



In re Estate of the Late Sylvester Munialo Wekesa (Deceased) (Miscellaneous Succession Cause E003 of 2021) [2025] KEHC 10924 (KLR) (24 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10924 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS SUCCESSION CAUSE E003 OF 2021**

REA OUGO, J

JULY 24, 2025

IN MATTER OF THE ESTATE OF THE LATE SYLVESTER MUNIALO WEKESA (DECEASED)

BETWEEN

AGNES NASIMYU MUNIALO INTERESTED PARTY

AND

PASILISA NASWA KHAEMBA PETITIONER

RULING

1. On 4th June 2021, the applicant filed a Summons for Revocation or Annulment of the Grant dated 20th April 2021, contesting the grant of letters of administration issued to the petitioner/respondent in Bungoma CMCC Succession Cause No. 393 of 2017 and confirmed on 15th December 2017. The grounds for revocation are that:
 - i. The proceedings to obtain the grant were defective in substance.
 - ii. The grant was obtained fraudulently by making a false statement or concealment from the court of something material to the case.
 - iii. The grant was obtained by means of an untrue allegation of fact essential in point of law to justify the grant.
 - iv. The Sub-division of land title No. W. Bukusu/N. Mateka/ 573 to create titles Nos. W. Bukusu/N. Mateka/ 3803 and 3804, pursuant to the above grant, be cancelled and 573 itself be retained.
 - v. Costs of the application be provided for.
2. The application is supported by the applicant's affidavit. She states that she is one of the wives of the late Sylvester Munialo Wekesa, who died on 24th March 2013. A grant of letters of administration intestate for the deceased's estate was issued to Pasilisa Naswa Khaemba by this court on 24th February



2016 in Bungoma High Court Succession Cause No. 344 of 2015, which was later transferred to the Chief Magistrate’s Court as Succession Cause No. 393 of 2017, with the grant being confirmed on 4th April 2017. She only became aware of this cause when she sought to register herself as administrator of the deceased’s estate through another grant obtained under Bungoma C.M.C Succession Cause No. 152 of 2016. Upon following up on Succession Cause No. 393 of 2017, she discovered that the petitioner had not involved the entire family. The deceased had four wives; three survived him — namely Pasilisa Naswa, Hellen Nasaka, and Agnes Nasimiyu. The petitioner did not name Hellen and Agnes. Furthermore, there was no consultation among all the beneficiaries of the estate before the cause was filed; the second, third, and fourth houses were not consulted. Consents to issue and confirm the grant were not sought from members of the other three houses of the deceased. Due to this lack of consultation, she inadvertently filed a separate Succession Cause concerning the same estate of her late husband in Bungoma C.M.C Succession Cause No. 152 of 2016, which was finalised and confirmed. She involved all four houses of the deceased, but the petitioner has been uncooperative, ignoring all notices to appear in court before the grant was confirmed.

3. The respondent was served. The application was not opposed.
4. On the 27th May 2025, the applicant testified. She adopted her affidavit, which has been summarised above.
5. The applicant relied on his submissions dated 16th October 2024. It is submitted that the estate of the deceased has two grants, one in succession cause no 393 of 2017, which was confirmed on the 15th December 2017, and another in succession cause no 152 of 2016, which was confirmed on the 6th August 2019. The applicant argues that she was not aware when she filed succession cause no 152 of 2016 that the respondent had filed succession cause no. 393 of 2017. She therefore seeks to have the grant in succession cause no. 393 of 2017 revoked. The two grants are not in agreement. The respondent grant has an error.

Determination

6. The applicant in this matter filed this case, Miscellaneous Succession Cause No. E003 OF 2021, on the 20th April 2021, with the knowledge that Succession Cause No. 393 of 2017 (formerly P& A 344 of 2015) had been filed by the respondent, and Succession Cause No. 152 of 2016 filed by herself. Both causes relate to the estate of one deceased person, Sylvester Munialo Wekesa.
7. Rules 44 (1) provides as follows;

“Where any person interested in the estate of the deceased seeks pursuant to the provisions of S of the Act to have a grant revoked or annulled he shall, save where the court otherwise directs, apply to the High Court for such relief by summons in Form 107 and, where the grant was issued through the High Court, such application shall be made through the registry to which and in the cause in which the grant was issued or, where the grant was issued by a resident magistrate, through the High Court registry situated nearest to that resident magistrate’s registry.”
8. Rule 44 (1) provides that such an application should be filed in the High Court. Judge Aburili held as follows in the case of *Joseph Odera Ombayo v Robert Ombayo Wambogo* [2019] eKLR13.

“Before I conclude this judgment, I must also clarify that Rule 44 of the Probate and Administration Rules, 1980, which requires applications seeking the revocation or annulment of grants to be exclusively filed in the High Court, was not amended. However,



given that the Probate and Administration Rules, 1980 are subsidiary legislation, they cannot override any of the provisions of the Act, and as such, the position remains that the Magistrates' Court have jurisdiction to deal with applications for revocation or annulment of grants issued by those courts, subject to their pecuniary jurisdiction. Having said that, there is a need for the Rules Committee to amend Rule 44 of the Probate and Administration Rules, 1980”.

9. I agree with Justice Aburuli's observations. Therefore, having confirmed that the respondent had filed a different cause, the applicant should have filed her application in Succession Cause No. 393 of 2017, rather than initiating another cause in the High Court. The Magistrates' Court has the jurisdiction to handle applications for revocation and annulment of grants issued by the said court. The applicant shall file her application in Succession Cause No. 393 of 2017. The application dated 20th April 2021 is dismissed with no order as to costs. Miscellaneous Succession Cause No. E002 of 2021 is closed.

DATED, SIGNED AND DELIVERED AT BUNGOMA ON THIS 24TH DAY OF JULY 2025.

R.E.OUGO

JUDGE

In the presence of:

Mr. Alovi For the Applicant - Absent

Applicant in person

Respondent - Absent

Wilkister C/A

