



REPUBLIC OF KENYA



**In re Estate of Fred Owen Seme Lyani (Deceased) (Succession Cause  
628 of 2013) [2025] KEHC 13460 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13460 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 628 OF 2013  
S MBUNGI, J  
SEPTEMBER 29, 2025**

**IN THE MATTER OF THE ESTATE OF FRED OWEN SEME LYANI (DECEASED)**

**BETWEEN**

**LYDIA ATIENO OLEKETE ..... 1<sup>ST</sup> PETITIONER  
JEMIMAH KEMUNTO ONGECHI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**JARED WANJALA LYAI ..... 1<sup>ST</sup> RESPONDENT  
BEATRICE LYANI ..... 2<sup>ND</sup> RESPONDENT  
BRITISH AMERICAN INSURANCE CO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This matter refers to the estate of the deceased Fred Owen Seme Lyani, who died on 16th November 2005.
2. Upon his demise, his father, the applicat Jafred Wanjala Lyani, and his mother Beatrice Lyani applied for a grant of letters of administration, which were issued on 17<sup>th</sup> March 2014.
3. The petitioner listed the deceased children as Dora Masakhwe Seme, Debra Namaemba Seme, Mary Nelima Seme, and Jafred Lyani Seme, together with the two petitioners, his mother and father, as being the deceased beneficiaries.
4. On 10<sup>th</sup> July 2014, the court issued the certificate of confirmed grant where the 1<sup>st</sup> petitioner, Jared Wanjala, was issued with the land parcel LR. No. N/Kabras/Kivaywa/1130, as a whole, to hold in trust for the deceased's four children, while the proceeds from the Ministry of Health and those from British American are to be held by the deceased parents, the petitioners, Jared Wanjala and Beatrice Lyani, jointly on behalf of the beneficiaries.



5. On 18<sup>th</sup> May 2017, the deceased wives filed an objection and filed a second petition under Succession Cause No. 628 of 2013, claiming that the deceased parents obtained the first grant fraudulently and concealed material facts in respect of the deceased estate,
6. On 16<sup>th</sup> February 2024, the petitioners, Lydia Atieno and Jemimah Kemunto, filed for a summons of confirmation of their grant in their favor, stating that the deceased was survived by two wives, being Lydia Atieno and Jemimah Kemunto, and three children, being Dora Masakwe, Debora Namayemba, and Jafred Lyani, and no other dependant.
7. She claimed that the deceased had left behind the death gratuity and pension with the public trustee of KShs. 549,769.20/= and North Kabras/Kivaywa/931-1.25 Ha and North Kabras/Kivaywa/1130-0.04 Ha.
8. She stated that her co-wife had lost interest in the deceased estate and wanted nothing to do with her share of the estate.
9. The applicant herein filed a summons for revocation and or annulment of a grant dated 11<sup>th</sup> October 2024. He further sought the following orders;
  - a. That it pleased this Honourable court to grant a conservatory order restraining any transfer, subdivision, or alienation of plot no. N/Kabras/Kivaywa/1130 pending determination of this application.
  - b. That it pleases the honourable court to annul and or revoke the grant of letters of administration intestate issued on 29/04/2014 and refer the cause to an already concluded cause being Kakamega HC No. 547 of 2007
  - c. That costs be in the cause
10. In his application which is supported by an affidavit sworn on the same date, the applicant avers that he was the biological father to the deceased Fred Seme Lyani who died in 2005 and that the deceased had various partners in his lifetime from whom he had children however they have since separated or divorced and that at the time of his death, he was living with Lydia Atieno Olekete.
11. He went further and claimed that at the time of his death, the deceased had already divorced Jemimah Kemunto and that Christine Mutenyo was the deceased's girlfriend, and that after the deceased died, Lydia Atieno Olekete remarried and left her matrimonial home with the deceased.
12. He claimed that the deceased children, being Dora Masakhwe Seme, Debra Namaemba Seme, Mary Nelima Seme, and Jafred Lyani Seme, remained in his custody and that he took up the responsibility of educating and taking care of them.
13. He avers that in 2007, he filed a Succession Cause in Kakamega High Court Succession Cause No 547 of 2007, as the deceased father, and the file has already been concluded.
14. He stated that they filed a list of the beneficiaries to the pension scheme and that the public trustee applied for the proceeds for the children's school fees.
15. He now prays that the second petition be revoked since the first one had already been heard and determined.
16. The 2<sup>nd</sup> petitioner, Jemimah Kemunto, filed the replying affidavit dated 7<sup>th</sup> November 2024, stating that the application was fatally defective and an abuse of the court process, stating that the applicant was the father of the deceased, and she was the widow together with the 1<sup>st</sup> petitioner.



17. She claimed that the applicant went behind their back and filed their succession case, which was consolidated through a court order on 17<sup>th</sup> July 2017.
18. She denied the allegation that she divorced the deceased and places the applicant to strict proof.
19. She claimed that the deceased was not survived by Christine Mutenyo, whom she claimed was never married to the deceased, and that she had a child, Mary Nelima, with the deceased.
20. According to the petitioner, the applicant misled the court by claiming that she took care of the deceased children and paid for the children's schooling.
21. She denied the allegation that the proceeds from the death gratuity were directed towards the children's school accounts.
22. She prays that the court grants her the land parcel North/Kabras/Kivaywa/1130, which she had built on. She claimed that the applicant chased her from her home, which she had been using and had been cultivating.
23. She denied the allegation that the applicant holds the deceased estate in trust for their children, who are now adults.
24. She stated that, given the order of consanguinity, she was entitled to file the succession proceedings as the deceased wife.

#### **Submissions.**

25. The petitioner filed their submission dated 21<sup>st</sup> April 2025, where she acknowledged filing the summons for confirmation, where the deceased's assets included a death gratuity and pension with the public trustee Kakamega of Kshs. 549,769.20/= and Land Parcel No. North Kabras/Kivaywa/1130.
26. She stated that the deceased was survived by the following widows: Lydia Atieno Olekete And Jemimah Kemunto Ongechi, who are the Petitioners herein, and that the objectors were the deceased's parents.
27. She avers that the Objectors had filed succession proceedings over the deceased's property without informing the widows vide Kakamega HC Succ No. 547 of 2007. The Petitioners filed this succession cause unaware of the previous cause filed by the Objectors, and that the court ordered a consolidation of the two files
28. They submitted under sections 26 and 28 of the [Law of Succession Act](#) and stated that the deceased's estate be distributed under section 40 as it was a polygamous family
29. They relied on the Succession Cause No. 123 of 1999, [Rahab Njeri Kariuki v Joyce Waruguru Kariuki & 2 others](#), in which the court observed that in sharing the net estate of an intestate polygamous deceased person, the court exercises a discretion and is required to bear in mind the principles of fairness and equity and not equality among the beneficiaries.
30. They equally relied in the Succession Cause No. 71 of 2015, [Judith Naiyai Ramaita & Another v James Koote Ramaita](#), in which the court observed that the provisions of section 40 of the [Law of Succession Act](#) has always been a touchy issue subject to contradictory interpretations; which controversy stems from whether the distribution of the net estate of an intestate polygamous deceased should be distributed equally or equitably.
31. The petitioners held that the 2nd Petitioner and the deceased bought and built on land parcel no. North Kabras/Kivaywa/1130 and pray that the court gives her the matrimonial property.



32. They submitted that the Applicant's allegation that he holds the two parcels of land in trust for the deceased's children was misconceived, since the deceased children are now adults.
33. She claimed that if the objectors continue holding the land in their trust, she, together with the deceased children, would be disenfranchised.
34. She denied the allegations that she had divorced the deceased and claimed that as the deceased's wife, she was entitled to file the succession proceedings as per the consignity order and pray that the court dismiss the summons for rectification of the grant.

### **Applicant's Submissions**

35. The applicant filed their submissions dated 8<sup>th</sup> May 2025 and raised three issues for determination, being;
 

Whether the grant issued to the petitioners on 29<sup>th</sup> April 2014 should be revoked under section 76 of the *Law of Succession Act*; whether the petitioners were suitable for being granted letters of administration, and whether the objector is entitled to the conservatory orders sought.
36. On the first issue as to whether the grant should be revoked, he relied on section 76 and held that the petitioners had failed to inform the court that their already existed a succession cause and had already administered the estate lawfully. He relied on the case of *Estate of Dalip Singh Dhanja (Deceased)* Succession Cause 259 of 2013 2023 KEHC.
37. The applicant held that the petitioners had failed to inform the court that the Succession Cause No 547 of 2007 had already been concluded, hence her petition was unlawful and an abuse of the court's time.
38. On the second issue of whether the petitioners had the capacity to apply for letters of administration, he relied on section 66 of the *Succession Act* and held that the deceased died in 2005, and at the time of his demise, he had already divorced from the 2<sup>nd</sup> petitioner.
39. He claimed that the divorce happened on 20<sup>th</sup> December 1998 in accordance with the Luhya community customs and produced letters from the chief, and claimed that the 2<sup>nd</sup> petitioner moved from their home and was therefore not a spouse or surviving spouse under the *Succession Act*.
40. He claimed that the 1<sup>st</sup> petitioner had separated from the deceased and that she had already admitted not being interested in administering the estate of the deceased or did not want to participate in the succession proceedings.
41. He confirmed that the deceased children were underage at the time he applied for their succession proceedings and that the 1<sup>st</sup> petitioner had renounced her rights and asked the court to rely on section 39 of the *Law of Succession Act*, where the deceased was left with no surviving spouse or children.
42. He claimed that the succession Cause No 547 of 2007 was lawfully administered and should be upheld, and that the second succession cause ought to be quashed.
43. On the third issue of whether they are entitled to the conservatory orders under Article 23(3)(d) of the *Constitution* he relied on the case of *Centre for Rights Education and Awareness (CREAW) & 7 others vs. Attorney General* (HCCP No. 16 of 2011) and claimed that he had already proved that the deceased estate was already subjected to a concluded succession process in succession Cause 547 of 2007 where the grant was already confirmed and that the 2<sup>nd</sup> petitioner went forward and filed another succession process and concealed the material fact that the matter was already concluded and claimed that he had



already presented evidence that he had the legal and factual threshold for the grant of conservatory orders.

### **Analysis and Determination**

44. The deceased, Fred Owen Seme Lyani, died intestate on 16th November 2005, leaving behind the estate comprising:
  - a. LR. No. North Kabras/Kivaywa/1130 (0.04 Ha)
  - b. LR. No. North Kabras/Kivaywa/931 (1.25 Ha)
  - c. Death gratuity and pension of Kshs. 549,769.20 held by the Public Trustee.
45. The Applicant, Jafred Wanjala Lyani, and his wife, Beatrice Lyani, obtained a grant of letters of administration on 17th March 2014, which was confirmed on 10th July 2014. The confirmation was distributed, LR. No. North Kabras/Kivaywa/1130 to the Applicant to hold in trust for the deceased's children (Dora Masakhwe Seme, Debra Namaemba Seme, Mary Nelima Seme, and Jafred Lyani Seme), with the proceeds from the Ministry of Health and British American held jointly by the Applicant and Beatrice Lyani for the children.
46. The Respondents, Lydia Atieno Olekete and Jemimah Kemunto Ongechi, filed a second petition under Succession Cause No. 628 of 2013, claiming to be widows of the deceased. They listed the deceased's children as Dora Masakhwe, Debra Namaemba, and Jafred Lyani, omitting Mary Nelima Seme.
47. On 17th July 2017, the court ordered the consolidation of Succession Cause No. 628 of 2013 with Succession Cause No. 547 of 2007, filed by the Applicant.
48. The Applicant alleges that:
  - a. He filed Succession Cause No. 547 of 2007, which was concluded, and the estate was lawfully administered.
  - b. The Respondents concealed the existence of the prior cause.
  - c. Jemimah Kemunto was divorced from the deceased on 20th December 1998 per Luhya customary law, and Lydia Atieno remarried after the deceased's death, thus disqualifying them as surviving spouses.
  - d. He has been caring for the deceased's children, who were minors at the time of the first petition.
49. The 2nd Respondent, Jemimah Kemunto, denies the divorce, asserts her status as a widow, and claims she built on and cultivated LR. No. North Kabras/Kivaywa/1130. She denies that the Applicant paid for the children's schooling or that the gratuity was used for their fees. The 1st Respondent, Lydia Atieno, is said to have renounced her interest in the estate.
50. The Applicant seeks conservatory orders to restrain any dealings with LR. No. North Kabras/Kivaywa/1130 and revocation of the grant issued to the Respondents, citing the concluded Succession Cause No. 547 of 2007
51. On whether the grant was obtained through fraud or concealment of evidence, the Applicant alleges that the Respondents concealed the existence of Succession Cause No. 547 of 2007, which he claims was concluded. The Respondents, however, assert that the court ordered consolidation of the two causes on 17th July 2017, suggesting that the prior cause was not finalized or was reopened for adjudication.



52. The power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously.
53. There must be evidence of wrongdoing for the court to invoke section 76 and order the revocation or annulment of 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 in the interest of justice.
54. *In Re Estate of Dalip Singh Dhanja (Deceased)* [2023] eKLR, the court revoked a grant where the petitioner failed to disclose a prior succession cause, as this constituted concealment of material facts under Section 76(b).
55. The applicant herein has not provided evidence, such as a certificate of confirmation or final distribution order, to prove that Succession Cause No. 547 of 2007 was fully concluded. The consolidation order of 17th July 2017 suggests that both causes were active and merged for determination, undermining the Applicant's claim of concealment.
56. However, the Respondents' omission of Mary Nelima Seme as a beneficiary in their petition raises concerns about full disclosure. In *Matheka Nzembe v Anna Ndila & 2 Others* [2018] eKLR, the court revoked a grant for failure to include all beneficiaries, as this violated the requirement for transparency in succession proceedings. The omission of Mary Nelima, acknowledged as a child of the deceased in the first petition, constitutes a material defect.
57. On whether the Respondents were entitled to apply for letters of administration, Section 66 of the *Law of Succession Act* prioritizes the surviving spouse and children as administrators. The Applicant alleges that Jemimah Kemunto was divorced per Luhya customary law on 20th December 1998 and that Lydia Atieno remarried, disqualifying them as surviving spouses. The 2nd Respondent denies the divorce and asserts her status as a widow.
58. *In Re Estate of John Musambasi* [2014] eKLR, the court held that a customary divorce must be proven with clear evidence, such as testimony from elders or documentation of the process. The Applicant's reliance on a chief's letter is insufficient without corroborative evidence of the divorce proceedings under Luhya customary law. Similarly, Lydia Atieno's alleged remarriage requires proof, such as a marriage certificate, which has not been provided.
59. The 1st Respondent's disinterest in the estate does not negate her status as a widow unless formally renounced under Section 59 of the *Act*. Absent conclusive evidence of divorce or renunciation, both Respondents remain surviving spouses with priority to administer the estate under Section 66. However, their failure to include Mary Nelima as a beneficiary undermines the validity of their petition.
60. On whether conservatory orders should be. The Applicant seeks conservatory orders under Article 23(3)(d) of the *Constitution* to restrain dealings with LR. No. North Kabras/Kivaywa/1130. In *Centre for Rights Education and Awareness (CREAW) & 7 Others v Attorney General* [2011] eKLR, the court held that conservatory orders require a *prima facie case*, potential irreparable harm, and consideration of public interest.
61. The Applicant has established a *prima facie case* by highlighting the omission of a beneficiary and the dispute over the Respondents' status. The risk of alienation of the land could prejudice the rightful beneficiaries, including the deceased's children. Public interest favors preserving the estate pending determination. The court finds that conservatory orders are warranted to maintain the status quo.



62. It is my finding that the grant issued on 29th April 2014 is defective due to the omission of Mary Nelima Seme as a beneficiary, which violates Section 51(2)(g) of the [Law of Succession Act](#), which requires all dependents to be listed.
63. However, the Applicant's claim that Succession Cause No. 547 of 2007 was concluded lacks evidential support, given the consolidation order of 17th July 2017.
64. The court finds that revocation of the grant is necessary to ensure a fair and lawful administration of the estate, involving all dependants and resolving disputes over the Respondents' status.

### **Orders**

65. For the reasons stated above, the court makes the following orders:
  - a. The grant of letters of administration intestate issued on 29th April 2014 to Lydia Atieno Olekete and Jemimah Kemunto Ongechi is hereby revoked under Section 76 of the [Law of Succession Act](#).
  - b. A conservatory order is hereby issued restraining any transfer, subdivision, or alienation of LR. No. North Kabras/Kivaywa/1130 pending the determination of a fresh petition for administration.
  - c. A fresh grant of letters of administration intestate shall be issued to Jemimah Kemunto Ongechi and Jafred Wanjala
  - d. The parties shall, within 90 days from the date of this ruling, file a fresh summons for confirmation of the grant, identifying all beneficiaries.
  - e. Each party shall bear its own costs for the Application.
  - f. Mention on 28<sup>th</sup> January, 2026 to confirm compliance.
  - g. Right of Appeal 30 days.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**S. N. MBUNGI**

**JUDGE**

In the presence of:

Court Assistant: Elizabeth Agong'a

Ms. Chesire for the Petitioner present online.

Mr. Sichangi for the Objector present online.

