



REPUBLIC OF KENYA



**In re Estate of Owiti Agot (Deceased) (Succession Cause
94 of 2012) [2026] KEHC 5274 (KLR) (24 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5274 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 94 OF 2012**

A MABEYA, J

APRIL 24, 2026

BETWEEN

GEORGE OKOTH ODONGO 1ST APPLICANT

BEATRICE ADHIAMBO OWINI 2ND APPLICANT

AND

STEWART JALANGO AGOT RESPONDENT

RULING

1. By Summons for Revocation of Grant dated 25/7/2025, the applicants sought to have the grant issued to the respondent on the 10/8/2020 revoked. The Summons was brought under the provisions of section 76 of the *Law of Succession Act* and Rules 44 of the Probate and Administration Rules.
2. The Summons was anchored on the grounds set out on its face as well as the supporting affidavit sworn on the 25/7/2025 by George Okoth Odongo. It was contended that the grant issued to the respondent was obtained by the making of a false statement particularly by concealment of material information that the deceased had other beneficiaries who were the children of the deceased's dead brother, Edwin Okelo Agot who the deceased omitted from including in the list of survivors and dependants.
3. It was their case that their father, Edwin Okelo Agot, died on the 9/4/2011 whereas their grandfather, the deceased herein was declared dead vide a court order issued on the 9/6/2011 in Bondo Miscellaneous Civil Application No. 4 of 2011.
4. That as children of the deceased's brother, they were entitled to an equal and lawful share of the deceased's estate just as the respondent who is similarly a brother to the deceased herein.
5. The Summons remained unopposed as the record reveals the respondent never took part in the proceedings.



6. The applicants filed submissions reiterating the allegations in their Summons for revocation. They submitted that the respondent failed to disclose to court the existence of another of his siblings, the applicants' father thus the applicants were never notified and never consented to the succession proceedings.
7. That being children of the deceased's brother, they stood in the shoes of their dead father to inherit from the estate of the deceased as provided in section 39 of the *Law of Succession Act*.
8. I have considered the record, the Summons for revocation were unopposed. I will thus proceed to consider whether the applicants merited grant of the orders sought.
9. 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.”

10. From the foregoing, a court may revoke a grant either on its own motion or on an application by a party on three broad general grounds. Firstly, where the process of obtaining the grant is marred by irregularities, is defective, either because some mandatory procedural step is omitted, where the process is marred by fraud and misrepresentation or concealment of material facts. Secondly, where the grant is obtained procedurally, but the administrator, thereafter, gets 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. And, thirdly, 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 becomes infirm.



11. In the present case, the applicants' claim was based on the allegation that the respondent obtained the grant by failing to disclose their existence as children of the deceased's brother. Consequently, this court has to determine whether the applicants were entitled to benefit from the deceased's estate.
12. It is uncontested that the applicants were children of one Edwin Okelo Agot, a brother to the deceased. The intestate provisions in Part V run from sections 32 to 42 of the [Law of Succession Act](#). They cover distribution of estates of persons who died without having made a will.
13. Where a deceased is survived by a spouse, whether or not without children, the surviving spouse has priority over everyone else. In the absence of children, the property would devolve upon the relatives, in the manner of section 39 of the [law of Succession Act](#) which provides as follows: -

“ 39. Where intestate has left no surviving spouse or children

- 1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—
 - a) father; or if dead
 - b) mother; or if dead
 - c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none.
 - d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
 - e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.”

14. In the present case, the deceased did not have a spouse and children, and his parents were dead. That meant that distribution was to follow the third scenario, where the property is shared out equally between the brothers and sisters of the deceased. Where any of the brothers and sisters of the deceased is dead, the share due to him or her would go to his or her children, who would divide the share equally amongst themselves, in terms of section 39(1)(c) of the [Law of Succession Act](#). The children of the dead's siblings step into the shoes of their late parents, in terms of section 41 of the [Law of Succession Act](#).
15. Accordingly, the applicants ranked equal in priority to the respondent in applying for grant and as such ought to have been included by the respondent which he failed to do. The respondent further did not list the applicants as beneficiaries of the deceased in Form P&A 5.
16. It is therefore evident that the process leading up to the issuance of the grant to the respondent was flawed. In the circumstances, the Grant of Letters of Administration Intestate issued to Stewart Jalango Agot on the 10/8/2020 is hereby revoked. All transactions on the suit property, North Sakwa/ Maranda/10 are hereby cancelled and the title reverts back to the name of the deceased.

It is so decreed.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF APRIL, 2026.

A. MABEYA, FCI Arb



JUDGE

