



**In re Estate of Okelo Angule alias Daniel Okelo Angule (Deceased) (Family Appeal E009 of 2023) [2025] KEHC 7087 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7087 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
FAMILY APPEAL E009 OF 2023**

**DK KEMEL, J**

**MAY 30, 2025**

**IN THE MATTER OF THE ESTATE OF OKELO ANGULE  
ALIAS DANIEL OKELO ANGULE (DECEASED)**

**BETWEEN**

**JOSHUA ONYANGO ..... APPELLANT**

**AND**

**FLORENCE OKECH AMARA ..... RESPONDENT**

*(Being an appeal against Hon. JP Nandi (SPM's Judgment and Decree delivered on 18/10/2023 in Bondo Succession Cause No. E494 of 2021)*

**JUDGMENT**

1. The appeal herein arises from the judgment of Hon. JP Nandi (SPM) in Bondo SPM Succession Cause No E494/2021 dated 18/10/2023 wherein he dismissed the Appellant's objection to confirmation of grant dated 13/2/2023 and allowing the Respondent's summons for confirmation of grant dated 14/11/2022 and confirmed the grant dated 15/2/2022 in favour of the Respondent.
2. Aggrieved by the said decision, the Appellant filed a Memorandum of Appeal dated 17/11/2023 wherein he raised the following grounds of appeal:
  1. That the Honourable Senior Principal Magistrate erred in law and fact in holding that the Agreement of sale dated 28/2/1990 in respect to LR No Siaya/Usigu/143 is not enforceable as it is contrary to Section 7 of the [Limitation of Actions Act](#) (Chapter 22 of the Laws of Kenya).
  2. That the Honourable Senior Principal Magistrate erred in law and fact by failing to acknowledge that the said agreement for sale dated 28/2/1990 was statute time - barred under Section 7 of the [Limitation of Actions Act](#) (Chapter 22 of the Laws of Kenya) which renders



the Respondent's claim as a purported Creditor in the Estate of the Late Okello Angule alias Daniel Okello Angule, null and void.

3. That the Honourable Senior Principal Magistrate erred in law and fact by holding that the Respondent had also stayed on the said parcel of land" LR No Siaya/Usigu/143 for thirty (30) years now without interruption," without any cogent evidence to establish that allegation.
4. That the Honourable Senior Principal Magistrate erred in law and fact by failing to appreciate that one John Otieno Otieno purported to execute the said agreement of sale dated 28/2/1990 on behalf of the late Daniel Okello Angule (the deceased herein) without a Power of Attorney from the deceased contrary to Section 48 of the *Land Registration Act*.
5. That the Honourable Senior Principal Magistrate erred in law and fact by failing to appreciate that the agreement for sale dated 28/2/1990 was invalid, null and void contrary to Section 43 of the *Land Registration Act*.
6. That the Honourable Senior Principal Magistrate erred in law and fact by failing to award the Appellant costs of the proceedings in the lower court.

The Appellant therefore prayed that the judgment of the lower court be vacated and/or set aside in its entirety and that the grant made on 15/2/2022 in favour of the Respondent be revoked and that the Appellant be at liberty to file the petition for grant of letters of administration in the estate of the deceased. Further, that costs both in the lower court and in this appeal be awarded to the Appellant.

3. This being the first appellate court, its duty is to re-evaluate the evidence tendered before the lower court and subject it to an independent analysis and to arrive at an independent conclusion as to whether or not to uphold the decision of the lower court. See *Selle v Associated Motor Boat Company Limited* [1968] EA 123.
4. The history of the matter is that the Respondent herein had filed a citation vide PM's Court at Bondo No E114/2021 wherein she had cited the Appellant herein and two others to take up letters of grant over the estate of the deceased herein failing which she would take up those letters. Apparently, the said Citees failed to comply and therefore the Respondent was given the greenlight to proceed and file for letters of grant of administration intestate for the estate of the deceased herein. She did so vide Bondo SPM's Succession Cause No E494/2021. The Respondent duly filed the requisite petition forms and had the cause gazetted and thereafter obtained the grant of letters of administration intestate which were issued to her on 15/2/2022. As no objection was raised against the grant, the Respondent duly proceeded to file summons for confirmation of the grant dated 14/11/2022 wherein she proposed that the only property of the deceased namely LR No Siaya/Usigu/143 be allocated to her wholly.
5. The Appellant herein filed a response vide a replying affidavit dated 13/2/2023 wherein he averred inter alia; that he is the son of the deceased herein Daniel Okello Angule and Lucia Aoko (both deceased); that his deceased parents had been blessed with three children namely Joshua Onyango, Robert Ojwachi(deceased) and Consolata Akinyi (alive); that the deceased inherited the mother of one John Otieno Otieno whose father had property; that upon the death of the deceased herein his remains were buried by the mother of John Otieno Otieno at their farm; that at the time the Appellant and his siblings were still young; that the chief identified him as a son of the deceased; that he seeks for the dismissal of the summons of confirmation of grant so that a proper succession can be commenced which includes him and the other beneficiaries of the estate; that the said John Otieno Otieno who sold the deceased's parcel of land to the Respondent herein should be ordered to refund the money to the Respondent herein.



6. One of the persons mentioned by the Appellant namely John Otieno Otieno filed an affidavit sworn on 15/2/2023 wherein he averred inter alia; that the said Lucia Aoko Okello was never a wife to the deceased herein as he does not know her and has never seen her; that he does not know one Joshua Onyango (Appellant) as he only heard of him through a phone call that he made with the Area Chief; that the said Joshua Onyango trespassed on to the suit land in 2018 and build a house thereon but next to the parcel No Siaya/Usigu/143 with a view to laying claim to the deceased's parcel of land.
7. The trial court directed the parties to file and exchange witness statements. The parties duly complied.
8. The trial court directed that the matter be canvassed by way of viva voce evidence.
9. The Objector Joshua Onyango (PW1) (now Appellant) adopted the contents of his replying affidavit sworn on 13/2/2023. He maintained that the person who sold the suit land to the Petitioner is one John Otieno Otieno as can be seen in the Land Sale Agreement dated 28/2/1990. He stated that the land belonging to the deceased was unlawfully sold to the Petitioner (now Respondent) since the deceased did not sell the land and that the said John Otieno Otieno who purported to sell it on behalf of the deceased to the Petitioner (now Respondent), was not a son of the deceased and did not have a power of Attorney. On cross examination, he stated inter alia; that the sale took place on 28/2/1990; that the deceased was not buried on parcel No 143; that the sale took place while the deceased was alive; that the deceased did not seek permission from the family members when he sold the land; that the land was sold at Kshs80,000/= to Florence Amara.
10. Ambrose Yumbra Angule (PW2) adopted his statement dated 13/2/2023 and stated that he is a cousin to the deceased herein; that land parcel Siaya/Usigu/143 was sold to the Petitioner herein Florence Amara by John Otieno Otieno who was not a son to the deceased and that the land was not theirs. He also stated that the deceased had two sons one died leaving Joshua Onyango Okello; that as far he is concerned the deceased did not sell his land.
11. Edwin Ochieng Awego (PW3) adopted his statement made on 13/2/2023. He stated that the deceased inherited the wife of one Otieno and that upon the death of the deceased, the deceased was buried at the home of the lady he had inherited; that the land parcel Siaya/Usigu/143 was sold after the death of the deceased to one Florence Amara; that John Otieno Otieno was not a son of the deceased.
12. The Appellant closed his case.
13. The Respondent Florence Okech Amara (DW1) adopted the contents of her affidavit in support of the summon for confirmation of grant as well as a reply to the one filed by the Appellant. She maintained that the land was sold to her by the deceased. That John Otieno Otieno witnessed the sale agreement that was made in 1990. That she has stayed on the land for thirty (30) years. She also stated on re-examination by her advocate that Daniel Okello Angule (deceased) is the one who sold the land to her.
14. John Otieno Otieno (DW2) adopted his affidavit sworn on 3/3/2023. He stated that the deceased was his father and that he stays on the said land as the only son of the deceased. That his mother is called Catherine Mbwana Okello. He maintained that the deceased had only one wife and that the alleged Lucia Aoko was not his wife. That the deceased had three brothers and a sister namely Okech, Okello, Jomra, Ondhuro and Omuenda. He stated that it is the deceased who sold the land to Florence Amara.
15. Pamela Akinyi Otieno (DW3) adopted her affidavit sworn on 3/4/2023. She stated that she has been working on the land belonging to Florence Amara for twenty-two (22) years. That the land is near her home. That the Appellant constructed a pit latrine on the land in 2018 but does not reside there. That the Appellant resides at the home of Ondhuro. That Florence Amara is her co-wife.
16. The Petitioner (now Respondent) closed her case.



17. The appeal was canvassed by way of written submissions.
18. The Appellant's counsel opened his submissions by reiterating all the grounds of appeal as indicated in the Memorandum of Appeal dated 17/11/2023 and went on to add that the Appellant in the lower court together with his witnesses had presented credible evidence challenging the Respondent. It was further contended that the chief Central Yimbo Location had written a letter to the Appellant wherein he confirmed that the Appellant was the only surviving son of the deceased and that the alleged John Otieno Otieno was a stranger to the estate.
19. It was submitted that the purported sale agreement dated 28/2/1990 is a questionable document and that if the same was ever entered into as alleged then the same is statute barred under Section 7 of the Limitation of Action Act. It was also submitted that the said John Otieno Otieno did not have a power of Attorney from the deceased to enable him enter into the sale agreement as a seller while the deceased was still alive. Learned counsel cited the provisions of Section 43 of the Land Registration Act which deals with instruments and disposition of land as follows:

Section 43 of the Land Registration Act provides for Instruments of Disposition of land as follows; -

- “
- 1) every instrument affecting a disposition of land under this Act shall be in the form prescribed in relation to that disposition under this Act or any other written law.
  - 2) No instrument affecting any disposition of private land under this Act shall operate to sell or assign and or create, transfer or otherwise affect any land, lease or charge until it has been registered in accordance with the Laws relating to the registration of instruments affecting the land in respect of which the disposition has been made.”

Section 48 provides for Execution on Agents as follows;

“except as provided in subsection 3, no instrument executed by any person as agent for any other person shall be accepted by the Registrar unless the person executing it was authorized in that behalf by a Power of Attorney executed and verified in accordance with Section 45.”

It was submitted therefore that the Respondent's purported Agreement dated 28<sup>th</sup> February, 1990 is invalid for non-compliance with Sections 43 and 48 of the Land Registration Act.

It was also submitted that the Respondent did not comply with Section 71 of the Law of Succession Act which stipulates that after expiration of six (6) months, the holder of a Grant of Representation shall apply to the court for Confirmation to empower the distribution of the estate of the deceased.

.....provided that in case of Intestacy, the Grant of Letters of Administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the Grant shall



specify all such persons and their respective shares.”

It was submitted that the Respondent’s summons for confirmation of grant were not accompanied by a consent of the legitimate beneficiaries. The alleged John Otieno Otieno who purportedly signed the consent was not a son of the deceased as per the chief’s letters dated 2/12/2020 and 8/12/2020.

20. It was finally submitted that the Respondent is not a bonafide purchaser of the property and as such she is not a creditor or liability in the estate of the deceased. The Appellant therefore urged the court to allow the appeal as prayed.
21. The Respondent’s submissions are dated 2/4/2025. It was submitted that the Appellant does not have the locus standi to file the appeal in that his name as per the Identity card are given as Joshua Mzee Onyango which is different from the one presented by the chief as Joshua Onyango Okello. It is therefore clear that the Appellant is an imposter who fraudulently claim to be the son of the late Daniel Okello Angule yet he has not produced any birth certificate to prove this. That he also failed to produce a death certificate to prove that his mother is one Lucia Aoko. That the Appellant failed to produce any document linking him to the deceased.
22. Learned counsel for the Respondent submitted that the sale agreement dated 28/2/1990 was a valid document because the same was produced and that the Appellant did not challenge the same and further that the same was signed by the deceased himself. It was submitted that the Respondent presented credible evidence regarding her ownership of the land which was backed by two of her witnesses namely John Otieno Otieno and Pamela Akinyi Otieno. It was also submitted that all the essential elements for a valid contract were complied with namely; offer, acceptance and consideration and that the lower court confirmed the same and held that the Respondent was a valid creditor to the estate and entitled to have the grant. It was finally submitted that even though the Appellant did not sign the consent to summons for confirmation of grant, the anomaly was cured when the court allowed all the parties to present their rival evidence. Reliance was placed in the case of *Re Estate of Muiruri Njuguna (Deceased)* (Succession Cause 86 of 2012) [2024] KEHC 14580 (KLR) Family (21 November 2024) paragraph 10; P.M. Nyaundi stated that:

“The confirmed grant of 18/1/2005 did not have written consent of all beneficiaries. However, there was a protest by Mary Nyokabi which made the court hear oral evidence of the administrator, son, buyer, and objector and vide judgment of 14/9/2006 decided on the confirmed mode of distribution under Section 71 of *Law of Succession Act* Cap 160. The requirement of consents was overtaken by the inter partes hearing.”

The learned counsel sought for the dismissal of the appeal with costs.

23. I have considered the record of appeal together with the rival submissions. It is not in dispute that the Respondent herein had filed the succession in the lower court after citing several Citees vide Bondo PMCC Citation Cause No E114/2021 and being granted the requisite leave to do so. It is also not in dispute that the Respondent’s interest in the estate was that of a Creditor and therefore a liability in the estate as a purchaser of land Parcel No Siaya/Usigu/143. It is also not in dispute that both the Appellant and the Respondent called their respective witnesses who tendered viva voce evidence before



the trial court which led to the decision now appealed against by the Appellant. It is not in dispute that parcel No Siaya/Usigu/143 belonged to the deceased herein but that the deceased later left it when he went and inherited another woman who was a widow and the surviving wife of one Otieno and that he was buried by the said widow on the land left behind by her late husband. It is also not in dispute that a purported Land Sale Agreement was made on 28/2/1990 between John Odhiambo Otieno Otieno and the Respondent herein over the said parcel of land Siaya/Usigu/143 wherein the said John Odhiambo Otieno Otieno claimed that he was a son of the deceased and had been authorized by the deceased to sell it to the Respondent at a sum of Kshs 80,000/=. It is also not in dispute that the said agreement was signed by John Odhiambo Otieno Otieno, Florence Okech Amara and the deceased Daniel Okello Angule. It is also not in dispute that the Area Chief of Central Yimbo Location wrote two letters of introduction one to Florence Okech Amara and the other to Joshua Onyango. It is not in dispute that these two letters were contradictory in nature in that whereas the first letter given to Florence Okech Amara indicated that the deceased had only one son namely John Odhiambo Otieno Otieno, the second letter indicated that both John Otieno Otieno and Joshua Onyango Okello were sons of the deceased. It is also not in dispute that both the Respondent and the Appellant lay claim to the suit property namely Siaya/Usigu/143. That being the position, I find the issue for determination is whether the Respondent proved her case on balance of probabilities.

24. It is noted that the key issues that faced the learned trial magistrate in the lower court were the question who between the Appellant and one John Odhiambo Otieno Otieno was the legitimate son of the deceased and whether the sale agreement entered on 28/2/1990 was valid. I am persuaded that the same two germane issues must also be determined by this court as they form the key plank in the dispute between the Appellant and the Respondent in this appeal. It is instructive that the chief Central Yimbo Location wrote two letters one to the Appellant and the other to the Respondent wherein he had indicated the relationship between the Appellant and one John Odhiambo Otieno Otieno are the surviving sons of the deceased. The rival viva voce evidence tendered by the parties in the lower court centred around these two issues. The Respondent had backed her claim onto the suit land by the evidence of John Odhiambo Otieno Otieno and the sale agreement dated 28/2/1990 while the Appellant relied on the chief's letter indicating that he was a son of the deceased. The Respondent who came in as a purchaser and a creditor therefore bore the heavy duty of proving her claim so as to be made a creditor of the estate of the deceased. It is noted that the trial court did not see the need to invite the chief Central Yimbo location to clarify the contradictory introductory letters so as to establish the genuine beneficiaries of the deceased. In the absence of the evidence from the said chief, then the trial court was handicapped in coming to the proper determination as to the genuine son of the deceased to respond to the Respondent's claim onto the suit land as a creditor of the estate.
25. Turning to the sale agreement dated 28/2/1990, it is noted that the Respondent heavily relied on it to back her claim that she is a creditor to the estate of the deceased. The same was entered into on 28/2/1990. I have perused the same and note that the Respondent did not bother to actualize the ownership despite her claim that the deceased duly signed the sale agreement by proceeding to the relevant department of lands so as to secure the consent and thereby have the land transferred into her name. She did not do so until the deceased passed on and further waited until 2021 when she filed the citation proceedings leading to the filing of the succession cause by herself. I find that she took a lot of time and hence there was inordinate delay and therefore the claim is statute barred under Section 7 of the Limitation of Action Act. It is also noted that the said agreement had the said John Otieno Otieno as the seller yet he did not have a power of Attorney from the deceased to enable him enter into the sale agreement as a seller while the deceased was still alive. It is even strange that the deceased signed the agreement and that the Respondent was at pains to explain who between the deceased and the said John Otieno Otieno was the seller. I have perused the said sale agreement and note that the seller is described



as John Otieno Otieno who claims to have been authorized by the deceased to sell it on his behalf for Kshs 80,000/. The deceased is said to have also signed the agreement. There is therefore confusion as to the person who sold the land. If indeed, the deceased had allowed the said John Otieno Otieno to sell it on his behalf then he ought to have given him a power of attorney since he was still alive and then stay away from signing the agreement in any way or to come out clearly as the seller. If a power of attorney was given by the deceased then the document ought to have been duly registered in accordance with the provisions of Section 43 of the Land Registration Act which deals with instruments and disposition of land as follows:

Section 43 of the Land Registration Act provides for Instruments of Disposition of land as follows; -

- “ 1) every instrument affecting a Disposition of Land under this Act shall be in the form prescribed in relation to that disposition under this Act or any other written law.
- 2) No Instrument affecting any disposition of private land under this Act shall operate to sell or assign and or create, transfer or otherwise affect any land, lease or charge until it has been registered in accordance with the Laws relating to the registration of instruments affecting the land in respect of which the disposition has been made.”

Section 48 provides for Execution on Agents as follows;

“except as provided in subsection 3, no instrument executed by any person as agent for any other person shall be accepted by the Registrar unless the person executing it was authorized in that behalf by a Power of Attorney executed and verified in accordance with Section 45.”

It is clear therefore that the Respondent’s purported Agreement dated 28<sup>th</sup> February, 1990 is invalid for non-compliance with Sections 43 and 48 of the Land Registration Act. Again, it is noted that the Respondent upon obtaining the grant filed summons for confirmation of grant and failed to secure the consents of all the beneficiaries contrary to the provisions of Section 71 of the Law of Succession Act which stipulates that after expiration of six (6) months, the holder of a Grant of Representation shall apply to the court for Confirmation of the said grant so as to distribute the estate of the deceased as follows:

“.....provided that in case of Intestacy, the Grant of Letters of Administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed, the Grant shall specify all such persons and their respective shares.”

It came out clearly from the viva voce evidence that there was uncertainty as to who between the Appellant and one John Otieno Otieno is the son of the deceased. The area chief vide his letters also added more confusion when he claimed that the two were the sons of the deceased yet each of these two individuals are on opposite



posts claim that their rival is not a son of the deceased but an impostor. The chief's letters dated 2/12/2020 and 8/12/2020 required the chief to come forward and clarify the truth about the genuine beneficiaries of the deceased. In such a situation, the Respondent's claim as a creditor of the deceased is thrown into doubt. I find that the Respondent did not prove her claim on a balance of probabilities. I find the Respondent is not a bonafide purchaser of the property and as such she is not a creditor or liability in the estate of the deceased. As the legitimacy of the beneficiary to the estate as between Joshua Onyango Okech and John Otieno Otieno is yet to be determined, this then has an effect on the summon for confirmation of grant filed by the Respondent dated 14/11/2022 in that the same must be supported by a consent duly signed by the beneficiaries as required by Section 71 of the *Law of Succession Act* (*supra*). As the Respondent's summons for confirmation of grant were not accompanied by a consent of the legitimate beneficiaries, the said summons were invalid and ought to have been rejected by the trial court or in the least the trial court would as well have given the parties leave to file supplementary affidavits to correct the anomaly. This was not done.

26. Even though the Respondent's counsel has submitted that the sale agreement dated 28/2/1990 was signed by the deceased and therefore the Respondent's legitimacy to the land, it is instructive that the deceased was alive then and that nothing prevented him from coming out as the seller of the land since he had all the rights to dispose his land as he deemed. The situation was worsened by the lack of power of attorney on the part of the purported seller John Otieno Otieno so as to give him authority to transact business on behalf of the deceased. Hence, from the word go, the legitimacy of the Respondent's claim onto the suit property was doubtful right from the beginning. Hence, the finding by the learned trial magistrate was in error and must be interfered with.
27. In view of the foregoing observations, it is clear that the Respondent is not a bonafide purchaser of the property and as such she is not a creditor or liability to the estate of the deceased. Hence, her claim before the trial court ought to have been rejected. There is thus need to revoke the grant issued to the Respondent so that a fresh application for grant is made by the legitimate beneficiaries so that the estate is distributed. There is also need to have the title revert back in the name of the deceased for distribution among the genuine beneficiaries.
28. In the result, it is my finding that the Appellant's appeal has merit. The same is allowed. The following orders are hereby made:
  - a) The judgment of lower court dated 18/10/2023 is hereby set aside and substituted with an order dismissing the Respondent's summons for confirmation of grant dated 14/11/2022.
  - b) The grant issued to Florence Okech Amara on 15/2/2022 is hereby revoked. A fresh grant be and is hereby issued to Joshua Onyango and John Otieno Otieno who are ordered to file summons for confirmation of grant within thirty (30) days of the issuance of the fresh grant.



- c) The certificate of confirmation of grant dated 18/10/2023 is hereby cancelled.
- d) The title to land parcel number Siaya/ Usigu/143 is hereby ordered cancelled and the same do revert in the name of the deceased Okelo Angule and be made available for distribution among the genuine beneficiaries.
- e) Each party to bear their own costs.

**DATED AND DELIVERED AT SIAYA THIS 30<sup>TH</sup> DAY OF MAY 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

Jaoko.....for the Appellant

N/A Obonyo.....for the Respondent

Okumu.....Court Assistant

