



**In re Estate of the Late Obuya Shaka (Deceased) (Succession Cause 192 of 2001) [2025] KEHC 14165 (KLR) (7 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14165 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 192 OF 2001**

**S MBUNGI, J**

**OCTOBER 7, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE OBUYA SHAKA (DECEASED)**

**BETWEEN**

**BEN PEMBE MUSAVA ..... OBJECTOR**

**AND**

**REUBEN SHAKA WATITA ..... 1<sup>ST</sup> PETITIONER**

**SIMON MUMIA OBUYA ..... 2<sup>ND</sup> PETITIONER**

**JULIUS MAINA MUSITIA ..... 3<sup>RD</sup> PETITIONER**

**RULING**

1. This application refers to the estate of the late Obuya Shaka. A letter of letters of administration of his estate was issued to Loice Ling'ondo, Simon Mumia Obuya, and Julius Maina Musitia. The grant was subsequently confirmed, and a certificate of confirmation of the grant was issued on 31<sup>st</sup> May 2021.
2. The deceased estate L.R. No. Kakamega /Lukume/803 was distributed to three beneficiaries as follows: Daniel Musitia Shaka- 6 ½ Acres, Simon Mumias Obuya- 5 Acres, and Reuben Shaka Watita- 5 Acres.
3. By way of summons for revocation and or annulment of the grant, the Applicant Ben Pembe Musava applied for revocation of the grant upon the usual statutory grounds under section 76 of the *Law of Succession Act*, Cap 160, and Rules 44 and 73 of the Probate and Administration Rules made thereunder.
4. The applicant sought the following orders;
  - a. That the grant of letters of administration intestate made to Loicce Ling'ondo, Luchievelei, Simon Mumia Obuya, and Julius Maina Musitia on 27<sup>th</sup> November 2019 be revoked and /or annulled.



- b. That a fresh grant do issue in the names of Ben Pembe Musava
  - c. That the cost of this application be provided for.
5. In support of his application, the applicant filed an affidavit where he avers that the deceased was his father and that one of the deceased beneficiaries, Daniel Musitia Shaka, was the deceased's stepbrother and not a son, hence he was not entitled to the share of the estate.
  6. He further claimed that Reuben Shaka Watita was a stranger to the estate and claims that all the other beneficiaries were left out of the mode of distribution and prays that the grant that was confirmed be revoked.
  7. He identified the deceased beneficiaries as follows,
    1. Matasi Obuya- widow [deceased]
    2. Loice Ling'ondo- widow [alive]
    3. Shikuku Obuya- son [deceased]
    4. Simon Mumia –son [alive]
    5. Musee Obuya- son [deceased]
    6. Jane Namukuru- Daughter [alive]
    7. Rose Bulimo- Daughter [alive]
    8. Ben Pembe Musava- son [alive]
  8. In his replying affidavit dated 2<sup>nd</sup> November 2023, the 1<sup>st</sup> and 3<sup>rd</sup> respondent avers that the summons for revocation was misconceived and they denied that they were strangers to the estate by attaching a court ruling dated 29<sup>th</sup> June 2010.
  9. They questioned the allegations that the applicant was a son of the deceased and produced the chief letter dated 22<sup>nd</sup> November 2021, which stated that the objector was a son of one of the beneficiaries and a grandson of the deceased Obuya Shaka.
  10. They prayed that the court order a DNA test to prove the paternity and the maternity of the objector.

#### **Submissions.**

11. The objector/applicant, through his submissions dated 3<sup>rd</sup> February 2025, stated that the grant was obtained by making false statements and or concealment of court material facts.
12. He claimed that the grant left behind the true heirs of the deceased, claiming that the deceased, his father, left behind 8 beneficiaries, and one of the beneficiaries and respondent Daniel Musitia Shaka was the deceased step stepbrother, and that the other beneficiary, Reuben, was a stranger and not related to the deceased.
13. He avers that his application had met the threshold of revocation under section 76 of the [Law of Succession Act](#) and relied on the case of Re Estate of Prisca Ong'ayo Nande [deceased] [2020] eKLR.
14. The applicant avers that the main beneficiaries, such as Loice Ling'ondo, Simon Mumias Obuya, Joseph Onyango, and Moses Shaka, were left out in the grant and prays that the grant that was confirmed be annulled and or revoked.



## Analysis And Determination

15. I have had a chance to look at the application, the affidavits, as well as the submissions by the parties.
16. I note that the deceased Obuya Shaka, who died on 11th November 1993 Estate comprised of Kakamega/Lukume/803. In the chief's letter dated 28/4/2001 listed the deceased beneficiaries are listed as Daniel Musitia Shaka [brother], Simon Mumia [son], Reuben Shaka [brother's son], Andabwa Shikuku Obuya [grandson], Muse Obuya [son], Kenyatta Watita [brother's son], and Isaac Watita [brother's son].
17. On 14<sup>th</sup> October, 2013, this court, through Hon. Justice Dulu, confirmed the grant on 14<sup>th</sup> October 2013 and named the three Daniel Musitia Shaka, Simon Mumias Obuya, and Reuben Shaka Watita as the heirs to the deceased estate.
18. I note that one of the beneficiaries, Daniel Musitia Shaka, died on 23<sup>rd</sup> April 2014 and was substituted with his son, Julius Maina.
19. On 31<sup>st</sup> May 2021, the confirmed grant was amended, and Julius Maina substituted his father, Daniel Mustita, as an administrator.
20. This court has thus identified the following issues for determination:
  - a. Whether the Applicant has locus standi to bring this application as a beneficiary of the estate of the deceased.
  - b. Whether the grant of letters of administration issued on 27th November 2019 and confirmed on 14th October 2013 was obtained through false statements, concealment of material facts, or other procedural defects under Section 76 of the [Law of Succession Act](#).
  - c. Whether the distribution of the estate to Daniel Musitia Shaka, Simon Mumia Obuya, and Reuben Shaka Watita was lawful.
  - d. What orders should the court issue?
21. Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will, and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of a matter, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons.
22. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of the grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required.
23. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.



24. Additionally, Section 29 of the *Law of Succession Act* defines dependents entitled to inherit from an intestate estate, including the widow, children, and, in certain cases, other dependents who were maintained by the deceased immediately prior to his death.
25. In *Re Estate of Prisca Ong'ayo Nande [Deceased] [2020] eKLR*, the court revoked a grant due to concealment of material facts regarding the rightful beneficiaries, and in *Matheka Nzembe v Anna Ndila & 2 Others [2018] eKLR*, the court emphasized that all beneficiaries must be disclosed and involved in succession proceedings to ensure fairness.
26. The deceased, Obuya Shaka, died intestate on 11th November 1993, leaving behind the estate comprising L.R. No. Kakamega/Lukume/803. The grant of letters of administration was issued to Loice Ling'ondo, Simon Mumia Obuya, and Daniel Musitia Shaka [later substituted by Julius Maina Musitia] on 27th November 2019.
27. The grant was confirmed on 14th October 2013, distributing the estate as follows: Daniel Musitia Shaka: 6½ acres, Simon Mumia Obuya: 5 acres, Reuben Shaka Watita: 5 acres
28. The Applicant, Ben Pembe Musava, claims to be a son of the deceased and alleges that Daniel Musitia Shaka was the deceased's stepbrother, not a son, and thus not entitled to inherit further than Reuben Shaka Watita was a stranger to the estate. And that other rightful beneficiaries, including Loice Ling'ondo [widow], Jane Namukuru [daughter], Rose Bulimo [daughter], and himself, were excluded from the distribution.
29. The Respondents, through their replying affidavit dated 2nd November 2023, contend that the Applicant is a grandson, not a son, of the deceased, as per a chief's letter dated 22nd November 2021, and that the distribution was lawful, supported by a court ruling dated 29th June 2010.
30. They request a DNA test to ascertain the Applicant's paternity.
31. The chief's letter dated 28th April 2001 lists the beneficiaries as Daniel Musitia Shaka [brother], Simon Mumia Obuya [son], Reuben Shaka Watita [brother's son], Andabwa Shikuku Obuya [grandson], Musee Obuya [son], Kenyatta Watita [brother's son], and Isaac Watita [brother's son]. Notably, this letter does not list the Applicant as a son but aligns with the Respondents' claim that he is a grandson.
32. For the first ground of locus standi, it is notable that for the Applicant to have locus standi to seek revocation of the grant, he must establish that he is a beneficiary or dependant of the deceased under Section 29 of the *Law of Succession Act*. The Applicant claims to be a son of the deceased, which would entitle him to a share of the estate. However, the Respondents, supported by the chief's letter dated 22nd November 2021, assert that he is a grandson.
33. In *Re Estate of Charles Kibe Karanja [Deceased] [2015] eKLR*, the court held that only persons with a beneficial interest in the estate have locus standi to apply for revocation of a grant. The Applicant's claim to be a son is contested, and the chief's letter suggests he is a grandson, potentially through one of the deceased's sons. The Respondents' request for a DNA test to determine paternity is noted, but the court finds that such a test is unnecessary at this stage, as the issue can be resolved through documentary evidence.
34. The Applicant has not provided conclusive evidence, such as a birth certificate, to prove he is a son rather than a grandson. However, even as a grandson, he may have a beneficial interest if he was a dependant of the deceased under Section 29[1][c]. The court finds that the Applicant's claim, supported by his affidavit and assertion of being excluded, grants him sufficient locus standi to bring this application, pending determination of his status as a beneficiary.



35. On whether the grant was obtained through false statements or concealment. Under Section 76[b] and [c] of the [Law of Succession Act](#), a grant may be revoked if it was obtained through false statements or concealment of material facts. The Applicant alleges that one of the beneficiaries of the estate, Daniel Musitia Shaka, was a stepbrother, not a son, and thus not entitled to inherit, and that Reuben Shaka Watita was a stranger to the estate while other beneficiaries, including the widow Loice Ling'ondo [now deceased], Jane Namukuru, and Rose Bulimo, were excluded.
36. The chief's letter dated 28th April 2001 confirms that Daniel Musitia Shaka was the deceased's brother, not a son. Under Section 39 of the [Law of Succession Act](#), in the absence of a spouse or children, siblings may inherit from an intestate estate. However, the deceased left behind a widow [Loice Ling'ondo] and children [Simon Mumia Obuya, Jane Namukuru, Rose Bulimo, and others]. Therefore, Daniel Musitia Shaka, as a brother, would only be entitled to inherit if no closer dependents existed, which is not the case here.
37. Regarding Reuben Shaka Watita, identified as a "brother's son" in the chief's letter, he appears to be a nephew of the deceased. His entitlement to inherit would also be subordinate to the deceased's spouse and children under Sections 35 and 36 of the Act.
38. The inclusion of Reuben as a beneficiary, without evidence of dependency under Section 29, raises concerns about the propriety of the distribution. As a son of the deceased brother, he was to inherit from his father's share, not his uncle's.
39. The exclusion of Loice Ling'ondo [widow], Jane Namukuru, and Rose Bulimo, who are undisputed dependents under Section 29, suggests concealment of material facts during the confirmation of the grant.
40. In *Re Estate of Prisca Ong'ayo Nande [Deceased] [2020] eKLR*, the court revoked a grant where beneficiaries were excluded without justification, emphasizing the need for full disclosure of all dependents. Similarly, in *Matheka Nzembe v Anna Ndila & 2 Others [2018] eKLR*, the court held that failure to include all beneficiaries in the petition renders the grant defective.
41. The court finds that the grant was obtained through concealment of material facts, namely the exclusion of rightful beneficiaries and the improper inclusion of persons with lesser or no entitlement.
42. On whether the distribution of the estate to Daniel Musitia Shaka [6½ acres], Simon Mumia Obuya [5 acres], and Reuben Shaka Watita [5 acres] disregarded the priority of beneficiaries under Section 35 of the [Law of Succession Act](#), which mandates that the surviving spouse and children take precedence. Loice Ling'ondo, as the widow, was entitled to a life interest in the net intestate estate, with the children entitled to equal shares upon her death or remarriage.
43. The exclusion of Jane Namukuru and Rose Bulimo, who are daughters of the deceased, violates the principle of equality in Section 38.
44. The court notes that Daniel Musitia Shaka, now deceased, was substituted by his son Julius Maina Musitia. However, since Daniel's entitlement as a brother was subordinate to the spouse and children, his share and subsequent substitution are irregular. Similarly, Reuben Shaka Watita's inclusion as a nephew lacks legal basis absent proof of dependency.
45. Having established that the grant was obtained through concealment of material facts and that the distribution was unlawful, the court finds that the grant issued on 27th November 2019 and confirmed on 14th October 2013, as amended on 31st May 2021, must be revoked under Section 76 of the [Law of Succession Act](#).



46. The Applicant seeks a fresh grant in his name alone. However, Section 66 of the *Law of Succession Act* prioritizes the surviving spouse and children .
47. For the reasons stated above, the court makes the following orders:
- a. The grant of letters of administration intestate issued on 27th November 2019 to Loice Ling'ondo, Simon Mumia Obuya, and Julius Maina Musitia, and confirmed on 14th October 2013, as amended on 31st May 2021, is hereby revoked.
  - b. A fresh grant of letters of administration intestate shall be issued to Simon Mumia Obuya, a son of the deceased.
  - c. Ben Pembe Musava, can file a protest in any event, to prove his entitlement as a beneficiary.
  - d. The Administrator shall, within 60 days from the date of this ruling file fresh summons for confirmation of the grant, identifying all beneficiaries and their respective shares.
  - d. The costs of this application in cause.
  - f. Mention 19.3.2026.
  - g. Right of Appeal 30 days.

**DATED, SIGNED and DELIVERED at KAKAMEGA this 7<sup>th</sup> day of OCTOBER, 2025**

**S.N. MBUNGI**

**JUDGE**

In the presence of:

Court Assistant: Elizabeth Agong'a

Parties present.

