023 KEHC 8434 (KLR)** the court took judicial notice the importance role played by the Chief's letter in Succession proceedings. The court stated:

***“ This Court takes judicial notice of the important role played by Chief's letters in Succession proceedings. When one files for letters of administration intestate, one of the crucial documents that is required is a letter from the chief. In the case of Ayako v Oronje [2024] KEHC 7641 (KLR) the court held that***

***“29 I should point out that the act of issuing a chief's letter or that of local administration in succession proceedings is Administrative, not legal, on the part of the local administrator.***

***30 The courts traditionally require the chiefs to assist the court to ascertain the***

***immediate kindred of a deceased person. The chiefs are considered reliable as it is expected that he/she is well acquainted with the residents of his location. However, there is no law that binds the chiefs to issue such a letter (s)”***

***“In Mombasa Maize Millers Limited v Roselyne Atieno Ouma & Another [2017] KEHC 7642 (KLR), the court in determining the survivors of the deceased stated that, given that the defendant had at paragraph 2 of the defence disputed the Plaintiff’s locus the issue ought to have been allowed to go for trial because a consent on liability presupposes that even the locus of the persons bringing the suit is admitted. In any event the chief’s letter suffices to prove that fact on a balance of probabilities more so there is no evidence rebutting it..... The chief’s letter is as I have stated the proves the status of the estate of the deceased as well as who his survivors were...”***

***31. The foregoing authorities underscore the importance of a chief’s letter, though not legally conclusive, they are foundational documents used to introduce the deceased’s family to the court. The***

***assumption is that he local administration possesses reliable knowledge of familial structures within their jurisdiction. The inconsistency between two letters authored by the same chief within one month and with materially different content is a critical evidentiary issue that the trial court ought to have interrogated. The failure to summon the chief or even question the legitimacy of the two contradictory letters, left a material evidentiary gap in the proceedings. Therefore, this court finds that the trial court fails to properly evaluate the evidence before it.***

13. It was submitted that the learned trial magistrate did not consider the issue of locus standi of the parties before it and hence the impugned ruling is therefore a nullity before the law. Further the trial court did not consider the issue of locus standi which goes to the root of the court's jurisdiction but went ahead to consider whether grounds for revocation of grant have been established. That the Respondents failed to present sufficient proof of their interest in the estate since the burden lay with them to show that indeed they were heirs of the deceased and that the Appellants were not entitled to the estate by virtue of being strangers.

14. It was also submitted that the trial magistrate erred when he granted an order stopping eviction of the Respondents from the suit land yet there was no evidence of any imminent risk or that they were in actual occupation of the land.
15. It was also submitted that the trial court went into error when it issued orders revoking title deeds and which was ultra vires. It was further contended that the succession court was only concerned with the distribution of a deceased's person estate while the Environment and Land Court deals with matters concerning environment use and occupation of land as well as title to land. Further, that the orders of the trial court are likely to cause chaos of unprecedented proportions which would militate against the provision of Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules.
16. It was finally submitted that the trial court issued orders affecting several other properties in which the Respondents failed to establish ownership and hence it is proper to allow this appeal and set aside the ruling of the trial court.
17. Vide submissions dated 6<sup>th</sup> October 2025, the Respondent submitted that they had filed summons for revocation of grant pursuant to the provisions of Section 76 of the Act provides that a grant may be revoked or annulled "on the application of any interested party" if obtained

fraudulently, by concealment, or without full disclosure. Counsel went ahead to submit that the phrase “any interested party” is broad and not confined to “dependants” under Section 29, which defines beneficiaries for distribution purposes. Reliance was placed in the case of **Re Estate of Julius Ndubi Mugo (Deceased) [2018] eKLR**, where the High Court held that locus standi for revocation extends to any person with a legitimate interest in the estate, including those alleging fraud or wrongful exclusion, without requiring proof of dependency at the application stage and that the Court emphasized: “The threshold for locus in revocation proceedings is prima facie interest, not conclusive proof of entitlement, as full determination occurs at confirmation.” It was therefore contended that the Appellants’ claim that the Respondents lacked locus standi under Section 29 of the Act lacks basis. That the Respondents detailed their membership in the Silwal Clan, their entitlement as heirs, and how Muganda Odunga Omolo fraudulently obtained the Grant without Clan consent, leading to wrongful registration of Siaya/Nyandiwa/1874, Siaya/Nyandiwa/1881, and Siaya/Mulaha/1759. Thus, this prima facie evidence sufficed to establish interest and hence shifting the burden to the Appellants to rebut. The Appellants’ reliance on **Apex Finance International Limited & Another v Kenya Anti-Corruption Commission** (supra) is misplaced, as that case involved judicial review

competence, not succession revocation where Section 76 expressly confers standing on interested parties.

18. As regards the Chief's letter as demanded by the Appellants, it was submitted that the Appellants erroneously maintained that the same is mandatory however in the case of ***Re Estate of Mutaba Kioko alias Michael Mutava Kioko (Deceased) Succession Appeal E004 of 2023 [2023] eKLR*** (cited by Appellants), the Court clarified that a Chief's letter is administrative and evidentiary, not legally binding or prerequisite for locus. The Court stated: "Though not legally conclusive, they are foundational documents... However, there is no law that binds the chiefs to issue such a letter." Similarly, in ***Ayako v Oronje (Civil Miscellaneous Application 103 of 2023) [2024]*** the High Court held: "The act of issuing a chief's letter... is Administrative, not legal... there is no law that binds the chiefs to issue such a letter. Further, the Respondents' affidavit evidence unchallenged by contrary proof from the Appellants was sufficient and therefore the Learned Magistrate rightly proceeded to find that summoning the Chief is discretionary under Rule 63 of the Probate and Administration Rules, not mandatory at revocation stage.

19. It was also submitted that the Appellants' claim that locus affects jurisdiction is untenable in that under Section 47 of the Act, the Court has jurisdiction over all succession matters, including preliminary determinations.

***In Mombasa Maize Millers Limited v Roselyne Atieno Ouma & Another [2017] eKLR***, the High Court upheld a Chief's letter as probative on a balance of probabilities absent rebuttal, but noted it is not indispensable and therefore the decision is not a nullity as it aligns with the decision in ***Re Estate of Mwaura Mutungi alias Mwaura Gichimu Mutungi (Deceased) [2012] eKLR***, where the Court held that Chief's letters assist but do not oust jurisdiction if affidavit evidence establishes interest.

20. It was also submitted that the Respondents as members of the Silwal Clan, have been in continuous occupation of the suit lands since the 1800s, a fact unchallenged by the Appellants. That this long-standing possession establishes a prima facie interest far beyond mere dependency under Section 29, aligning with the broad interpretation of "interested party" in revocation proceedings. That the Appellants' assertion of destitution is baseless, as they are not in occupation and have failed to demonstrate they are the true beneficiaries. That as per the replying affidavit filed by the respondents in opposition to the appeal, the Respondents would suffer grave inconvenience from eviction, tipping the balance of hardship in their favor. That as held by many courts, courts must weigh the scales of justice to ensure a successful party enjoys the fruits of judgment without rendering an appeal nugatory. That the Respondents'

prima facie rights must prevail. That the burden to prove locus lay with the Respondents, which they discharged prima facie but the Appellants, as successors to the fraudulent Grant holder, cannot now demand stricter proof without adducing counter-evidence.

21. As regards the aspect of jurisdiction, it was submitted that Section 48 of the Law of Succession Act empowers the Court to determine “any dispute” under the Act, including preservation of the estate pending revocation. That Rule 73 saves inherent powers to make orders “necessary for the ends of justice.” That in ***Re Estate of Kigen Cheboi Kipchorsoi Deceased (Succession Cause 141 of 1991) [2024] eKLR (cited by Appellants)***, the High Court affirmed that Family/Succession Courts handle matters of ownership and entitlement to a deceased person’s property, including land, but clarified this includes ancillary orders like injunctions to prevent dissipation and that the Court stated, “matters of ownership and entitlement... are governed by the Law of Succession Act and are to be determined by the Family Court.” That the orders granted were preservative, tied to revocation, not a final land dispute. That in the case of ***Succession Cause No. 141 of 1991 Re Estate of Kigen Cheboi Kipchorsoi Deceased [2024] eKLR***, the Court distinguished pure land occupation from succession-related preservation, upholding the latter and hence the learned magistrate

acted within mandate, preventing chaos under Section 45 (prohibiting intermeddling).

22. It was also submitted that the Appellants' claim of ultra vires ignores the position held in numerous decided cases which have the view that succession courts can issue interim orders on occupation to preserve the estate, especially where fraud is alleged. That subsequent successions on subdivided properties do not bar revocation if rooted in fraud in that Section 76 allows revocation at any time. That the orders align with upholding justice, preventing prejudice under Article 159(2)(d) of the Constitution.

23. As regards the issue of limitation, it was submitted that Section 76 of the Law of Succession Act imposes no time bar for revocation, especially for fraud in that it provides from the outset thus '**76. Revocation or annulment of grant -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**'. That in **Re Estate of Charles Ngotho Gachira (Deceased) [2015] eKLR**, the High Court held:

“There is no limitation period provided under the Law of Succession Act as regards the period within

which an application for revocation or annulment of grant should be made.”

That Section 7 of the Limitation of Actions Act applies to actions for land recovery, not succession/revocation. That the Application filed over 30 years post-Grant, was timely as fraud vitiates everything. That missing documents do not invalidate the ruling as the Court relied on available evidence, including the Green Card for Siaya/Mulaha/1759 showing fraudulent transfer. That as for other properties, similar prima facie evidence sufficed at this stage.

24. It was finally submitted that the appeal lacks merit. That the learned mmagistrate’s ruling was sound, supported by evidence, and within jurisdiction and that the appeal should be dismissed with costs.
25. I have considered the record of the trial court as well as the submissions filed. I find the issue for determination is whether the appeal has merit.
26. It is noted from the rival contestations that the Appellants on the one hand contends that the Respondents did not have locus standi to file the summons for revocation of grant before the trial court as they did not avail the chief’s introductory letter and further approached the court too late in the day after the grant had been issued and confirmed while on the other hand, the Respondents maintain that they are the rightful descendants of the

owners of parcel number Siaya/Nyandiwa/1874, 1881 and 1579 wholly occupied by one Onyango Apoli who was a member of Silwal clan. This was the crux of the matter before the trial court. indeed, the trial court received the evidence from the parties and observed the demeanour of the witnesses.

27. As the issue that was presented before the trial court relates to revocation of grant, it is necessary to revisit the provisions of Section 76 of the Law of Succession Act which provides as follows:

***“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 allegations 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 grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or**

**ii) To proceed diligently with the administration of the estate; or**

**iii) To produce to court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs € 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.”**

28. The Respondents were therefore under obligation to establish the grounds set out in Section 76 of the Act. The Respondents claimed that the proceedings to obtain the grant which was issued 22/9/1986 by one Muganda Odunga Omollo were conducted clandestinely as they

were not notified and further that the said person concealed from the court material facts namely that the properties belonged to one Onyango Apoli. The Respondents further claimed that the said Onyango Apoli who was their uncle and a member of Silwal clan was the legitimate owner of the said parcels of land namely Siaya/Nyandiwa/1874, 1881 and 1579. They also contended that they had been in occupation of the parcels of land for a long time and that the Appellants were strangers and further that the said Muganda Odunga Omollo hailed from Ugenya where he was eventually buried. It also transpired from the evidence that the said Muganda Odunga Omollo had mysteriously registered himself as owner of the said properties yet no confirmation took place. The Appellants in the trial court failed to present evidence that the grant issued on 22/9/1986 was indeed confirmed and hence the trial court was convinced that the grant that had been issued ought to be revoked so that fresh petitions could be lodged and then parties with an interest in the estate could ventilate their claims. ***The Respondents presented a copy of judgment in ELC at Kisumu No. 831 of 2015 in which the court ruled that the registration process and transfer of title numbers Siaya/Mulaha/1759, Siaya/Nyandiwa/1874 and Siaya/Nyandiwa/1881 appeared suspicious and went ahead to order cancellation of the said titles.*** The Appellants have contended that the Respondents did

not have locus standi on the ground that there was no chief's letter to confirm that the Respondents actually belonged to Silwal clan. Learned counsel for the Appellants placed reliance in the case of Mutaba **Kioko alias Michael Mutava Kioko (Deceased) Succession Appeal E004 of 2023 KEHC8434 (KLR)** where the court took judicial notice the importance role played by the chief's letter in succession proceedings. The court stated that:

***“This court takes judicial notice of the important role played by chief’s letters in succession proceedings. When one files for letters of administration intestate, one of the crucial documents that is required is a letter of the chief. In the case of Ayako v Oronje [2024] KEHC 7641 (KLR) the court held***

***“29 I should point out that the act of issuing a chief’s letter or that of local administration in succession proceedings is Administrative, not legal, on the part of the local administrator.***

***30 The courts traditionally require the chiefs to assist the court to ascertain the immediate kindred of a deceased person. The chiefs are considered reliable as it is expected that he/she is well acquainted with the residents of his location. However,***

***there is no law that binds the chiefs to issue such a letter (s)”***

***“In Mombasa Maize Millers Limited v Roselyne Atieno Ouma & Another [2017] KEHC 7642 (KLR), the court in determining the survivors of the deceased stated that, given that the defendant had at paragraph 2 of the defence disputed the Plaintiff’s locus the issue ought to have been allowed to go for trial because a consent on liability presupposes that even the locus of the persons bringing the suit is admitted. In any event the chief’s letter suffices to prove that fact on a balance of probabilities more so there is no evidence rebutting it..... The chief’s letter is as I have stated the proves the status of the estate of the deceased as well as who his survivors were...”***

***31. The foregoing authorities underscore the importance of a chief’s letter, though not legally conclusive, they are foundational documents used to introduce the deceased’s family to the court. The assumption is that he local administration possesses reliable knowledge of familial structures within their jurisdiction. The inconsistency between two letters authored by the same chief within one month and with materially different content is***

***a critical evidentiary issue that the trial court ought to have interrogated. The failure to summon the chief or even question the legitimacy of the two contradictory letters, left a material evidentiary gap in the proceedings. Therefore, this court finds that the trial court failed to properly evaluate the evidence before it.***

Despite the foregoing decision as relied upon by the Appellants, it is my considered view that the failure to present a chief's letter does not invalidate or weaken a party's claim in a succession matter since that is not the only ground which ought to be relied upon by parties. It is common knowledge that the said chiefs' letters are often persuasive to the courts and that ordinarily chiefs are under no obligation to write such letters. It is instructive that the Law of Succession Act gives persons the opportunity to present claims to the succession court for consideration. It is noted that the Respondents upon learning of the existence of the matter, filed the summons for revocation of grant pursuant to the provisions of Section 76 of the Law of Succession Act. Even though the Appellants pitched camp on the issue of lack jurisdiction by the trial court on the basis of absence of a chief's letter, it is the view of this court that the trial court had jurisdiction once the Respondents lodged the Summons for Revocation of Grant. The duty of the court was to hear the claims by the parties and make a

determination. In any event, the issue of a chief's letter did not touch issues of jurisdiction and further the issue of whether the Respondents were dependants of the deceased in the succession cause has nothing to do with jurisdiction of the court as succession court has a wide latitude to adjudicate all the competing interests of the parties hence, the Appellants' Preliminary Objection lacked merit and was meant to deny the Respondents an opportunity to ventilate their claim before the court. In any case, Section 76 of the Act provides that a grant may be revoked or annulled "on the application of any interested party" if obtained fraudulently, by concealment, or without full disclosure. It is noted that the phrase "any interested party" is broad and not confined to "dependants" under Section 29, which defines beneficiaries for distribution purposes. In the case of ***Re Estate of Julius Ndubi Mugo (Deceased) [2018] eKLR***, the

Court held that locus standi for revocation extends to any person with a legitimate interest in the estate, including those alleging fraud or wrongful exclusion, without requiring proof of dependency at the application stage and that the Court emphasized: "The threshold for locus in revocation proceedings is prima facie interest, not conclusive proof of entitlement, as full determination occurs at confirmation." Hence, the Appellants' claim that the Respondents lacked locus standi under Section 29 of the Act lacks basis. It is instructive that the

Respondents detailed their membership in the Silwal Clan, their entitlement as heirs, and how Muganda Odunga Omollo fraudulently obtained the Grant without Clan consent, leading to wrongful registration of Siaya/Nyandiwa/1874, Siaya/Nyandiwa/1881, and Siaya/Mulaha/1759. Thus, this was prima facie evidence sufficient to establish interest and hence shifting the burden to the Appellants to rebut. It is noted that the Appellants have relied on the case of **Apex Finance International Limited & Another v Kenya Anti-Corruption Commission** (supra) regarding the issue of competence of the court where the parties have capacity to file suits before it. It is noted that the said case involved judicial review competence, not succession or revocation where Section 76 expressly confers legal standing on interested parties. Indeed, the trial court acted as a succession court in which all parties with interest in the estate were entitled to appear before it and ventilate their issues. The trial court could not lock out certain parties on the basis that they lacked capacity yet those parties genuinely had interests to protect.

29. The Appellants' counsel has also dwelt a lot on the issue of the trial court's lack of jurisdiction on the basis that the Respondents did not present the Chief's letter introducing them as members of Silwal clan and having interest in the three properties in dispute. I find that the Appellants' contention that the same is mandatory is erroneous. In

the case of **Re Estate of Mutaba Kioko alias Michael Mutava Kioko (Deceased) Succession Appeal E004 of 2023 [2023] eKLR** (cited by Appellants), the Court clarified that a Chief's letter is administrative and evidentiary, not legally binding or prerequisite for locus. The Court stated: "Though not legally conclusive, they are foundational documents... However, there is no law that binds the chiefs to issue such a letter." Similarly, in **Ayako v Oronje (Civil Miscellaneous Application 103 of 2023) [2024]** the High Court held: "The act of issuing a chief's letter... is Administrative, not legal... there is no law that binds the chiefs to issue such a letter. Further, the Respondents' affidavit evidence unchallenged by contrary proof from the Appellants was sufficient and therefore the Learned Magistrate rightly proceeded to find that summoning the Chief is discretionary under Rule 63 of the Probate and Administration Rules, not mandatory at revocation stage.

30. Further, the Appellants' claim that locus affects jurisdiction is untenable in that under Section 47 of the Act, the Court has jurisdiction over all succession matters, including preliminary determinations. **In Mombasa Maize Millers Limited v Roselyne Atieno Ouma & Another [2017] eKLR**, the Court upheld a Chief's letter as probative on a balance of probabilities absent rebuttal, but noted it is not indispensable and therefore the decision is not a nullity as it aligns with the decision in **Re Estate of Mwaura Mutungi alias Mwaura Gichimu**

***Mutungji (Deceased) [2012] eKLR***, where the Court held that Chief's letters assist but do not oust jurisdiction if affidavit evidence establishes interest. To that extent, it is my view that the Appellants claim that the trial court did not have jurisdiction on the basis of absence of a chief's letter is misplaced. I find that the trial court had jurisdiction to entertain the matter.

31. It came out from the evidence that the Respondents are members of the Silwal Clan, who have been in continuous occupation of the suit lands for many years and which was not challenged by the Appellants. Hence, the long-standing possession establishes a prima facie interest far beyond mere dependency under Section 29 of the Act, aligning with the broad interpretation of "interested party" in revocation proceedings. That as per the replying affidavit filed by the respondents in opposition to the appeal, the Respondents would suffer grave inconvenience from eviction thus tipping the balance of hardship in their favour. The courts must weigh the scales of justice to ensure that the rights of parties are not deprived even before the dispute is determined

32. Still on jurisdiction, it is clear that Section 48 of the Law of Succession Act empowers the Court to determine "any dispute" under the Act, including preservation of the estate pending revocation. That Rule 73 saves inherent powers to make orders "necessary for the ends of

justice.” That in ***Re Estate of Kigen Cheboi Kipchorsoi Deceased (Succession Cause 141 of 1991) [2024] eKLR (cited by Appellants)***, the High Court affirmed that Family/Succession Courts handle matters of ownership and entitlement to a deceased person’s property, including land, but clarified this includes ancillary orders like injunctions to prevent dissipation and that the Court stated, “matters of ownership and entitlement... are governed by the Law of Succession Act and are to be determined by the Family Court.” That the orders granted were preservative, tied to revocation, not a final land dispute. Again, in the case of ***Succession Cause No. 141 of 1991 Re Estate of Kigen Cheboi Kipchorsoi Deceased [2024] eKLR***, the Court distinguished pure land occupation from succession-related preservation, upholding the latter and hence I find the learned magistrate acted within mandate, preventing chaos under Section 45 of the Act which concerns with intermeddling of an estate of a deceased person.

33. The Appellants have contended that the trial court acted ultra vires by ignoring the Appellants’ objection on lack of jurisdiction by the trial court when it entertained the Respondents without a chief’s letter and when it made orders cancelling the titles. It has been held in numerous decided cases which have the view that succession courts can issue interim orders on occupation to preserve the

estate, especially where fraud is alleged. It is noted that the subsequent successions on subdivided properties do not bar revocation if rooted in fraud in that Section 76 of the Act allows revocation at any time. These orders align with upholding justice, preventing prejudice under Article 159(2)(d) of the Constitution. The trial court as a succession court had the jurisdiction and power to make the orders as appropriate in line with the provisions of Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules.

34. It was also contended by the Appellants that the summons for revocation of grant were filed after many years since the grant was issued on 22/9/1986 and maintained that this was a violation of the provision of Section 7 of the Limitation of Actions Act. However, the provisions of Section 76 of the Law of Succession Act imposes no time bar for revocation, especially for fraud in that it provides from the outset thus '**76. Revocation or annulment of grant -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**'. That in **Re Estate of Charles Ngotho Gachira (Deceased) [2015] eKLR**, the High Court held:

**“There is no limitation period provided under the Law of Succession Act as regards the period within which an application for revocation or annulment of grant should be made.”**

Indeed, Section 7 of the Limitation of Actions Act applies to actions for land recovery, not succession/revocation. The application is noted to have been filed over 30 years post-Grant, but the same was still valid since fraud vitiates everything. Further, the issue of missing documents do not invalidate the ruling as the Court relied on available evidence, including the Green Card for Siaya/Mulaha/1759 showing fraudulent transfer as well as other properties where the evidence was presented. I am satisfied that the Respondents presented sufficient evidence in support of the Summons for Revocation of Grant to warrant the orders which were eventually granted by the trial court. Hence, the finding of the trial court was proper and must be upheld.

35. It is noted that learned counsel for the Appellants has contended that the orders issued by the trial court would cause chaos on the ground. However, the order reverting the properties to the rightful deceased Onyango Apoli was appropriate so as to ensure that the same are not dissipated pending the parties and others interested regularizing their status as well as presenting their appropriate claims.

36. In view of the foregoing observations, it is my finding that the Appellants' appeal lacks merit. The same is dismissed. Each party to bear their own costs.

**Dated and delivered at Siaya this 19<sup>th</sup> day of January 2026.**

**D. KEMEI**

**JUDGE**

**In the presence of:**

**Jeji.....for Appellants.**

**M/s Nyambeka.....for Respondents.**

**Maureen/Kimaiyo.....Court Assistant.**