



REPUBLIC OF KENYA



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**In re Estate of Imbiakha Muka (Deceased) (Succession Cause
616 of 2015) [2025] KEHC 10180 (KLR) (14 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10180 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 616 OF 2015**

S MBUNGI, J

JULY 14, 2025

BETWEEN

JAPHETHER MBAKAYA IMBIAKHA PETITIONER

AND

RICHARD MUKA IMBIAKHA OBJECTOR

RULING

1. In an application dated 14th March 2017, the applicant herein filed summons for revocation and /or annulment against the grant which was issued to Japhether Mbakaya Imbiakha on 7th day of December 2016.
2. The Application is premised on the grounds set out on its face and on the supporting affidavit sworn on the same date, where the applicant avers that at the time of confirmation of the grant, his name as a beneficiary was not in the grant.
3. He avers that their names as the children of the deceased were not indicated in the chief's letter, and that Jacob Wafula Were and Francis Imbiakha Mbakaya were not genuine beneficiaries and hence were not in a position to claim inheritance from the deceased's estate.
4. One of the deceased son, Isaac Kulecho, swore an affidavit on 3/6/2019, where he transferred his share of the estate, being 1.25 Acres, to one Jacob Wanjala Were, acknowledging that he had sold his share of his estate.
5. On 17th October 2022, Honorable Justice W.M Musyoka confirmed the grant that had been issued to Japhether Mbakaya Imbiakha and Richard Muka Imbiakha with the proposed mode of distribution as follows: Richard Muka ----2.7 Acres, Japhether Mbakaya--- 2.7 Acres, Isaac Kulecho--- Nil, Jesca Nafula Nil, and Jacob Wafula Were ---- 1.25 Acres.



6. The certificate of confirmation of grant was later rectified on 31st May, 2024; however, it retained the same shares. It rectified the name of Jacob Wanjala were which had been misspelt.
7. In reply to the summons for revocation, the petitioner in his reply dated 7th May 2025 confirms that Jacob Wanjala Were was a beneficiary to the estate after one of the deceased's sons, Isaac Kulejo Indeche, sold him his share of the estate.
8. He asserts that Francis Imbiakha Mbakaya was the grandson of the deceased and that the Objector Richard Muka was named as a beneficiary and was the co-administrator to the estate.
9. He prays that the summons for revocation be dismissed and the court allow the transfer process to continue as was confirmed in the grant.
10. In his submission, the 2nd petitioner prays that the confirmed grant be effected and the mode of distribution dated 17/10/2022 continue.
11. He stated that the 1st petitioner, who is also a co-administrator, objects to the inclusion of Francis Mbakaya as a beneficiary despite him being a grandson of the deceased and listed as a beneficiary in place of his late father.
12. He prays that the application be dismissed as it failed to meet the threshold for revocation of a grant.

ANALYSIS AND DETERMINATION.

13. The applicant herein seeks revocation of the grant, claiming that Francis Imbiakha and Jacob Wafula were not sons of the deceased and should not inherit from the estate.
14. The petitioner/ respondent, on the other hand, opines that Francis was a grandson of the deceased, while Jacob Wanjala got his rightful share after their brother Isaac Kulecho rightfully sold him his share of the estate.
15. I have considered the application herein, the responses thereto, and the submissions. I find the issue that arises for determination is whether the grant of letters of administration made on the 7th December 2016 and re-issued to the Petitioner herein on 17th October 2022 should be revoked.
16. The applicable law is the [Law of Succession Act](#) 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 allows; 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.
17. In the case of *In re Estate of Magangi Obuki (Deceased)* [2020] eKLR, the Court quoted the authority in the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, Succession Cause No.158 of 2000, Mwita J. made remarks on the guiding principles for the revocation of a grant. He stated;
- (13) 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 wrongdoing 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 the interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.
18. I note that this court in its confirmed grant dated 17th October 2022 issued to both the petitioner and the applicant as follows: Richard Muka ----2.7 Acres, Japhether Mbakaya--- 2.7 Acres, Isaac Kulecho--- Nil, Jesca Nafula Nil, and Jacob Wafula Were ---- 1.25 Acres.
19. In this case, the applicant claims that there was misrepresentation by the Petitioner in his distribution, who wants to include Francis Imbiakha and Jacob Wanjala as part of the beneficiaries to the estate and prays that the court revoke the grant to include just the two of them, being him and his brother.
20. On his part, the Petitioner has reiterated in his replying affidavit dated 24th May 2017, insisting that indeed he is a son of the deceased and that Francis Imbiakha is the grandson, while Jacob Wafula was given his share by Isaac Kulecho, one of the deceased son.
21. I note that the letters from the Chiefs dated 3/9/2015 indicate the beneficiaries of the deceased as Richard Muka (the objector), Japheth Mbakaya (the petitioner), Isaac Kulecho, Jesca Nafula and Francis Imbiakha, and Jacob Wanjala Were as a liability.
22. I note that the court allowed one of the deceased sons being Isaac Kulecho, sold his share to one Jacob Wanjala, who was included in the confirmed grant.
23. In *Jamleck Main Njoroge v Mary Wanjiru Mwangi* [2015] eKLR, the court had this to say on revocation of grant:
- “.....The circumstances that can lead to the revocation of a grant have been set out in section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”



24. According to the applicant, Francis Imbiakha Mbakaya is the son of the petitioner and should inherit from his father's estate, while Isaac Kulecho never provided any evidence that he was the son to the deceased.
25. He opines that the only person entitled to the share of the estate is himself and the petitioner.
26. It is evident that the court, before the confirmation of the grant dated 17th October 2022 established the three beneficiaries as Richard Muka Imbiakha, Japhether Mbakaya Imbiakha and Jacob Wanjala were.
27. The petitioner never included the alleged grandson in his mode of distribution. He never mentioned Francis Mbakaya's father, whom he claims he stands for in the list of the beneficiaries, and as such, he cannot sneak his name in the confirmed grant that was later rectified on 31st May 2024 if he was not listed as a beneficiary.
28. Concerning the share of one Isaac Kulecho, it is clear that he surrendered his share of inheritance to one Jacob Wanjala, and as such, it was the court's finding that he has an interest in the estate.
29. Section 107 of the *Evidence Act* is clear that the burden of proof lies on the person who alleges.
30. The law is that whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
31. The burden of proof as to any particular fact lies on that person who wishes the court to believe its existence, unless it is provided by any law that the proof of that fact shall be on any particular person. The standard of proof determines the degree of certainty with which a fact must be proved to satisfy the court of the fact.
32. It was the duty of the applicant to prove to the court that the said beneficiary was not entitled to inherit from the estate.
33. My understanding of the summons, that the revocation of the grant would occasion one Jacob Wanjala to lose his purchase interest in the estate, despite there being a clear consent from Isaac Kulecho in relinquishing his interest, and as such, is likely to occasion prejudice or injustice to the other beneficiaries.
34. From my analysis of the issues discussed earlier, I find and hold that there is nothing before me to suggest that the Respondent withheld crucial material from the court.
35. The upshot is that the applicant has failed to establish any of the grounds stipulated under section 76 of the Act, and as such, the distribution is to proceed as per the confirmed grant issued on 31st May 2024.
36. Accordingly, I dismiss the Summons for Revocation Grant dated 21st April, 2021, with no costs for it is a family matter.
37. Orders accordingly
38. Right of appeal 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 14TH DAY OF JULY, 2025.

S.N MBUNGI

JUDGE



In the presence of:

Court Assistant – Elizabeth Angong'a

Petitioner/respondent – Present.

Objector- Absent.

