

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT HOMA BAY
CIVIL MISC. APPLICATION NO. E070 OF 2024

KENNEDY OCHIENG
OWIDI.....APPLICANT
VERSUS

JOHN OKAL OWIDI.....1ST
RESPONDENT
MONICA ADOYO OWIDI.....2ND
RESPONDENT
THOMA ANYUNGA OMBOGA.....3RD
RESPONDENT

RULING

[1] This ruling is in respect of the Summons for Revocation of Grant dated 17th October 2024. It was filed pursuant to **Sections 45, 47 and 76** of the **Law of Succession Act**, Chapter 160 of the Laws of Kenya and **Rules 49 and 73** of the **Probate and Administration Rules**. The applicant thereby prayed for the following orders:

[a] That the consent dated 17th February, 2022 in Civil Appeal No. E077 OF 2021 be set aside.

[b] That the grant issued to **John Okal Owidi and Monica Adoyo Owidi**, the respondents herein, made on the 23rd February, 2024 be revoked.

[c] That upon grant of prayer [a] above, the deceased's properties be distributed afresh and all beneficiaries to sign a consent on the mode of distribution.

[c] That the Court be pleased to issue an injunction restraining the respondents from transmitting, selling, transferring and disposing off the property title number EAST/KASIPUL/KOJWACH KAMIORO/1256 pending the hearing and determination of the application herein.

[d] That costs of this application be in the cause.

[2] The application was supported by the applicant's own affidavit and is premised on the grounds that the applicant herein is a beneficiary by virtue of being one of the sons of the deceased; and that the respondents obtained letters of administration without the consent of all beneficiaries. He contended that the respondents did not involve the applicant in deciding on the mode of distribution and therefore the beneficiaries did not execute any consent to agree on the mode of distribution proposed in the application for confirmation of grant. The applicant further averred that the court issued a grant based on a consent order made in **Civil Appeal No. E077 of 2021** where neither the 2nd respondent nor any of the beneficiaries participated; and therefore it is in the interest of justice that the instant application be allowed and orders granted as prayed.

[3] In response to the application, the respondents filed Grounds of Opposition dated 14th February 2025. They thereby contended that:

[a] The application is misconceived, frivolous, and without merit.

[b] The applicant, having sought similar orders to revoke the grant of representation before the lower court, is precluded from seeking the same orders from the High Court in its original jurisdiction.

[c] The application amounts to an appeal from the orders of the lower court.

[d] The applicant lacks capacity to make the said application for failing to first seek leave of court for his joinder.

[e] The applicant is a stranger to this Appeal.

[f] The applicant was not a party to the consent contention and cannot therefore seek to set it aside.

[g] The application is incompetent and an abuse of, the process of this Court.

Replying affidavit

[4] The application was canvassed by way of written submissions. The applicant filed written submissions dated 17th March 2025. He provided a brief history of the matter and stated that he is the son of **Harrison Omune *alias* Owidi Omune**, now deceased, whose estate is the subject of these proceedings. The applicant further explained that the grant in respect of the estate of the deceased was issued pursuant to a consent order made in **Civil Appeal No. E077 of 2021: Thomas Anyunga Omboga v**

Monicah Adoyo Owidi, John Okal Owidi & Grace Akinyi; and therefore none of the beneficiaries and or children of the deceased were involved and or were party to the said consent order.

[5] The applicant further explained that the applicant filed an application before the lower court seeking revocation of the grant but the said application was dismissed on the grounds for lack of jurisdiction. Accordingly, the applicant proposed a single issue for determination, namely: whether a grant the knowledge or consent of the beneficiaries. He made reference to **Rule 40(8)** of the Probate and Administration Rules and the **Estate of Gathima Chege** (Deceased), Nairobi High succession Cause No. 1955 of 1996. He urged the Court to find that the proceedings before the lower court were a nullity.

[6] On their part, the respondents relied on their written submissions dated 17th March 2025. In their view, the issues for determination herein are:

[a] Whether the applicant, having unsuccessfully sought the orders for revocation of grant in the original suit, can seek similar orders from this Court in exercise of its original jurisdiction.

[b] Whether the Court in exercising its original jurisdiction can review and/or set aside its earlier orders made in an appeal from the lower court.

[c] Whether the applicant has *locus standi* to bring the present application.

[d] Whether the applicant, who was a non-party in the earlier appeal, may seek to set aside a consent order made in that appeal and without leave to be joined in that appeal as a party.

[7] The respondents developed their arguments around the four issues above and urged the Court to find that the instant application is *res judicata*. They further submitted that the applicant lacks the *locus standi* to seek the setting aside of the consent orders in respect of which grant was issued. In this regard, the respondents relied on **Miiri Julius v The Chief Registrar of the Judiciary**. Accordingly, the respondents prayed that the application be dismissed.

[8] From the foregoing, there is no dispute that, in respect of the estate of **Harrison Omune *alias* Owidi Omune**, the personal representatives filed **Succession Cause No. E249 of 2018** before the Senior Principal Magistrate's Court at Oyugis. The decision of the lower court in that matter was appealed and the documents annexed to the applicant's Supporting Affidavit confirm that the appeal, being **Homa Bay High Court Civil Appeal No. E077 of 2021**, was compromised by consent. Hence the appeal was marked as withdrawn. That paved way for the lower court to proceed with **Succession Cause No. E249 of 2018** in terms of the consent dated 17th February 2022.

[9] Consequently, the Grant of Letters of Administration Intestate issued in the names of the 1st and 2nd respondents, was duly confirmed and a Certificate of Confirmation issued on 23rd February 2024. Therefore, the valid question posed by the respondents, which is the key issue for determination herein, is whether this Court can, in the manner sought by the applicant, revoke the Grant issued by the Magistrates Court.

[10] Whereas **Section 47** of the Law of Succession Act provides that the High Court shall have jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decrees and make such orders therein as may be expedient, that provision also recognizes that:

“The High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”

[11] In addition, **Section 48(1)** of the Law of Succession Act provides that:

(1) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of [section 49](#), a magistrate shall have jurisdiction to entertain any application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under section 7 of the Magistrates' Courts Act ([Cap 10](#)).

[13] In the circumstances, any party aggrieved by the decision of the Magistrate’s Court can only invoke the appellate jurisdiction of this Court. **Section 50(1)** of the Law of Succession is explicit that:

(1) An appeal shall lie to the High Court in respect of any order or decree made by a Resident Magistrate in respect of any estate and the decision of the High Court thereon shall be final.

[14] In the premises, I find it superfluous to engage in a merit consideration of the matter. The application dated 17th October 2025 is clearly misconceived and is accordingly struck out with no order as to costs.

It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY
OF APRIL 2026**

.....

**OLGA SEWE
JUDGE**