

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**SUCCESSION APPEAL NO. E024 OF 2025**

**CHRIS OMULO OYUGI ..... 1<sup>ST</sup> APPELLANT**

**NORAH OTIENO ..... 2<sup>ND</sup> APPELLANT**

**- VERSUS -**

**CHRISTABEL ATIENO PIRE ..... 1<sup>ST</sup> RESPONDENT**

**ROSE MIKAL ADHIAMBO ONYANGO ..... 2<sup>ND</sup> RESPONDENT**

**(Being an appeal from the judgment and decree of Hon. F. Rashid SPM  
delivered on the 6/10/2025 in Kisumu CMSUCC No. 886 of 2017, Chris Omulo  
Oyugi & Norah Otieno v Christabel Atieno Pire & Rose Mikal Adhiambo  
Onyango)**

**J U D G M E N T**

1. The deceased herein, **Phoebe Olando Opudo** alias **Phoebe Opudo Halanga**, a resident of Kisumu County died on the **4/6/2014** in Lambeth, United Kingdom. Her estate consisted wholly of land parcel **Kisumu/Manyatta ‘B’/471**.
2. **Christabel Atieno Pire**, the 1<sup>st</sup> respondent, petitioned for Letters of Administration and on the **19/3/2018**, Grant of Letters of Administration Intestate were issued to her as the deceased’s sister and subsequently confirmed on the **26/4/2019**. On the **15/10/2021**, the confirmed grant issued to the 1<sup>st</sup> respondent was

rectified to the effect having the 2<sup>nd</sup> respondent, **Rose Mikal Adhiambo Onyango** confirmed as the beneficiary of the deceased's estate.

3. Vide Summons for Revocation of Grant dated **29/11/2024**, the appellants moved the trial court seeking to have the letters of administration issued to the 1<sup>st</sup> respondent and rectified in the name of the 2<sup>nd</sup> respondent revoked and the title deed issued to the 2<sup>nd</sup> respondent cancelled.
4. The appellants anchored their Summons on the grounds that the 1<sup>st</sup> respondent instituted the succession proceedings without involving other members of the deceased's family specifically himself as the deceased's nephew and the 2<sup>nd</sup> appellant as the sister-in-law and in concealment of the fact that the 1<sup>st</sup> respondent was not a beneficiary of the deceased's estate.
5. The trial proceeded by way of viva voce evidence and in a judgment delivered on the **6/10/2025**, the trial court found that the respondents had priority over the appellants in applying for letters of administration and as such proceeded to dismiss the appellants Summons.
6. Being dissatisfied with the said Judgment/decree, the appellants lodged this appeal vide the Memorandum of Appeal dated **23/10/2025** which raised twelve (12) grounds of appeal which can be summarized as follows: -

- a) *The learned magistrate erred in law and fact in framing the dispute before her solely as who among the relatives of the deceased has priority in benefiting from the estate and in any case decided erroneously on that premise.*
- b) *The learned magistrate erred in law and in fact in failing to consider and/or acknowledge that the appellants summons of 29/11/2024 was grounded on fraud, misrepresentation and the defectiveness of the 1<sup>st</sup> respondent's application for letters of grant of administration.*
- c) *The learned magistrate erred in law and in fact in failing to consider that Rule 26 (1) of the Probate and Administration Rules provide that Letters of Administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant which notice the 1<sup>st</sup> respondent did not issue.*
- d) *The learned magistrate erred in law and in fact in failing to consider that Rule 26 (2) of the Probate and Administration Rules compelled the 1<sup>st</sup> respondent to provide renunciations, or written consents in Form 38 or 39, by all persons so entitled in equality or priority and/or affidavit to secure the Grant of Representation which she did not.*

- e) *The learned magistrate erred in law and in fact in failing to consider that pursuant to section 76 of the Law of Succession Act she was mandated and ought to have revoked and/or annulled the subject grant upon the realization that the proceedings to obtain the same were defective in substance, that the grant was obtained fraudulently by the making of a false statement or that the grant was obtained by means of an untrue allegation of a fact.*
- f) *The learned magistrate erred in fact as is apparent from the subject judgment which is fraught with errors including witnesses who were misidentified, testimony which was improperly recorded and information that is contrary to the witness statements.*
- g) *The learned magistrate erred in law and in fact in ignoring the very grounds upon which the subject summons were premised and ruled contrary to the weight of evidence before her.*

7. The appeal was disposed of by way of oral submissions on **8/12/2025**. It was submitted on behalf of the appellant that the 1<sup>st</sup> respondent applied for grant on the basis that she was a sister of the deceased whereas she is a daughter in law of the 2<sup>nd</sup> respondent. That the trial court erred in stating that the fundamental issue for determination was who had priority to apply for the grant.

8. That the 1<sup>st</sup> appellant being a nephew of the deceased and the 2<sup>nd</sup> appellant being a sister-in-law to the deceased had superior priority over the 1<sup>st</sup> respondent in applying for letters of grant, that the 1<sup>st</sup> appellant had equal rights to the deceased estate as the 2<sup>nd</sup> respondent.
9. As for the respondents, it was submitted that it was the unchallenged evidence that the 2<sup>nd</sup> respondent took the deceased to work in the UK, took care of her when she was unwell and facilitated the airlift of her body back to Kenya after her demise. That on the **18/10/2014** there was a meeting held by the 5 surviving siblings of the deceased including the 1<sup>st</sup> appellant's mother and 2<sup>nd</sup> appellant's husband where it was agreed that the suit property be given to the 2<sup>nd</sup> respondent for the work she had done in maintaining the deceased.
10. That the deceased's blood sisters had no issue with the agreement of the family and as such it was strange for the appellants to raise their opposition 10 years after the fact. That there was no decree in the Record of Appeal thus offending ***Order 42 Rule 33 and 34 of the Civil Procedure Rules.***
11. In rejoinder, it was submitted for the appellants that there were no minutes adduced for the meeting held in 2014. That the illegality on procuring the grant could not be rectified as the process was fraudulent. That revocation of the grant would allow the parties to articulate their interests in the estate.

12. This being a first appeal, the Court is duty bound to evaluate the evidence before the trial court afresh and come to its own independent findings and conclusions. See **Selles & Anor v Associated Motor Boat Co Ltd & Others [1968] EA 123.**
13. **Norah Otieno**, the 2<sup>nd</sup> appellant testified as **Ow1**. She adopted her statement dated **30/1/2025** as her evidence in chief. It was her testimony that the 2<sup>nd</sup> respondent, who was the deceased's sister used her sister in law, the 1<sup>st</sup> respondent to undertake succession proceedings.
14. That **Ow1's**, husband prior to his death had made an oral will over the suit property stating that the same should be preserved in the memory of the deceased. That the 1<sup>st</sup> respondent had no right to take out letters of administration of the deceased's estate without consent of others.
15. In cross-examination, she confirmed that she was not related by blood to the deceased. That after the deceased's death, one **Apollo Onyango**, a son to the 2<sup>nd</sup> respondent stayed on the suit property watching over it for the 2<sup>nd</sup> respondent. That she was not aware of the family meeting where it was agreed that the suit property be given to the 2<sup>nd</sup> respondent.
16. **Chris Omulo Oyugi**, the 1<sup>st</sup> appellant testified as **Ow2**. He adopted his affidavit sworn on the **29/11/2024** in support of the Summons for revocation of grant as his evidence in chief. It was his case that the 1<sup>st</sup> respondent was not a sister of the

deceased but rather a sister-in-law whereas the 2<sup>nd</sup> respondent was the deceased's sister.

17. In cross-examination, she stated that the 2<sup>nd</sup> respondent and the deceased were both his aunts. That in the meeting of **18/4/2014**, her mother and her siblings resolved to grant the 2<sup>nd</sup> respondent the suit land. That he is the only one in his family opposed to the grant of letters to the 1<sup>st</sup> respondent.

18. **Vincent Omollo Onyango** testified as **Ow3** adopting his witness statement dated **13/1/2025** as his evidence in chief. It was his testimony that the deceased was his aunt whereas the 2<sup>nd</sup> respondent was his mother. That the 1<sup>st</sup> respondent was his sister in law. He testified that his uncle **Kepha Otieno Opudo** and the 2<sup>nd</sup> respondent appointed him to stay on the suit land upon the demise of the deceased and he had been staying there for the past 10 years. That he was aware that the respondents want to dispose of the suit property.

19. In cross-examination, he stated that he had been having issues with his mother, the 2<sup>nd</sup> respondent over land issues. That he did not stay on the suit land on behalf of his mother. That his home was in Sango farm and Dunga.

20. **Malachi Otieno Muga** testified as **Ow4**. He adopted his witness statement dated **30/1/2025** as his evidence in chief. It was his testimony that the deceased was his mother's younger sister. That the 2<sup>nd</sup> respondent was similarly a sister to his

mother. That his uncle **Kepha Otieno Opudo** constructed a house on the land in order to facilitate the burial of the deceased. That the 1<sup>st</sup> appellant's mother was the one who found the suit property for the deceased. In cross-examination, it was his testimony that there were 2 siblings of the deceased who were still alive.

21. **Zephaniah Ojijo** testified as **Ow5** and adopted his witness statement dated **30/1/2025**. It was his testimony that he was the village elder of the location where the suit property was located. That the suit property was under the care of one **Mama Loyce Oyugi** who lived next to it and that her sister who had lived abroad was the one who was buried on the property.
22. On their part, the 1<sup>st</sup> respondent testified as **Pw1**. She adopted the witness statement dated **23/5/2025** as her evidence in chief and produced the list of documents dated **10/6/2025** as **PExh1 – 8**. It was her testimony that she was a daughter in law to the 2<sup>nd</sup> respondent and that she knew the deceased before she got married to the 2<sup>nd</sup> respondent's family.
23. That the 2<sup>nd</sup> respondent delegated her the duty of conducting the succession proceedings following a meeting held on the **18/10/2014** and pursuant to that meeting she gifted her the suit property which she subsequently transferred into the name of the 2<sup>nd</sup> respondent. That there was no fraud or concealment of any material

facts in obtaining the grant or the transfer of the suit property to the name of the 2<sup>nd</sup> respondent.

24. In cross-examination, she told the court that in the chief's introductory letter, she identified herself as a sister of the deceased. That at the time of the deceased's death, the deceased had 3 siblings who were still alive namely; **Mikal (2<sup>nd</sup> respondent), Edith and Loise**. That the said siblings failed to sign any consent allowing her to proceed.
25. That she did not have the minutes of the meeting alleged to have taken place on the **18/10/2014** but that she was informed that the family agreed that she undertake the succession proceedings.
26. **Rose Mikal Adhiambo Onyango**, the 2<sup>nd</sup> respondent testified as **Pw2**. She adopted her witness statement dated **3/6/2025** as her evidence in chief. It was her testimony that the deceased was her blood sister. That the deceased told her about the suit land in the **1970s** and she provided the money to the deceased to purchase the land. That at the time of the deceased's death, she was survived by 5 siblings, including parents to the appellants.
27. That following the deceased's burial, the family held a meeting on the **18/10/2014** to discuss the status of the deceased's land, which meeting was attended by the mother and brother of the 1<sup>st</sup> appellant and husband of the 2<sup>nd</sup> appellant who

chaired it. That at the meeting, it was agreed that she be given the suit property and that she initiates the succession proceedings. It was further agreed that the 1<sup>st</sup> respondent be allowed to petition for letters of grant and that one **Vincent Omollo** be given the responsibility of taking care of the land. That pursuant to the said nomination and endorsement, she gifted the property to herself and subsequently upon confirmation of the grant transferred it to her name.

28. In cross-examination, she stated that the 1<sup>st</sup> respondent was her daughter in law. That although she allowed the 1<sup>st</sup> respondent to commence the succession proceedings on her behalf, she did not have proof of the said authority. That she did not sign any consent to allow the 1<sup>st</sup> respondent to be an administrator.
29. **Pw3 Fredrick Odhiambo Akuba Oyugi** testified as Pw3 stating that the 1<sup>st</sup> appellant was his brother while the 2<sup>nd</sup> appellant was his sister-in-law. He adopted his witness statement dated **15/1/2025** as his evidence in chief and testified that the 2<sup>nd</sup> respondent was his aunt.
30. That the 2<sup>nd</sup> respondent supported the deceased in purchasing the suit property. That the 2<sup>nd</sup> respondent had taken care of and supported the 1<sup>st</sup> appellant in his studies and that their (Pw3's) family did not have any interest in the suit property. That as administrator of their parents' estate, the 1<sup>st</sup> appellant had been apportioned a piece of land therein.

31. In cross-examination, he stated that the 1<sup>st</sup> respondent was not a blood sister to the deceased. That he was aware of the succession proceedings commenced by the 1<sup>st</sup> respondent. That when the deceased passed on, she had 5 siblings still alive and they gave the 1<sup>st</sup> respondent permission to commence the succession proceedings.
32. **Pw4 John Charles Anyumba Yoga** adopted his witness statement dated **3/4/2025** as his evidence in chief. It was his testimony that he was a cousin to the deceased. That he attended the meeting of **18/10/2014** after the deceased's burial that was in on how to handle the deceased's suit property.
33. That it was agreed that in appreciation of the 2<sup>nd</sup> respondent's generosity in airlifting the deceased's body from abroad and undertaking the burial costs, it was resolved that the suit property be given to her. That as the 2<sup>nd</sup> respondent was not living in Kenya, her daughter in law, the 1<sup>st</sup> respondent was allowed to petition on her behalf and that one **Vincent Omolo Onyango** not having a place to stay was tasked with watching over the suit property.
34. **Pw5 Joyce Mudho** adopted her witness statement dated **29/6/2025** as her evidence in chief. It was her testimony that she was a sister in law to both the deceased and 2<sup>nd</sup> respondent. That she was aware of the meeting of **18/10/2014** wherein it was resolved that in appreciation to the 2<sup>nd</sup> respondent's generosity in undertaking the

burial expenses, her daughter in law was tasked with undertaking succession proceedings on her behalf.

35. In cross-examination, she stated that the deceased had surviving siblings when succession proceedings commenced though she was not aware if all the beneficiaries consented.

36. It is based on this evidence that the trial court rendered its decision. The appellant's case before the trial court was rather simple, that they ranked in priority to the 1<sup>st</sup> respondent in terms of applying for letters of administration over the deceased's estate and as such the Letters of Administration of Grant issued to the 1<sup>st</sup> respondent on the **19/3/2018** and subsequently confirmed on the **26/4/2019** be revoked on account that the same was obtained fraudulently and without involving other members of the deceased's family.

37. The appeal was argued generally without following the grounds set out in the Memorandum of Appeal. I would likewise determine the same generally.

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. From the foregoing, a court may revoke a grant on three broad grounds. These are; where the process of obtaining the grant is marred by several irregularities, where the grant is obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, and finally where the grant has become useless and inoperative following subsequent circumstances.

40. It is common ground that the deceased was never married and did not have any children of her own. The gravamen of the 1<sup>st</sup> appellant's claim was that as a nephew of the deceased, he ranks higher in priority in applying for the Grant to the 1<sup>st</sup> respondent as a sister in law. He also claimed that she obtained the grant fraudulently by misleading the court that she was the deceased's sister and finally that she did not seek the consent of the deceased's siblings.

41. The *Law of Succession Act (“the Act”)* has conferred upon the court, the discretion as to who a grant of letters of administration shall, in the best interests of

all concerned, be made. Priority is given to beneficiaries in accordance with their beneficial interests in the estate. **Section 66 of the Act** provides: -

*“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—*

- (a) surviving spouse or spouses, with or without association of other beneficiaries;*
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;*
- (c) the Public Trustee; and*
- (d) creditors”*

42. In the present case, the deceased was survived by neither spouse nor children.

**Section 39 of the Act** stipulates what should happen in a situation such as the present case, as follows:

***“(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.***

43. In the case of a deceased intestate who is not survived by spouse, children or parents, priority is given to brothers and sisters or any child or children of deceased brothers and sisters. If none of these are alive, then relatives in the nearest degree of consanguinity up to and including the ***sixth degree***. In this regard, the 1<sup>st</sup> appellant as a child of the deceased’s brother would have had priority over the 1<sup>st</sup> respondent, Christabel Atieno Pire, a sister in law to the deceased.

44. In the present case however, the deceased had siblings who were still alive at the time of her demise. There was evidence of a meeting held on **18/10/2014** wherein the siblings of the deceased agreed that the 1<sup>st</sup> respondent would apply for grant on behalf of the 2<sup>nd</sup> respondent. It is those siblings together with the 2<sup>nd</sup> respondent who were entitled to petition for the grant of letters of administration. They are the ones who permitted the 1<sup>st</sup> respondent to do so for and on behalf of the 2<sup>nd</sup> respondent, their sister.
45. The succession proceedings were commenced during their lifetime. None of them opposed or challenged the same. The proceedings were commenced and concluded without their objection. It is now the appellants, their child and an in law who are raising issues that the siblings seem to have settled.
46. There was no challenge that the 2<sup>nd</sup> respondent was appointed or allowed to take the property of the deceased. There was evidence of her having assisted the deceased during her lifetime, when she needed help most (during her sickness), and after her demise. She airlifted the deceased to England for treatment and her body back. That is the basis on which her siblings appointed her or allowed her to succeed the deceased's estate. Can that decision be now challenged 10 years later after their demise? I do not think so. Following the decision of the family, the rights of the siblings of the deceased inured to the 2<sup>nd</sup> respondent. She was the one

to petition for the grant. Her having delegated that right to the 1<sup>st</sup> respondent did not defeat that right. She ultimately got the property in her name as intended by the family.

47. At the hearing of the appeal, she was in Court. She was aged and fragile. She told the Court that she was 83years old then thereby prompting the Court to expedite the hearing of the appeal.

48. The 2<sup>nd</sup> respondent being a sister of the deceased had all the right to apply for letters of grant of administration to the deceased's estate being the deceased's blood sister. She permitted the 1<sup>st</sup> respondent to petition on her behalf. She stated that she was at the time in the UK. In this regard, there was no evidence to show that by stating that she was a sister to the deceased, the 1<sup>st</sup> respondent intended to mislead the court or acted fraudulently as alleged by the appellants.

49. The question any court would ask is, why would the appellants wait until the demise of their parents to start a fight with their parent's sister, the 2<sup>nd</sup> respondent. Even if the grant was revoked, the same evidence presented at the trial would be adduced and the end result would be that the estate property would be distributed to the deceased's sister, the 2<sup>nd</sup> respondent as it is now. Nothing would be achieved by revoking the grant as sought.

50. In light of the above, it is my finding that the trial court did not err in dismissing the appellants' Summons for revocation dated **29/11/2024**. In the circumstances, I find that the appeal has no merit and hereby dismiss the same. I will not make any order for costs this being a family matter.

It is so decreed.

**DATED** and **DELIVERED** at Kisumu this **24<sup>th</sup>** day of **April, 2026**.

**A. MABEYA, FCI Arb**

**JUDGE**