



In re Estate of Seif Abdallah Mohamed (Deceased (Civil Appeal E026 of 2022) [2024] KECA 1826 (KLR) (20 December 2024) (Judgment)

Neutral citation: [2024] KECA 1826 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MALINDI
CIVIL APPEAL E026 OF 2022
AK MURGOR, JW LESSIT & GV ODUNGA, JJA
DECEMBER 20, 2024**

BETWEEN

SAID KHAMISI MBILI 1ST APPELLANT

ESHA AHAMAD HAMISI 2ND APPELLANT

AND

WAKF KHADIJA BINTI SULEIMAN EL BUSAIDY 1ST RESPONDENT

FRANCIS KADIMA 2ND RESPONDENT

(Being an Appeal from the Judgment and Decree of the High Court at Malindi (R. Nyakundi, J.) dated the 14th April, 2021 in Malindi High Court Succession Cause No 141 of 2016)

JUDGMENT

1. This appeal arises from objection proceedings in a succession cause concerning the estate of Seif Abdallah Mohamed (the deceased) who died intestate.
2. The background to the objection proceedings is that Esha Ahamad Hamisi and Said Khamisi Mbili, the appellants, who are a widow and a son respectively of the deceased filed and obtained a Grant of letters of administration of the deceased's estate and listed themselves as beneficiaries. The parcel, Mnarani Farm, Plot Number 7 Group (V) Situated South Kilifi Creek (the subject plot) was listed as the only asset.
3. The 1st respondent was aggrieved and filed Objection proceedings by way of a Chamber Summons dated 27th September 2019 in which it sought orders for the Grant intestate issued to the appellants on 15th February 2018 and confirmed on 14th March 2019 to be revoked (or annulled) pending hearing inter parties of this application or until further orders are issued by the court.



4. The application was supported by the affidavit sworn by Sultana Fadhil dated 27th September 2019 where it was deponed that, the parcel was registered in the name of Khadija Binti Suleiman El-Busaidy on 23rd January 1941 and has never been transferred to a third party; that she is a beneficiary of the Wakf Khadija Binti Suleiman Bin Hemed El-Busaidy being the granddaughter of Rukiya Mohammed Bin Hemed El-Busaidy, the sister of Khadija Binti Suleiman Bin Hemed El-Busaidy, the donor of the Wakf (Trust) comprising the subject plot which also named beneficiaries who are not the petitioners. It was deponed that she was aware that Wakf property is managed by a trustee in accordance with the donor's intentions for the benefit of the beneficiaries as opposed to an estate which is administered by an executor or administrator for distribution to the heirs; that at the time of her death, Shariffa Mohamed Busaidy did not have any assets registered in her name to form part of an estate, but was a beneficiary of a share of the Wakf of her late sister Khadija Binti Suleiman El- Busaidy; that in High Court Civil Case No. 846 of 1995, the court appointed Zeyane Mohamed Omar and Fatma Mahmoud Fadhil Al-Bakry as the Trustees over the subject plot.
5. It was the objector's contention that the appellants misled the court by claiming that they were the widow and son of the deceased, Seif Abdalla Mohamed, yet he had no sons and only one surviving daughter named, Wafaa; that Wafaa was not included as a beneficiary of the deceased's estate, and further, though the deceased was a beneficiary of the Wakf (Trust), he was only entitled to a share of the income during his lifetime as provided at Clause 3 of the Wakf Deed which stated:

“...and the fifth part shall be distributed equally among the children and adopted child of my late brother Seif Bin Mohamed El-Busaidy, named Fatuma, Harith, Abdalla, and Rukiya and upon the death of any of the said beneficiaries his or her share shall be divided equally among his or her sons and daughters and their issue per stripes.”
6. Finally, it was deponed that the subject plot being a property of the Wakf Trust administered by the Trustees is not inheritable.
7. In support of its case the 1st respondent, Sultana Fadhili, PW1 and Francis Kadima, PW2 who testified on its behalf confirmed that the subject plot is a Wakf property. PW3, the Land Registrar, Mombasa County prepared a report dated 18th June 2020, and informed court that the Wakf in question was registered on 3rd December 1942, and was for the benefit of Sharifa, Rukiya, Katathuma and Mwana Wa Shee, all daughters of Mohamed Hemed Busaidy. He confirmed that the second schedule of the properties are located in Kilifi and that both properties cannot be inherited. According to the report, on 23rd January 1941, a conveyance dated 23rd January 1941 to Khadija Binti Suleiman El-Busaidy was registered as LT. IV, Folio 458/14. On 3rd December 1942, by a Deed of Wakf dated 3rd November, 1942 Khadija Binti Suleiman Bin Hemed El-Busaidy, in consideration of her natural love and affection of her sisters Shariffa, Rukiya, Kalathum and Mwana Wa Shei, all daughters of Mohamed Bin Hemed El- Busaidy consecrated the subject plot among others to the Wakf and it was registered as LT IV, Folio 459/15.
8. On 28th May 1946, an Indenture dated 20th May 1946 made between Khadija Binti Suleiman Bin Hemed El-Busaidy as Trustee of the settlement of Wakf made by virtue of a Deed dated 3rd November 1942 of one part and Gulamhussein Mohamed (Tenant) was registered as LT. IV, Folio 459/16. PW3 further stated that based on the report, Shariffa Mohamed Busaidy was one of the Trustees of the Wakf of Khadija Binti Suleiman Bin Hemed El- Busaidy and not the sole proprietor of the subject plot and therefore, the Grant of letters intestate in respect of Shariffa Mohamed Busaidy and Seif Abdalla Mohamed respectively was erroneously registered against the title of the subject plot



and should be expunged from the records, together with Gazette Notice No. 5340 of 21st June, 2019. According to the records, the surviving remaining Trustee of the Wakf is Fatma Mahmoud Fadhili.

9. In support of the application, the 2nd respondent claimed that the appellants fraudulently obtained the Grant of letters intestate and included the subject plot which was the Wakf property of Khadija Binti Suleiman Busaidy.
10. In opposing the application, the appellants filed grounds of opposition and a replying affidavit where they deponed that the 1st respondent had no legal capacity to act on its own in the absence of the registered trustees; the deponent to the application is neither an heir nor a dependent of the Estate of Seif Abdalla Mohammed, and has no interest in the estate capable of supporting an application for revocation of the Grant intestate; that there was no Wakf created over the subject plot that formed part of the deceased's estate, and therefore the summons for revocation of the grant was frivolous and an abuse of the court process; that Sultana Fadhil who alleges to be the beneficiary of the Wakf and the deponent in support of the summons for revocation acted as an advocate for Abdalla Seif Mohamed in Probate Cause No. 196 of 1989 in the Estate of Shariffa Mohamed Busaidy whose property had descended to the appellants.
11. The appellants asserted that they are the widow and son of the deceased, and therefore were his defendants by the time of his demise on the 2nd August 1994; that the only property known to them is the subject plot measuring approximately 172 acres; that the 1st respondent had not proved the existence of a Wakf recognized under the WAQF Act (Cap. 109) and, it was not established that falsehoods were employed to obtain the Grant of letters intestate so as to warrant its revocation.
12. The trial Judge upon considering the objection held that the respondents had satisfied the criteria under section 76 of the Law of Succession Act for revocation and annulment of the Grant of letters intestate issued to the appellants in respect of the estate of the deceased, and in so finding, revoked the Grant of letters intestate and the confirmed grant.
13. Aggrieved, the appellants filed an appeal to this Court on the grounds that; the learned Judge misdirected himself as to the nature of the application and issued orders that the respondents had not sought or applied for in the Summons dated 27th September, 2019; that whereas the Summons sought interim orders pending the inter partes hearing of the application, the Judge proceeded to fully and substantively determine the matter thereby occasioning an injustice; that the learned Judge was in error in holding that the 1st respondent could properly and legally be represented by Sultana Fadhili, and in holding that the 1st respondent had locus standi when there was no legal or procedural basis for that finding; that the appellants had locus standi and the right to petition for a Grant of letters of administration as they are the widow and son of the deceased.
14. The appellants also faulted the learned Judge for holding that the deceased was survived by a daughter by the name of Wafaa, which was purely circumstantial evidence since, the 1st respondent did not fully discharge the burden of proof of the existence of such a person, and allowing the 2nd respondent who had previously acted as an advocate for the appellants to be joined as an adversary of his former clients, contrary to the law and established norms, thereby prejudicing the appellants; that the 2nd respondent, having acted as an advocate for the deceased in Malindi Probate Cause No 196 of 1989 was privy to privileged information on the estate of the deceased and ought not to have been allowed to testify adversely on matters relating to the estate that had since descended on the appellants; that the Judge failed to find that the 1st and 2nd respondents, as advocates, had violated their oath of confidentiality to their former clients to the detriment and prejudice of the appellants.



15. The appellants further faulted the learned Judge for declaring that a valid Wakf was created when there was no prayer in the Summons for such declaration, and also for determining that the subject plot was Wakf property that was not an issue for determination, and in delving into the ownership and status of the subject plot, which issue was not pleaded; that therefore, the court had no jurisdiction to entertain or adjudge it. In the result, it was contended that the judge failed to consider the relevant facts, law and procedure and in so doing reached the wrong conclusion to revoke the Grant of letters of administration and confirmation issued to the appellants when there was no sufficient legal and factual basis for doing so.
16. The appellants and the respondents filed written submissions. When the appeal came up for hearing on a virtual platform, learned counsel for the appellants, Mr. Ondabu submitted that the property was not Wakf property; that the appellants clearly demonstrated that this was free property. Counsel submitted that the maker of the Wakf did not comply with the law at the time which required that all Wakfs be registered with the Wakf Commission of Kenya, and since no witness was called to confirm its registration, the alleged Wakf Deed registered on 23rd January 1941 remained imperfect. Further, it was submitted, section 76 of the *Law of Succession Act* requires that parties be identified yet, an advocate appeared on behalf of the trustees, and none of the parties, either the trustees or one, Wafaa Abdullah Seif filed any affidavit or attended court to complain about their exclusion. It was submitted that the witnesses confirmed that the 2nd appellant was the deceased's wife and therefore she had the capacity to apply for Letters of Administration.
17. It was further argued that the Judge ordered the Land Registrar to provide the Wakf documents, but no such documents were presented in court and therefore the Wakf trust, as claimed, did not exist; therefore, the subject plot was not under a Wakf and so was available for inheritance under the deceased's estate. Counsel concluded that the court should not have revoked the Grant of letters intestate on account of inclusion of the subject plot and that the correct finding should have been that it was not a free property.
18. On their part, learned counsel for the 1st respondent, Ms. Oloo holding brief for Mr. Kilonzo for the 1st respondent submitted that at the time of filing the Petition for grant of letters of administration, the appellants only listed themselves as the surviving beneficiaries of the estate of the late Seif Abdalla Mohamed in their alleged capacity of a widow and son of the deceased; that they failed to disclose to the court that the deceased had only one child namely, Wafaa Abdalla Seif, who had been excluded as a beneficiary of her father's estate contrary to section 51(2) (g) of the *Law of Succession Act* and Rule 7(1) of the Probate & Administration Rules; that therefore the confirmed grant of 14th March 2019 was obtained fraudulently on account of non-disclosure of material facts. It was further submitted that the appellants did not have the legal capacity to obtain Letters of administration for the estate of the deceased because the 1st appellant was not the deceased's son and the 2nd appellant did not present any proof of marriage to the deceased. With regard to the subject plot, it was submitted that it was Wakf property having been donated and registered under a Wakf, by Khadija Binti Suleiman Hemed El-Busaidy, pursuant to which it ceased to be personal property.
19. This being a first appeal, the duty of this Court is as re-stated in the case of Abok James Odera t/a A.J. Odera & Associates vs John Patrick Machira t/a Machira & Co Advocates [2013] eKLR, where it was held in part that:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine



whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

20. We have considered the record and the parties’ submissions and are of the view that the main issues for determination are whether the 1st respondent had locus standi to file the application for revocation and whether the learned Judge rightly revoked (or annulled) the Grant of letters intestate issued to the appellants on 15th February, 2018 and confirmed on 14th March, 2019 pending hearing interparties of this application.
21. On the first issue of whether the 1st respondent had locus standii to file the objection to the Grant of letters intestate filed by the appellants, the respondent’s objection was brought under section 76 of the Law of Succession Act which provides that:
- “ A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an 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 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 untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- SUBPARA d ”
22. Therefore, under section 76 "an interested party" may file an application seeking to revoke or annul a grant. The Supreme Court in the case of *Trusted Society of Human Rights Alliance vs Mumo Matemo & 5 others*, SC Petition (Application) No. 12 of 2013; [2014] eKLR defined the term “interested party” as;
- “... one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions for her cause.”
23. In other words, an interested party is one who would be affected by the decision of the court, and in this case, one who would be affected by the issuance of a Grant of letters of administration intestate to the appellants.
24. Concerning the term “locus standi”, Black’s Law Dictionary, 9th Edition (page 1026) defines this as, “the right to bring an action or to be heard in a given forum”.
25. An Australian jurist Leslie Stein in her book "Locus Standi" defined the term “locus standi” as, “...the existence of a right of an individual or group of individuals.....to have a court enter upon an adjudication of an issue.....before the court by proceedings instigated by the individual or group.”
26. In this case, as to whether the 1st respondent as an individual had the right to seek for revocation of the Grant intestate issued in the petition brought by the appellants, a consideration of the facts shows that, the 1st respondent’s interests in the petition emanated from a Deed of Wakf dated 3rd November, 1942 where Khadija Binti Suleiman Bin Hemed El-Busaidy, in consideration of her natural love and affection of her sisters Shariffa, Rukiya, Kalathum and Mwana Wa Shei all daughters of Mohamed Bin



- Hemed El- Busaidy consecrated the subject plot among others to the Wakf. The 1st respondent being the Wakf Trust created by the donor, and to which the subject plot is alleged to be consecrated, claimed that the appellants have listed the subject plot as an asset of the estate of the deceased, yet it is registered as Wakf property.
27. In her affidavit and testimony during the hearing, Sultana Fadhili stated that she was a beneficiary of the Wakf of Khadija Binti Suleiman Bin Hemed El-Busaidy, by virtue of being the granddaughter of Rukiya Mohammed Bin Hemed El-Busaidy, the sister of Khadija Binti Suleiman Bin Hemed El-Busaidy, the donor of the Wakf property that comprised the subject plot; that since the Wakf did not include the deceased or the appellants, the subject plot was not available to be distributed to them.
28. Clearly, if indeed she is a beneficiary of the Wakf to which the subject plot is alleged to belong, and we have no reason to doubt this, then, she is bound to be prejudiced by deprivation of the Wakf of the subject plot to which it is alleged to be consecrated, were it to descend to the appellants under the deceased's estate. Consequently, we find the 1st respondent had a stake in the proceedings, and more particularly in the only asset of the estate that being, the subject plot. For all intents and purposes, she was therefore an interested party as defined under section 76 of the *Law of Succession Act* with the requisite locus standi to bring the Objection proceedings.
29. On the next question of whether the Objectors or interested parties satisfied the prerequisites necessary to warrant revocation of the grant, the respondent's case was that the Grant intestate ought to be revoked for three reasons. Firstly, because the appellants had excluded the deceased's daughter, Wafaa Abdulla Seif from the list of beneficiaries, and had applied for letters of administration without her knowledge or consent. Secondly, that the 2nd respondent was not the deceased's wife and therefore ineligible to petition as an administrator or beneficiary, and thirdly, because the subject plot, the only asset listed in the schedule of assets was Wakf property registered as such, and it was therefore not available to be incorporated as a part of the deceased's estate.
30. In determining whether or not to revoke the Grant to the appellants, the learned judge stated that:
- “The above-mentioned sections signify that a petitioner for the grant of Letters of Administration will be deemed prima facie to have obtained a fraudulent grant, with respect to the state if he or she fails to issue notice to any of the dependents or beneficiaries to the estate of the deceased, including obtaining their necessary consents as mandatory provided in the Succession Act. Equally the grant of Letters turns out to be defective if the evidence shows that it was issued in error, misrepresentation of facts, concealment or nondisclosure of material evidence relevant and admissible for the making of the grant of representation.
31. The Judge concluded that:
- “The analysis above leads me to this. The Objectors/Interested parties have satisfied the criterion under section 76 of the *Law of Succession Act* on revocation and annulment of the Grant of Letters of Administration issued to the Petitioners for the benefit of the estate of Seif Abdalla Mohamed”.
32. Under section 76, a grant of letters of administration may be revoked for three general reasons. Of pertinence for the purposes of this case is the reason set out in section 76 (b) which specifies that the grant can be revoked where the process was marred by fraud, misrepresentation or concealment of fundamental particulars, such as in cases where survivors are not disclosed or the petitioner or petitioners convey untruths and false claims as to who are or are not survivors of the deceased, among other reasons.



33. This Court in the case of Samuel Wafula Wasike vs Hudson Simiyu Wafula Civil Appeal No.161 of 1993, held that:

“A grant obtained on the strength of false claims, without obtaining the consent of persons who had prior right to the grant and on the basis of facts concealed from the court, is liable to revocation.”

34. In determining whether the Grant was obtained through material non- disclosure, we begin by ascertaining whether the appellants excluded a known beneficiary from the estate of the deceased. In this regard, the appellants’ only response to the assertion that they had excluded Wafaa Abdullah Seif as a beneficiary, was that she did not file any affidavit or attended court to complain about her exclusion as a beneficiary of her father’s estate.

35. While it is true that Wafaa Abdulla Seif did not testify as a witness, there was uncontested evidence placed before the trial court that showed she was the only child of the deceased. There was also ample evidence on the record, from the Sultana Fadhili, and through a Statutory Declaration sworn by Wafaa Abdulla Seif herself, to which an identity card, passport and other documents were attached, that disclosed that she was the deceased’s daughter. Since the evidence remained uncontroverted, as the deceased’s daughter she ought to have been included as a beneficiary of the deceased’s estate. By listing only themselves as beneficiaries, the 1st and 2nd appellants were guilty of material non-disclosure of the exclusion Wafaa Abdulla Seif, the deceased’s only daughter as a beneficiary of his estate. Though they argued that Wafaa Abdullah Seif did not attend court or complain about her exclusion, it goes without saying that, as the deceased’s only surviving child, the law required that she be included as a beneficiary of her father’s estate. On this basis alone, the Grant of letters of administration issued to the appellants was liable for revocation, and the trial Judge was right in so revoking it.

36. On the issue of whether or not the 2nd appellant was married to the deceased, the objector’s main contestation was that the 2nd appellant did not produce a marriage certificate or any other evidence as proof of her marriage to the deceased. A consideration of the record does not disclose that she testified or adduced any such evidence. And as a consequence, her status in so far as the deceased was concerned remained questionable.

37. Likewise, in the case of the 1st appellant, the objectors asserted that he was not the deceased’s son, and therefore ought not to have been granted letters of administration of the deceased’s estate. In the affidavit in reply, despite having stated that he was the deceased’s son and dependant, the 1st appellant also did not adduce any evidence that was supportive of this assertion. The 1st and 2nd appellant’s status having been challenged by the objectors, it was incumbent upon them to demonstrate the extant relationship they had with the deceased. They did not, and having failed to do so, we are not satisfied that they were eligible to petition for letters of administration of the deceased’s estate.

38. Finally, on the question of whether or not a Wakf existed, and whether the subject plot was Wakf property, a consideration of the judgment shows that the learned judge was persuaded that a Wakf had been created by Khadija Binti Suleiman Bin Hemed El-Busaidy. In this regard the learned Judge had this to say:

“In this case, the Wakf is Ahly, to benefit the children of the donor and their children from generation to generation. The Wakf cannot be dissolved as there are still other generations who have interest in the Wakf. The law allows for division [al Muhaya’at] of the Wakf if it is in the best interest of the Wakf. However, where it does not conflict with the law, the



intention of the donor must be respected as much as possible taking consideration of his or her objectives to the Wakf.

Therefore, in the court's view, the instant Application is properly before this court".

39. For their part the appellants' have argued that there was no Wakf in existence for the reason that it was not registered in accordance with the provisions of the Wakf Commission of Kenya.

Section 4 of the WAQF Act provides:

1. shall be valid where—
 - A waqf
 - a. it is made in accordance with Islamic law;
 - b. the waaqif has attained eighteen years;
 - c. the waaqif is of sound mind; and
 - d. it is made for religious purposes for the poor and vulnerable within the Muslim community.
 2. A waqf shall not be invalid merely because the benefit of the waqf that shall be reserved for the poor or any other purpose shall not take effect until after the extinction of the family of the waaqif.
40. The evidence that was before the trial Judge was that a Wakf was created by Khadija Binti Suleiman Bin Hemed El-Busaidy on 3rd December 1942, by a Deed of Wakf dated 3rd November, 1942 and registered as LT IV, Folio 459/15. When the requirements for the existence of a valid trust as specified by section 4 of the WAQF Act are considered, more particularly that, it was made in accordance with Islamic Law, and that it was made for the benefit the children of the donor and their children from generation to generation, as was the learned Judge, we too are satisfied that a valid Wakf was created on 3rd November 1942, and duly registered.
41. However, the appellant's counsel has argued that the Wakf was not registered with the WAQF Commission, and therefore it was not valid. But upon examining the record we find that there was nothing that demonstrated that the Wakf was not registered with the WAQF Commission or that it had no known trustees. It is trite that he or she who alleges must prove the existence of a fact, as stipulated in sections 107 and 109 of the *Evidence Act*. Since no such evidence was placed before the trial court, it was not proved that the Wakf was not registered. In any event, from a reading of the provisions of the WAQF Act, we are not persuaded that the Act expresses that a failure to register a Wakf with the WAQF Commission rendered it invalid, and, we so find.
42. The final issue was the question of whether the subject plot that was listed as the only asset in the appellants' schedule of assets was Wakf property. As we have seen above, the Wakf was established by Khadija Binti Suleiman Bin Hemed El-Busaidy over the subject plot out of her natural love and affection for her sisters, Shariffa, Rukiya, Kalathum and Mwana Wa Shei all daughters of Mohamed Bin Hemed El- Busaidy; that once the subject plot was consecrated under the Wakf, it remained Wakf property.
43. The appellants on the other hand claim that Shariffa Mohamed Busaidy was then registered as owner of the subject plot, and that it devolved to the deceased's estate following his demise. That therefore, the beneficiaries of his estate, that is the 1st and 2nd appellants were entitled to inherit the subject plot.



44. What becomes apparent from this discourse is that, the dispute between the parties concerns the ownership of the subject plot. On the one hand, the appellants claim that it initially belonged to Shariffa Mohamed Busaidy, while the respondents' case is that it belongs to the Wakf created by Khadija Binti Suleiman Bin Hemed El-Busaidy. Given that the nature of the dispute is over the ownership of the subject plot, it was not a matter for determination by the succession court, but for the Environment and Land Court.
45. This Court in the case of *Matei Julius Mulili Ndeti & Nzioki Mulili Ndeti (Administrators of the Estate of Harrison Mulili Ndeti) & 4 others vs Ndeti & another (Civil Appeal 64 of 2019) [2022] KECA 150 (KLR)* held that
- “In view of the fact that the gist of the appellants' case relates to ownership of the suit properties, we find that the right forum for this dispute is the ELC. The ELC is seized with the requisite jurisdiction to determine all the issues raised by the appellants herein as pertains to ownership of the suit properties and there is already a suit pending before that court on the issue. Once the ELC renders itself on the question of ownership, the High Court can be moved if there is any outstanding or unresolved question of succession.”
46. It is trite that jurisdiction is everything. In the *Owners of the Motor Vessel 'Lillian S' vs Caltex Oil (Kenya) Ltd, Civil Appeal No. 509 1989* this Court held:
- “Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.
47. In view of the nature of the dispute between the parties, the right forum for such determination was the Environment and Land Court, and not the succession court which should have downed its tools in respect of the dispute on the ownership of the subject plot.
48. In sum, having found as we have that there was material non-disclosure in the list of beneficiaries, with the exclusion of Wafaa Abdullah Seif, the deceased's only surviving child, and in the appointment of the administrators, we come to the conclusion that the learned judge rightly revoked the letters of administration and Grant Intestate under section 76 of the *Law of Succession Act*. However, in so far as the dispute between the parties concerned the registered ownership over the subject plot, we find that the learned judge went too far in determining a matter that was not within the remit of the succession court, but of the Environment and Land Court, with the result that it is necessary to interfere with the decision.
49. As a consequence, the appeal is allowed in part. We uphold the trial Judge's decision revoking the Grant of Letters of Administration Intestate and the confirmed grant, but we set aside the finding that the subject plot was Wakf property for the reason that the trial Judge had no jurisdiction to determine the question of ownership of the subject plot.
50. Accordingly, we make the following orders:
- i. The appeal succeeds in part to the extent that the appeal against the finding that the subject plot was Wakf property be and is hereby set aside for the reason that the trial Judge had no jurisdiction to determine the question of ownership of the subject plot.



- ii. The decision of the High Court revoking the Grant Intestate issued to the appellants on 15th February 2018 and confirmed on 14th March 2019 be and is hereby upheld.
- iii. Each party to bear their own costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2024.

A. K. MURGOR

.....

JUDGE OF APPEAL

J. LESIIT

.....

JUDGE OF APPEAL

G.V. ODUNGA

.....

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

