



REPUBLIC OF KENYA



In re Estate of Murwa Henry Musemate (Deceased) (Succession Cause E899 & E735 of 2022 (Consolidated)) [2025] KEHC 13637 (KLR) (Family) (2 October 2025) (Ruling)

Neutral citation: [2025] KEHC 13637 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E899 & E735 OF 2022 (CONSOLIDATED)
HK CHEMITEI, J
OCTOBER 2, 2025
IN THE MATTER THE ESTATE OF MURWA HENRY MUSEMATE (DECEASED)

BETWEEN

VIOLET LOVEGA MENGESA 1ST APPLICANT

AMOS MUKAVALE MATE 2ND APPLICANT

AND

ALICE NANGEKHE SONGHWAH 1ST RESPONDENT

DAN HICKSON ALUVI MUSEMATE 2ND RESPONDENT

FRANK NELSON MUHANDE MUSEMATE 3RD RESPONDENT

RULING

1. This ruling relates to the application dated 2nd April, 2024 filed by the Applicants, Violet Lovega Mengesa and Amos Mukavale Mate, seeking for orders that:-
 1. Spent.
 2. This honourable court be pleased to revoke the grant of letters of administration intestate herein dated 4th March, 2024, issued to Alice Nangekhe Songwah, Dan Hickson Aluvi Musemate and Frank Nelson Muhande Musemate in respect of the Estate of Henry Musemate Murwa (deceased).
 3. In the alternative, this honourable court be pleased to include Amos Mukavale Mate and Violet Lovega Mengesa as co – administrators alongside those administrators appointed on 4th March, 2024.



4. This honourable court be pleased to issue orders staying any further administration and transmission of the Estate by the Administrators pending the hearing and determination of this application.
 5. This honourable court be pleased to issue any further orders it deems necessary in the interest of justice for all parties concerned.
 6. The costs of this application be provided for.
2. The application is based on the grounds thereof and supported by affidavits sworn by Violet Lovega Mengesa and Amos Mukavale Mate on 2nd April, 2024, 5th June, 2024 and 28th November, 2024.
 3. Violet avers inter alia that the administrators petitioned for letters of administration intestate but deliberately withheld material facts that would have enabled this Honourable Court to ascertain the full extent of the deceased's dependants and beneficiaries. Despite repeated written requests from her advocates in 2023 for copies of the pleadings, the administrators' counsel failed to provide them. Her advocates only became aware of the proceedings after discovering a gazette notice referencing Succession Cause E735 of 2023, Estate of Henry Murwa Musemate. This notice was erroneous because the correct cause is E735 of 2022, a discrepancy she asks the court to take judicial notice of.
 4. Further that unaware of this parallel succession cause filed by the administrators and her brother-in-law, she separately instituted Succession Cause E899 of 2022 to protect and preserve the deceased's estate. She explains that she acted because the current administrators had been estranged from the deceased for most of his life, showed no interest in his affairs and left immediately after his burial. After she filed her cause, her advocates invited the administrators to participate, prompting them to enter appearance and respond to applications.
 5. On 4th March, 2024, this Court confirmed a grant of letters of administration intestate to Alice Nangekhe Songwah, Dan Hickson Musemate and Frank Nelson Muhande Musemate. She contests the administrators' claim that Alice Nangekhe Songwah ("the 1st Administrator") was the deceased's sole wife. According to her, the 1st Administrator abandoned the family around 2015 and lived apart from the deceased for over a decade, compelling him to remarry due to advancing age and ill-health.
 6. Following the 1st Administrator's departure, she began living with the deceased as husband and wife - first at Embakasi Nyayo Estate and later at Madaraka Estate - openly recognized as his spouse by relatives and the community.
 7. She deponed that in 2019, the deceased introduced her to his extended family and she reciprocated. Throughout this period, the 1st Administrator and her children maintained no contact until the deceased's death. She cared for the deceased during his illness, accompanied him to hospital and was present when he passed away on 6th November, 2021 at 5 a.m. Although she initially sought to obtain his death certificate, the 2nd and 3rd Administrators allegedly seized his identification documents and burial permit and rushed to secure the certificate for their own purposes. She later obtained a death certificate through the Naitiri Chief and the Births and Deaths Registry with proper authority.
 8. After the death, she transported the body to Eldoret, where - consistent with Isukha (Luhya) customs - the deceased was buried in his homestead under her care as his wife, a status publicly acknowledged by the 1st Administrator during the funeral. Although they had no children together by mutual decision, the deceased fully supported her and her three children, paying school fees and household expenses.
 9. She went on to state that the deceased had another son, Prince Leon Mwendwa, with one Jacinta, whom he raised and educated like his other children. Despite this, the Administrators excluded



- Prince Leon from the succession proceedings and failed to disclose his existence, thereby fraudulently obtaining the grant.
10. Having lived with the deceased for nearly a decade, nursed him in his final days, and been customarily recognized as his wife - including a dowry negotiation at her parents' home attended by relatives such as Patrick Lumumba Muganda and Peter Mutiri Mutuka - she asserts locus standi under Section 29 of the *Law of Succession Act* as a lawful dependant. She therefore seeks revocation of the current grant and issuance of fresh letters of administration to protect the estate and ensure proper succession.
 11. She emphasizes that Isukha custom allows dowry to be paid posthumously to validate a marriage, and that she was legally free to marry the deceased, having been divorced from the father of her children for over 15 years. Her petition asks the court to safeguard the estate from unlawful administration and to recognize her and Prince Leon as rightful beneficiaries, warning that the Administrators' conduct is malicious and aimed at disinheriting them.
 12. Amos Mukavale Mate on the other hand in his supporting affidavit avers inter alia that he is the deceased's brother and holds no personal claim to the estate. The Administrators, together with Karen Khahoya Musemate, form the deceased's first family, with the 1st Administrator being the former wife and the rest their children.
 13. He deponed that for over ten years, this first family abandoned the deceased, showing no concern for his life or wellbeing, even during his illness. During this entire period, it was the 1st Objector - the deceased's second wife - who bore the responsibility of caring for him. The 1st Objector lived with the deceased as husband and wife for more than a decade, a relationship openly acknowledged by family and friends.
 14. She nursed the deceased during his illness and maintained constant communication with him until his death. Together, they had established a village home which the deceased designated for her use and where they stayed whenever they visited the village - further confirming her recognition as his wife.
 15. That in accordance with Luhya customary law, she was allowed to bury the deceased in front of her house despite the presence of the 1st Administrator, the former wife. At no point did he deny the 2nd Administrator access to the deceased's house, which rightly belongs to 1st Objector as his surviving spouse. Instead, they excused themselves, citing urgent travel back to the United Kingdom and the United States.
 16. During that meeting, the deceased's father assigned him (the deponent) the duty of ensuring proper management of the estate. The deceased's last-born child, Prince Leon Mwendwa, lived with him until his death. The deponent personally knew Prince Leon, having been introduced to his mother during her pregnancy. The deceased was an attentive father, supporting Prince Leon's education, signing his school diaries and sending money to his mother, Jacinta. This critical information was deliberately concealed from the court by the administrators in an attempt to disinherit the 1st Objector and Prince Leon.
 17. Furthermore, the Kenya Gazette notice regarding the succession proceedings contained an error: it incorrectly referred to Cause E735 of 2023 instead of the correct Cause E735 of 2022.
 18. The application is opposed vide replying affidavit and supplementary affidavit sworn by Alice Nangekhe Songwah, Dan Hickson Aluvi Musemate, Frank Nelson Muhande Musemate, Henry Ilondanga Lukanu, Thomas Murwa Madee Hudson Made Sajida and Margaret Mwigani Wafula on 29th April, 2024 and 2nd October, 2023.
 19. Alice Nangekhe Songwah, Dan Hickson Aluvi Musemate and Frank Nelson Muhande Musemate aver inter alia that the objectors lack locus standi and are pursuing unfounded interests in the deceased's



- estate to delay the succession process and continue their intermeddling. Under Kenyan succession law, Alice Nangekhe Songwah is the deceased's lawful wife and the mother of his three children - Dan Hickson Aluvi Musemate, Frank Nelson Muhande Musemate and Karen Khaoya Musemate - who are the sole persons entitled to priority as administrators and beneficiaries.
20. That Alice married the deceased in 1989. Together they first built a home on the deceased's father's land at Naitiri, Shihilila village, and later acquired Plot E. Bukusu/S. Kanduyi/5272, where they raised their family. While the deceased worked as a government surveyor, Alice was a nurse and later joined World Vision between 2005 to 2009 in South Sudan. During this period, she maintained regular contact with her husband and children. The deceased later purchased a house in Embakasi - Nairobi Block 140/133/88, where the family lived and where the children attended school. The two sons eventually studied abroad in England and the USA, fully supported by the deceased, and remained actively involved in his life, including assisting with his surveying company, Digma Geosystems.
 21. That on the other hand their sister Karen lived with the deceased in Nairobi West while studying at the University of Nairobi and confirms that she never encountered the 1st Objector in their father's home. The 1st Objector claims to be a second wife but has offered no credible proof of marriage or cohabitation. The Administrators contend that her story is fabricated to disinherit the rightful heirs. They maintain that neither the deceased's brothers, sisters nor close relatives knew or recognized her as a wife.
 22. They further note that post-humous dowry is not recognized under Isukha custom and deny that any dowry negotiations occurred. The alleged "common home" said to be shared by the deceased and the 1st Objector was, in fact, land purchased only in 2018, with construction continuing until 2020, and the deceased died in 6th November, 2021 before any occupation by the 1st objector.
 23. The Administrators add that the 1st objector was previously married to another man and has her own children and therefore any claim of dependency is misplaced. They argue that if the deceased truly intended to marry her, he would have provided a separate home for her during his lifetime, given his financial stability.
 24. The deceased's brief final illness lasted about a week, during which all medical expenses were met by his employer and children; the 1st Objector's occasional hospital visits cannot confer spousal status. After the deceased's death from COVID-19 on 6th November, 2021, he was buried at Naitiri Shihilila on land purchased in 2017 and developed under the supervision of his elder brother Hudson Sajida Mate.
 25. The Administrators assert that the 1st and 2nd Objectors have unlawfully taken control of estate property by collecting rent from the Embakasi and Nairobi West houses, selling livestock, cultivating and selling crops and interfering with the deceased's surveying business. They intend to seek court orders requiring all income from estate assets to be deposited into a designated account pending distribution. The administrators stress that the letters of administration were obtained lawfully. They followed all statutory steps, including gazettelement in the Kenya Gazette, and no valid objection was filed within the prescribed period. Any alleged publication errors are matters for the Kenya Gazette's editorial process and do not invalidate the grant. They urge the court to reject the Objectors' applications to be joined as co-administrators, to restrain them from further intermeddling and to uphold the rights of the deceased's legally recognized wife and children as the sole administrators and beneficiaries of the estate.
 26. Reuben Ilodanga Lukanu avers inter alia that he is both a cousin and close personal friend of the deceased and has known Alice Nangekhe Songwah since her marriage to the deceased in 1989. The couple enjoyed a loving family life and were blessed with three children - two sons and one daughter -



who are now adults. During his assignments with Nzoia Sacco Limited (2002) and Bungoma Teachers Sacco Ltd (2003), he frequently stayed at their home and experienced their hospitality. Beyond family ties, he and the deceased maintained a strong friendship, attending each other's important occasions such as the dowry negotiations for the deceased's daughter, his graduation and various development projects they planned together.

27. He confirms that at no time did the deceased ever mention a dissolution of marriage from Alice, a new relationship, or a marriage to another woman. At the family meeting convened to determine the burial site, the deceased's late father Japheth Madee directed that Henry be interred on his own parcel of land where he had built a house and further instructed that Dan Musemate, the deceased's eldest son, should oversee the property and grave.
28. Thomas Murwa Madee avers *inter alia* that he is the third-born son of the late Japheth Madee Murwa and a younger brother of the deceased. He confirms that Alice Nangekhe Songwah was lawfully married to the deceased in 1989, and together they had three children - Dan Aluvi Musemate, Frank Muhande Musemate and Karen Khaoya Musemate.
29. As the deceased's immediate younger brother and a resident of their father's homestead, he is fully aware of family affairs and has never known the deceased to have any other legally married wife up to his death on 6th November, 2021. Family matters are traditionally managed within the family, and he has often served as family secretary. For example, when their late father subdivided the family land, he was appointed secretary to oversee the process. Likewise, when their mother passed away in 2014, Alice attended the funeral with the deceased as his acknowledged wife. In December 2017, Alice again accompanied the deceased to the funeral of his late son as a couple.
30. In 1998, following local custom, the deceased and Alice entrusted their two sons, Dan and Frank, to him for circumcision rites. During the funeral preparations on 17th November, 2021, Violet Lovega was introduced to their late father by Amos Mukavale as Henry's wife. Their father welcomed her attendance but firmly stated that anyone claiming to be Henry's wife must provide documentary proof after the burial. He asked Violet whether she had ever visited the homestead or knew him as Henry's father, to which she responded in the negative. Later, on 31st December, 2022, Pastor Patrick Lumumba Muganda brought their ailing father from Kakamega and summoned him (Thomas Murwa) to discuss unresolved claims by women alleging to be Henry's wives. Their father directed that these issues be settled without delay so that Henry's grandchildren could be properly settled on their late father's properties.
31. Hudson Madee Sajida avers *inter alia* that he is the deceased's elder brother and has known Alice Nangekhe Songwah since 1989, when the deceased introduced her to him as his wife. In 2017, after Alice's father passed away, the deceased instructed him - following Luhya cultural practice - to accompany a delegation with a bull to the funeral in Kamukuywa as a sign of respect and recognition of Alice as the deceased's lawful wife. He attended the burial together with other family members, including sisters, brothers, cousins and neighbors from Shihilila such as Dorica, Grace, Margaret, Luka and Thomas.
32. He deponed that throughout his brother's lifetime, he never knew the deceased to have any other wife. On 7th November, 2021, while in Nairobi with Alice, he encountered a woman named Violet Lovega at the deceased's Nairobi West - Madaraka home. Violet introduced herself as the deceased's wife, but he had never met her before. Present at the time were his sisters Dorricah Ayuma, Grace Khavai and his nephew Edgah Ambani, who were already engaged in funeral planning with Alice and Hudson Sajida. The next day, when he asked Violet if she would accompany the body for burial, she replied that she needed to consult her father in the village before deciding.



33. On 13th November, 2021, a clan meeting chaired by their late father resolved that the deceased be buried on a plot he had purchased and that his elder son, Dan Aluvi Musemate, would retain custody of the burial site, as recorded in the attached minutes.
34. He went on to aver that after their mother's death in 2014, the deceased asked him to identify land near the family homestead in Shihilila for his adult sons. He located a suitable parcel in Shihilila B Village, Makhanga Sub-location, which the deceased began purchasing in 2018. That same year, the deceased requested him to supervise the construction of a house for his sons on the land, which was completed in 2020. Later in 2020, the deceased began collecting materials to build a main house and, in 2021, started constructing a car park overseen by nephews Geoffrey Kigalo Koinange and Phillip Wafula. Unfortunately, he passed away before completing these plans. At no time did the deceased establish a village home on the property with any woman, contrary to the claims made by others.
35. Margaret Mwigani Wafula avers inter alia she is the deceased's sister and first met Alice Nangekhe Songwah in 1989, when Alice legally married the deceased in Meru. She became a close friend to the couple and was entrusted with managing some of their assets such as a plot in Amalemba and a posho mill in the same area - for over a decade, from around 1996 to 2009. Whenever the couple faced family issues, they frequently sought her advice.
36. That in December 2014, after the deceased completed his work contract in Rwanda and Alice concluded hers in South Sudan, they invited her to celebrate the opening of their new home in Nairobi West, Makadara. She visited this house several times while the deceased lived there with his family. Later, she and her elder sister Dorica Ayuma continued to visit when Alice was away on work assignments, during which periods the deceased stayed there alone.
37. On 17th November, 2021, while at their late father's home in Shihilila for the deceased's funeral preparations, she encountered Violet Luvoga, who was introduced by her younger brother Amos Mukavale to their father Japheth as Henry's wife - a person she had never seen or heard of before that day.
38. The Applicants have filed written submissions dated 16th January, 2025 placing reliance on the following:
 - a. In Re Estate of Ndinguri Karugia (Deceased) [2017] eKLR where the court stated as follows: "From the detailed chronology of the documents that the Respondent lodged for grant of letters of administration intestate, she did not disclose all the children and family of the deceased. The non - disclosure of all beneficiaries of the deceased's estate amounted to concealment of material facts. The grant and the confirmed grant were fraudulently obtained by means of an untrue allegation or fact essential in point of law to justify the grant."
 - b. In Re Estate of Wahome Mwenje Jackson [2016] eKLR where the court held as follows: "The evidently deliberate failure by the Respondent to involve the applicants at the time of filing these proceedings, failing to list them among the beneficiaries or seek their consent or renunciation was in my view bad faith and amounted to concealment of material facts. My conclusion is that the proceedings leading to the issuance of the grant are defective in substance and that material information was not disclosed to the court in that had the court been made aware that there were other beneficiaries who were interested in the deceased's estate the court would have hesitated to issue the grant... It is settled law that a person who approaches the court for relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have a bearing on the adjudication of the issues raised in the case. In other words, he/she owes a duty to the court to bring out all the facts and refrain



from concealing/ suppressing any material facts within his. Her knowledge or which he/she could have known by exercising diligence expected of a person of ordinary prudence. If he/she is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person.”

- c. In Re Estate of Kirira Rungare Gathenge (Deceased) (Succession Cause No. E019 of 2021) [2024] KEHC 3244 (KLR) (20 March, 2024) (Judgment) where the court found that the respondents/administrators actions of deliberately left out some children and wife of the deceased from being beneficiaries while in the process of obtaining the grant, to be in concealment of material facts and thus revoked the grant of letters of administration.

Analysis And Determination

39. I have read the application before this court and the rival submissions and the issues for determination, as crafted by the applicants are as follows:-
 - i. Whether the court should revoke the grant of letters of administration intestate issued and confirmed on 4th March, 2024.
 - ii. Whether the court should include the Applicants as co- administrators.
 - iii. Whether the court should issue orders staying any further administration and transmission of the estate by the administrators pending the determination of this application.
40. The court has perused the lengthy affidavits in support and opposition to the application. To be fair to both parties the issues raised are generally factual and will need testing by way of cross examination. It is not possible at this juncture based on affidavit evidence alone to make a definite determination on whether the applicant was legally married to the deceased or not.
41. At the same time if it was the case as she asserts evidence of when and how it was conducted must be adduced.
42. I also note from her averments that she stayed with the deceased for close to 10 years and that they acquired some properties in the cause of time. Again, this must be tested at the witness box.
43. The same goes with the assertion that the Respondent had already walked out of her marriage with the deceased. If that is the case then what implication does it have in respect to inheritance as a wife or a former wife.
44. There is also the issue of one Prince Leon, a son whom the deceased got with another woman. Although no much objection was raised about him, his issues must be tested through viva voce evidence.
45. The grounds for annulling a grant have been laid down under the provisions of the Act and cited in several authorities. For example, In re Estate of Joshua Githiari Kibui (Deceased) [2021] eKLR the court stated as follows:
 - “ 18. For avoidance of doubt, Section 76 of the [Law of Succession Act](#) states as follows:
 - a. “76. Revocation or annulment of Grant
 - b. 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—
20. Further, In the Matter of the Estate of L A K – (Deceased) [2014] eKLR the court held that;
- (a) Revocation of grants in 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.
32. In *Scolastica Ndululu Suva v Agnes Nthenya Suva* [2019] eKLR the court pronounced itself as follows: “Section 40(1) of the *Law of Succession Act* provides for distribution of the estate of a polygamous deceased’s person as follows:- “40(1) where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.” In *Mary Rono vs Jane Rono & another* (supra), Waki JA in the leading judgment, accepted the proposition that the Court had the discretion in ensuring a fair distribution of the deceased’s estate but that the discretion must be exercised judicially on sound legal and factual basis. In the same judgment, Omollo JA stated the position more clearly as follows: “My understanding of that section is that while the net intestate estate is to be distributed according to houses each house being treated as a unit, yet the judge doing the distribution still has a discretion to take into account or consider the number of children in each house. If Parliament had intended that they must be equality between houses they would have been no need to provide in the section that the number of children in each house be taken into account. Nor do I see any provision in the Act that each child must receive the same or equal portion. That would clearly work injustice particularly in the case of a young child who is still to be maintained, educated and generally seen through life. If such a child whether a girl or a boy, were to get an equal inheritance with another who is already working and for whom no school fees and things like that were to be provided,



such equality would work an injustice and for my part, I am satisfied that the Act does not provide for that kind of equality.” In *Douglas Njuguna Muigai & vs John Bosco Maina Kariuki & another* (supra) this Court noted the absurdity of a blind application of section 40(1) of the *Law of Succession Act* as follows: “Back to section 40(1) of the *Law of Succession Act*, that provides that a widow shall be considered as a unit alongside the children of the deceased when it comes to the distribution of the deceased’s estate. In this case, Jerioth Wangechi the first wife of the deceased who even participated in the dowry negotiations for her co-wives is equated to the last born child of the 3rd wife of the deceased. Her contribution and support to the deceased as a spouse is not recognized and, in our view, that failure to recognize her contribution is tantamount to discrimination.”

46. It is therefore in my view fair to state that each party must be granted a chance to air or ventilate their issues via oral evidence. The affidavit evidence is not sufficient for now.
47. This means that there is need to preserve the estate. Although the Respondents are holders of the grant, it will not be prudent and or efficacious to annul the same at this juncture. The best way is to put on hold its use pending the determination of the objection proceedings.
48. Neither do I find it necessary at this time to allow the Objector come in as one of the Administrators as per her prayers. This is not necessary for the simple reason that putting a break on the confirmed grant will give her the chance to stake her claim without worrying that the estate might be going to waste.
49. In other words, there is need to preserve the estate pending the objection proceedings and its outcome. The capital assets must of necessity be preserved pending the outcome of the objection. Were they to fall in the hands of third parties it shall be difficult and expensive to undo.
50. In the premises the court directs as follows:-
 - (a) The grant of letters of administration issued on 22nd November 2023 and confirmed on 4th March 2024 is hereby stayed pending the hearing and determination of the objection proceedings herein.
 - (b) The objection proceedings be heard by way of viva voce evidence where the Objector shall be the Plaintiff and the Respondents the Defendants.
 - (c) The parties are each granted leave to file any witness statements or further affidavits, if any, within 30 days from the date herein.
 - (d) Costs shall await the outcome of the cause.,

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 2ND DAY OF OCTOBER 2025.

H K CHEMITEI
JUDGE

