



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Elizabeth Lutenyo Anaita (Deceased) (Succession Cause E338 of 2012) [2025] KEHC 8159 (KLR) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8159 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E338 OF 2012**

**RN NYAKUNDI, J**

**JUNE 13, 2025**

**IN THE MATTER OF THE ESTATE OF ELIZABETH LUTENYO ANAITSA - (DECEASED)**

**AND**

**IN THE MATTER OF ALFAYO MUMBO AMIANI JOSEPH LUMITI**

**BETWEEN**

**ALFAYO MUMBO AMIANI JOSEPH LUMITI ..... 1<sup>ST</sup> PETITIONER**

**BENEDA MUHADIA KENYABUS ..... 2<sup>ND</sup> PETITIONER**

**AND**

**WELLINGTON KIFUMBA ..... 1<sup>ST</sup> APPLICANT**

**ERICK AMIANI ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. The matter herein relates to the estate of Elizabeth Lutenyo Anaita who died on 14<sup>th</sup> November, 2011 domiciled in her residence in Kimumu area, Uasin Gishu County. The deceased died intestate leaving behind the following surviving her:
  - a. Richard Kifumba Amiani – son
  - b. Beneda Muhadia Kenyabus – Daughter in-law
  - c. Wilfrida Udege – Daughter
  - d. Sulumena Khayisi Ondwari – Daughter



2. Richard Kifumba Amiani and Beneda Muhadia Kenyabus petitioned for letters of administration intestate and subsequently a grant was issued to them by this court on 25<sup>th</sup> March, 2013 by the Hon. Ngenye-Macharia J.
3. Learned Counsel Mr. Momanyi on 23<sup>rd</sup> October, 2013 filed summons for confirmation seeking to confirm the Grant as issued to the said beneficiaries since the statutory period of six months had lapsed, which was confirmed on 26<sup>th</sup> June, 2014 by the session judge Hon. Kimondo J. in the following terms:

| NAME                      | DESCRIPTION OF PROPERTY | SHARE OF HEIRS |
|---------------------------|-------------------------|----------------|
| Richard Kifumba Amiani    | Uasin Gishu/Kimumu/37   | ¼ Acre         |
| Beneda Muhadia Kenyabus   | Uasin Gishu/Kimumu/37   | ¾ Acre         |
| Sulumena Khayisi Ondwari  | Uasin Gishu/Kimumu/37   | ¼ Acre         |
| Wilfrida Udege            | Uasin Gishu/Kimumu/37   | ¼ Acre         |
| Anjelina Imudede Amugwiri | Uasin Gishu/Kimumu/37   | 0.3 Acres      |
| Joshua Kadenge Mung'ono   | Uasin Gishu/Kimumu/37   | 1 Acre         |
| John Odeke Okisegere      | Uasin Gishu/Kimumu/37   | ½ Acre         |
| Benjamin Kosgei           | Uasin Gishu/Kimumu/37   | ½ Acre         |
| Lucky Alex Aruwa Ogunde   | Uasin Gishu/Kimumu/37   | ¼ Acre         |

4. Later, Alfayo Mumbo Amiani through learned counsel Mr. Chepkwony lodged summons for rectification of Grant dated 10<sup>th</sup> November, 2017 in which he sought that the name Richard Kifumba Amiani be substituted with the names Alfayo Mumbo Amiani and Joseph Lumiti, being his sons for reasons that the name Richard Kifumba Amiani died.
5. The aforementioned substitution culminated to an amended Grant and a Certificate of Confirmation of a Grant dated 22<sup>nd</sup> July, 2019 essentially incorporating the sons of Richard Kifumba Amiani and equally giving them his designated share of the estate.
6. On 15<sup>th</sup> July 2019, learned counsel Mr. Chepkwony filed another summons for rectification regarding the grant issued on 12<sup>th</sup> July 2019. This application sought to substitute Mary Atieno Aruwa Ogunde in place of Lucky Alex Aruwa Ogunde. The session judge, Honourable Justice R.K. Limo, granted this rectification and issued a Certificate of Rectified Confirmation of Grant dated 5<sup>th</sup> August 2022.
7. I have also taken note from the record that John Odeke Okisegere through learned counsel Mr. Momanyi filed an application dated 4<sup>th</sup> October, 2022 seeking orders that the administrators be ordered to sign all the documents necessary to have land reference Uasin Gishu/Kimumu/8455 transferred by transmission to the applicant John Odeke Okisegere.
8. The Petitioners later through Learned Counsel Mr. Isaboke Bw'orina lodged chamber summons dated 11<sup>th</sup> November, 2022 seeking orders as follows:



- a. That the distribution mode of the estate dated the 23<sup>rd</sup> October, 2013 and filed in this court on the 28<sup>th</sup> October, 2013 giving the Respondent half (1/2) an acre of land be and is hereby amended to read quarter (1/4) of an acre as per his Sale of Land Agreement.
  - b. That the Certificate of Confirmation of a Grant issued by this Honourable Court issued on the 22<sup>nd</sup> July, 2019 based upon the erroneously made Mode of Distribution of Estate alluded to prayer (a) above be amended to read quarter (1/4) of an acre in terms of the Respondent's Sale of Land Agreement.
9. The application was anchored on various grounds chief among them being that the purchased piece of land by the Respondent is quarter (1/4) of an acre and not (1/2) as indicated in the certificate of confirmation.
  10. In response to the said application, the Respondent John Odeke Okisegere through learned counsel deposed that the confirmed Grant which was obtained by the petitioners has already been acted upon and enforced by the Land Registrar Uasin Gishu. Further that pursuant to the confirmation of grant being enforced, the petitioner and all the beneficiaries have obtained title deed to the parcels of land allocated to them. That he is entitled to half an acre of the property and not ¼ an acre. He also indicated that when the petitioners filed an application on 10<sup>th</sup> November, 2017, their only prayer was substitution of the deceased Richard Kifumba Amiani with Alfayo Mumbo Amiani and Joseph Lumiti. That he is not a beneficiary on account of the sale agreement dated 25<sup>th</sup> May, 2012 but on account of agreements made in 2005 but which agreements got destroyed on account of arson arising from the 2008 post-election violence.
  11. The summary as highlighted became necessary so as to put into perspective the summons for revocation now before court seeking a revocation of the same Grant that learned counsel Mr. Momanyi has been agitating for confirmation and execution.
  12. The court is now called to determine the summons for revocation dated 3<sup>rd</sup> August, 2023 in which the applicants, Wellington Kifumba and Erick Amiani seek orders as follows:
    - a. Spent
    - b. Pending the hearing interparties and determination of the application land reference Uasin Gishu/Kimumu/8484 be preserved through an order of inhibition.
    - c. The amended grant of letters of administration made on 12<sup>th</sup> July, 2019 and issued and confirmed on 22<sup>nd</sup> July, 2019 be revoked.
    - d. Costs of the application be borne by the Petitioners/Administrators.
  13. The application is based on grounds that:
    - a. The applicants are sons of a beneficiary to the deceased's estate.
    - b. The deceased Richard Kifumba Amiani share of the estate is currently delineated as Uasin Gishu/Kimumu/8484.
    - c. The parcel of land has been transmitted and registered in the names of Alfayo Mumbo Amiani and Joseph Lumiti.
    - d. The registered owners of the parcel of land have not indicated that they are so registered as trustees for and on behalf of their brothers.
    - e. The applicants rank equally with their brothers Joseph Lumiti and Alfayo Kifumba Amiani.



14. In response to the application, Alfayo Mumbo Amiani swore a replying affidavit in which he deposed as follows:

- a. That I indeed know of my own knowledge that the Applicants are my brothers though Eric Amiani is from a different mother, to wit Josephine Malesi Shivachi.
- b. That I know of my own knowledge that myself and my brother Joseph Lumiti are holding all that piece of land known as Uasin Gishu/Kimumu/8484 of our other siblings including the 1<sup>st</sup> Applicant.
- c. That I know of my own knowledge that neither myself nor my brother Joseph Lumiti have ever had intention to deprive any of our siblings their interest in the said piece of land.
- d. That the Applicants have not shown any evidence that I and my brother Joseph Lumiti are currently afoot with plans to act adversely to the interest of our siblings including the 1st Applicant.
- e. That I know of my own knowledge that we have no plan or at all to disinherit our siblings.
- f. That I know of my own knowledge that it is me who went to bring the 1<sup>st</sup> Applicant to the said piece of land from Soy after he stuck on our step mother Beneda Muhadia Kenyabus' land at Soy such that if I had the intention of disinheriting him I ought not to have gone for him.
- g. That I know of my own knowledge and it is indeed in public domain that I, the 2<sup>nd</sup> Petitioner and the 1<sup>st</sup> Applicant have all constructed our residential houses and are living peacefully on the said piece of land.
- h. That I know of my own knowledge that the Rectification of the Grant was done because our father the late Richard Kifumba Amiani had passed away hence there was need and desire to have our name entered to safeguard his interest in the Estate.
- i. That I know of my own knowledge that since the grant was issued we have acted and conducted ourselves diligently to protect our interest and that of the 1st Applicant.
- j. That I know of my own knowledge that because of that prohibition and the rituals that were conducted by our clan (Basaniaka) the 2<sup>nd</sup> Applicant and his mother Josephine Malesi Shivachi were barred and from attending and stepping on the graves of Elizabeth Lutenyo, our grandmother, Paul Amiani, our grandfather, Frida Barabara, our ant and Richard Kifumba Amiani, our father and from any dealings with our clan.
- k. That I know of my own knowledge that it was said that if they dared step on the said graves there were curses that will visit upon them with untold consequences such that the said Josephine Malesi Shivachi and the 2<sup>nd</sup> Applicant were expelled from home never be allowed to participate in our family affairs or dealing with us in any manner.
- l. That I know of my own knowledge that the said Josephine Malesi Shivachi and hers son Eric have neither attended nor participated in our family ceremonies and function notwithstanding the fact that he was sired by our late father Richard Kifumba Amiani.



## Analysis and determination

15. Grounds for revocation or annulment of grant of Letters of Administration are set out in Section 76 of the Law of Succession thus:

“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.

16. The circumstances in which a grant can be revoked were discussed in the case of *In the Matter of the Estate of L.A.K. (Deceased)* [2014] eKLR:-

“Revocation of grants is governed by Section 76 of the *Law of Succession Act*. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.”

17. Let me highlight that the power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the persuasive decision in *Albert Imbuga Kisigwa v Recho Kawai Kisigwa Succession Cause No. 158 of 2000* where Mwita J stated: -

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take



into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”

18. Having carefully considered the application for revocation and the responses thereto, I find that this application is fundamentally flawed and must be dismissed on multiple grounds. The first and most glaring defect lies in the wholly disproportionate nature of the remedy sought. The applicants' grievance relates exclusively to the distribution of their late father Richard Kifumba Amiani's specific share of the estate, now delineated as Uasin Gishu/Kimumu/8484. However, they seek revocation of the entire grant, which would unjustifiably prejudice numerous other beneficiaries who have no involvement whatsoever in the internal family disputes concerning Richard's inheritance. The other beneficiaries who would be affected by such wholesale revocation include Wilfrida Udege, Sulumena Khayisi Ondwari, Anjelina Imudede Amugwiri, Joshua Kadenge Mung'ono, John Odeke Okisegere, Benjamin Kosgei, and Mary Atieno Aruwa Ogunde. These individuals have lawfully obtained their respective shares under the confirmed grant and have already secured title deeds to their allocated parcels based on the distribution confirmed on 26<sup>th</sup> June, 2014. To revoke the entire grant would destroy their vested property rights and create unnecessary chaos in an otherwise settled estate distribution
19. The second flaw in this application is a fundamental procedural defect. The applicants seek to revoke the amended grant of letters of administration made on 12<sup>th</sup> July 2019 and issued and confirmed on 22<sup>nd</sup> July 2019. However, they have completely failed to acknowledge that this document has been superseded by subsequent judicial proceedings. As clearly established in the record, on 15<sup>th</sup> July 2019, learned counsel Mr. Chepkwony filed another summons for rectification regarding the grant issued on 12<sup>th</sup> July 2019, seeking to substitute Mary Atieno Aruwa Ogunde in place of Lucky Alex Aruwa Ogunde. The session judge, Honourable Justice R.K. Limo, granted this rectification and issued a Certificate of Rectified Confirmation of Grant dated 5<sup>th</sup> August 2022. The legal position is therefore clear. The operative document is now the August 2022 rectified grant by Justice Limo, not the July 2019 grant that the applicants seek to revoke. One cannot seek to revoke a document that has been legally superseded by a subsequent judicial determination. This fundamental error renders the entire application misconceived and procedurally invalid.
20. Thirdly, the circumstances disclosed in this application do not meet any of the statutory thresholds for revocation under Section 76 of the *Law of Succession Act*. There is no evidence of defective proceedings in obtaining the original grant, fraud or concealment of material facts from the court, untrue allegations of facts essential to justify the grant, or failure to proceed diligently with estate administration. The dispute centers on a family disagreement over inheritance shares, which, while unfortunate, does not constitute grounds for wholesale revocation of a validly obtained and confirmed grant that has undergone multiple judicial considerations and confirmations over the years.
21. The proper legal approach to address the applicants' concerns would be to institute separate succession proceedings for the estate of Richard Kifumba Amiani, who died after the original grant was issued. In such proceedings, all of Richard's sons, including the applicants, could be properly joined as beneficiaries, and the court could determine the rightful distribution of Richard's share among his heirs without affecting other beneficiaries of the main estate.
22. In exercising my discretion under the principles established in *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, I must consider the interests of all beneficiaries entitled to the deceased's estate and ensure that any action taken serves the interests of justice. Revoking the entire grant would destroy vested property rights of innocent beneficiaries, create unnecessary litigation and uncertainty, fail to address the specific dispute over Richard's share, and contravene the principle of proportionate remedies.



23. Having carefully analysed the application, the responses, and the applicable law, I find no sound legal or factual grounds to warrant revocation of the grant. The application is fundamentally flawed in its conception and is dismissed with no orders as to costs.

24. Orders accordingly.

**DATED AND DELIVERED AT ELDORET THIS 13<sup>TH</sup> DAY OF JUNE 2025.**

.....

**R. NYAKUNDI**

**JUDGE**

