



**In re Estate of George Mudeny Kadima alias James George Mudeny Kadima (Deceased)  
(Succession Appeal E002 of 2024) [2025] KEHC 15284 (KLR) (29 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15284 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION APPEAL E002 OF 2024**

**AC BETT, J**

**OCTOBER 29, 2025**

**IN THE MATTER OF THE ESTATE OF GEORGE MUDENYO  
KADIMA ALIAS JAMES GEORGE MUDENYO KADIMA (DECEASED)**

**BETWEEN**

**HERMAN MULAMA MUDENYO ..... 1<sup>ST</sup> APPELLANT**

**DANIEL OKWARO MUDENYO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**GEOFFREY MUDENYO KADIMA ..... 1<sup>ST</sup> RESPONDENT**

**BEN ARUNGA MUDENYO ..... 2<sup>ND</sup> RESPONDENT**

**WILLIAM KADIMA MUDENYO ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the Ruling of the Hon. Mr. E. Wasike (PM) in  
Butere Succession Cause No. E002 of 2024 delivered on 27th February 2024)*

**JUDGMENT**

**Background**

1. This matter arises from Butere Principal Magistrate’s Court Succession Cause No. 100 of 2003, concerning the estate of the late George Mudeny Kadima Alias James George Mudeny Kadima (deceased).
2. The dispute stems from succession proceedings in which the Respondents (then Petitioners) obtained a Grant of Letters of Administration issued on 17<sup>th</sup> November 2022, later amended and confirmed on 28th July 2023, without the involvement of the Appellants, who are their siblings and rightful beneficiaries. The Appellants contend they were not aware of the confirmation proceedings and were



- excluded from participating in the administration and distribution of the estate, despite being among the children of the deceased.
3. The Appellants alleged that the Respondents fraudulently obtained the grant by concealing material facts, excluding certain beneficiaries, and forging the 1<sup>st</sup> Appellant's signature and national identification number.
  4. They further asserted that the estate, which includes property measuring approximately 51 acres valued at over Kshs. 38,000,000/- was distributed without their consent.
  5. They accused the Respondents of filing the succession proceedings secretly, and of making false statements to the court, thereby rendering the proceedings defective in substance.
  6. By way of Summons for Revocation of Grant dated 9<sup>th</sup> June 2023, the Appellants sought the following orders:
    - a) That the grant of letters of administration issued by the trial court on 17th November 2022 and thereafter amended and confirmed on 28th July 2023 be revoked and/or annulled.
    - b) That the costs of the application be provided for.
  7. The Respondents opposed the application through a Replying Affidavit sworn by the 1<sup>st</sup> Petitioner on 27th June 2023, in which they refuted the Appellants' claims. They averred that the Appellants had been incorporated in the cause, that all the houses were duly represented, and that the 1<sup>st</sup> Appellant had been allocated 20 acres on behalf of his family, the largest share compared to other houses. They contended that the Appellants had come to court with unclean hands as they were aware of the proceedings and had even filed other cases, including Kakamega CM's Succession Cause No. 1502 and Kakamega High Court Misc. Civil Application No. 40 of 2006, which had been dismissed. The Respondents maintained that no beneficiary was left out of the estate and sought dismissal of the application.
  8. The trial Court dismissed the Application leading to the present appeal.
  9. The Appellants sought the following orders:-
    - a) That the Grant issued by the Trial Court on 17.11.2022, amended and confirmed on 28.7.2023 in the Estate of the above-named deceased, that the Grant issued by the Trial Court on 17.11.2022, amended and confirmed on 28.7.2023 in the Estate of the above-named deceased, be revoked and annulled.
    - b) Costs be provided for.

### **Objector's Case**

10. PW1 Herman Mulama testified that the deceased was his father, and the 1<sup>st</sup> Petitioner is his brother. He adopted his supporting affidavit, sworn on 9<sup>th</sup> June 2023. He told the court that he was not involved in the proceedings that led to the issuance and confirmation of the grant and that other family members were also left out. He produced a list of documents dated 23<sup>rd</sup> October 2023, marked as P. Exhs. 3, 4, 5, and 6. He denied signing any succession documents and stated that he reported the alleged forgery to Matunda Police Station under OB No. 27/31/7/23. He urged the court to nullify the grant.
11. On cross-examination, he stated that he was later allocated 20 acres but was not involved in the process. He stated that he had not filed any Succession Cause in Kakamega, but he was aware that the 2<sup>nd</sup> Objector had done so.



12. He acknowledged that the beneficiaries were more than five and that in the Kakamega matter, the Petitioner's name did not appear. He confirmed having filed Kakamega High Court Misc. Civil Application No. 40 of 2006, which was dismissed.
13. He admitted he had no expert report to prove forgery of his signature. He stated that the main issue is the land at Nzoia, noting that the land he occupies is less than 20 acres. He has no interest in the Wanga land. He wants Daniel Okwaro to be one of the administrators.

#### **Petitioner's Case**

14. DW1, William Kadima Mudenyio, adopted his Replying Affidavit, sworn on 27<sup>th</sup> June 2023 and produced a list of documents dated 16<sup>th</sup> November 2023, marked as D. Exhs 1–10. He confirmed that L.R. No. Kakamega/Nzoia/269 measures 51 acres, of which 41 acres have been distributed. He proposed that the remaining 10 acres be allocated to Herman Mulama's household. He denied any forgery and maintained that all family members, including Herman, were aware of the succession proceedings and were informed.
15. On cross-examination, he affirmed that the 1<sup>st</sup> Objector was aware of the process and had moved the Kakamega High Court after their mother's death. He did not recall if all family members attended the confirmation or if Herman signed any documents.

#### **Appellants' Submissions**

16. The Appellants submitted that the learned trial Magistrate erred in law and fact in declining to revoke the Grant of Letters of Administration confirmed on 28<sup>th</sup> July 2023. They contended that the said grant was obtained fraudulently, and that they, as biological children of the deceased, were deliberately excluded from the succession proceedings.
17. It was submitted that the 1<sup>st</sup> Appellant did not sign the consent to the confirmation of the grant and that his national Identity card number was irregularly used.
18. The Appellants maintained that they were not notified of the Succession Cause or the confirmation hearing. They relied on the case of *Kosgei v Cherono* (Family Appeal E002 of 2023), where the High Court emphasised that succession proceedings must involve all beneficiaries and confirmation is a continuation of the grant process. They maintained that exclusion from either stage rendered the proceedings fatally defective.
19. On the issue of jurisdiction, the Appellants submitted that the trial court lacked the requisite pecuniary jurisdiction to entertain the matter, as required under Section 7 of the *Magistrates' Courts Act*. It was their position that the estate, comprising land measuring 51 acres with an approximate value of Kshs. 38,000,000/-, far exceeded the statutory pecuniary limit.
20. They relied on *Owners of the Motor Vessel "Lilian S" [1989] KLR 1*, where it was held that jurisdiction is everything, and without it, a court must lay down its tools.
21. On whether the grant was obtained through fraudulent means, the Appellants submitted that the Respondent forged signatures and misrepresented facts to the court.
22. They relied on *In re Estate of JGM (Deceased) (Probate & Administration Appeal E012 of 2022) [2024] KEHC 7740 (KLR)*, in which the court held that a confirmed grant based on documents whose signatures were disowned and remained unchallenged amounted to fraud, and justified revocation.



23. In conclusion, the Appellants urged this Honourable Court to invoke its inherent powers under Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules to rectify the illegality and ensure proper administration of the estate. They prayed for revocation of the confirmed grant and issuance of a fresh one, inclusive of all beneficiaries.

### **Respondents' Submissions**

24. The Respondents submitted that the issue of jurisdiction was neither raised in the lower court nor in the memorandum of appeal. They contended that the Notice of Preliminary Objection dated 26<sup>th</sup> March 2024 was filed after the appeal had already been lodged and was never heard or determined.
25. They further submitted that no valuation report was placed before the trial court to support the claim that the estate was valued at Kenya Shillings Thirty-Eight Million (Kshs. 38,000,000/), and the issue of pecuniary jurisdiction was never raised at the hearing stage.
26. On the allegation that the confirmed grant was obtained without the Appellants' participation, the Respondents submitted that the 1<sup>st</sup> Appellant was aware of the succession proceedings.
27. They noted that the 1<sup>st</sup> Appellant previously participated in Kakamega Miscellaneous Civil Application No. 40 of 2006, which was dismissed on 15th November 2019, and thereafter filed Kakamega Chief Magistrate's Succession Cause No. 150 of 2020, where he listed only his house as a beneficiary.
28. It was further submitted that the 1<sup>st</sup> Appellant was included in the succession proceedings and represented his house. He had been initially allocated 20 acres. Upon establishing that the land measured 51 acres and not 41 acres; an additional 10 acres were allocated to the Appellants' house, increasing their total share to 30 acres, which was more than what any other house received.
29. On the issue of alleged forgery and fraud, the Respondents submitted that the Appellants failed to discharge the burden of proof. They submitted that the Appellants did not produce any forensic report or impugned documents to demonstrate forgery, nor did they identify the documents alleged to have been forged.
30. They contended that merely reporting a matter to the police does not establish fraud in a court of law.
31. The Respondents submitted that the trial magistrate properly exercised his judicial discretion under Section 76 of the *Law of Succession Act* as he found no concealment of material facts or fraud. They relied on the decision in *In re Estate of Benjamin Kirenganyi Muiiri (Deceased) [2022] eKLR*, which restated the grounds for revocation of a grant, and *In re Estate of Albert Imbuga Kisingwa (Deceased) Succession Cause No. 158 of 2000*, where it was held that mere dissatisfaction with the distribution does not justify revocation.
32. In conclusion, the Respondents urged the court to dismiss the appeal and uphold the confirmed grant, submitting that the distribution was just and the Appellants had been awarded a greater share than any other house in the estate.

### **Analysis and Determination**

33. The Appellants challenged the trial court's refusal to revoke a grant of letters of administration confirmed on 28<sup>th</sup> July 2023, relying on alleged fraud, forgery, non-participation, and lack of jurisdiction. The Respondents counter that jurisdiction was not contested below, no evidence of fraud was adduced, and the distribution was fair. The issues are:



- (i) Whether the trial magistrate had jurisdiction to entertain the application for revocation.
  - (ii) Whether the grant was procured by fraud or forgery.
  - (iii) Whether the proceedings were defective in substance.
34. This Court has consistently emphasised that jurisdiction is the very foundation upon which the authority of any court rests. It is what confers upon a court the legal power to hear, determine, and pronounce itself on matters brought before it.
35. Without jurisdiction, a court's actions are a legal nullity; its decisions, no matter how well reasoned, amount to nothing in law. The centrality of jurisdiction was authoritatively captured by the Court of Appeal in the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1, where Nyarangi, JA, famously stated that:-
- “By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by statute, charter or commission under which the court is constituted and may be extended or restricted by the like means... If the jurisdiction of an inferior court or tribunal including an arbitrator depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts to decide whether it has jurisdiction but except where the court or tribunal has been given power to determine conclusively whether the fact exists where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision a merit to nothing.”
36. The Respondent submitted that the issue of jurisdiction was never raised before the trial court and therefore should not be entertained at the appellate stage. While that argument may appear persuasive at first glance, this Court is compelled to reaffirm that jurisdiction is not a procedural matter that can be waived or forfeited by the parties.
37. It is well established that the question of a court's jurisdiction goes to the very root of the legal process, and may be raised at any stage, including for the first time on appeal.
38. The principle was reiterated by the Court of Appeal in Kenya Ports Authority vs Modern Holding [EA] Limited [2017] eKLR, where it held that:-
- “We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage and even on appeal, though it is always prudent to raise it as soon as the occasion arises. It can be raised at any time, in any manner, even for the first time on appeal, or even viva voce, and indeed, even by the court itself, provided that where the court raises it suo motu, parties are to be accorded the opportunity to be heard. The 2<sup>nd</sup> Respondent's case is that this matter ought to have been handled by the Co-operative Tribunal.”
39. That being said, the pecuniary jurisdiction of Magistrates' Courts is governed by Section 7(1) of the Magistrates' Courts Act, 2015, which provides that the monetary jurisdiction is up to ten million Kenya shillings (Kshs. 10,000,000/-) for Principal Magistrates. Therefore, where a party asserts that a trial court exceeded its monetary jurisdiction, the burden rests upon that party to adduce credible evidence proving that the subject matter's value exceeded the court's threshold.
40. In the present appeal, although the Appellant alleges that the subject parcel of land exceeded the pecuniary jurisdiction of the trial court, no documentary or valuation evidence was tendered to support that claim.



41. In *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, the Court of Appeal held that:

“As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is, however, the evidential burden that is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence, which is captured in Sections 109 and 112 of the Act.”

42. Accordingly, and in the absence of any evidence demonstrating that the land in question was valued above the monetary limit of the trial court’s jurisdiction, this Court finds that the objection is unsubstantiated and dismisses it accordingly. However, the court takes judicial notice that since devolved governments were established, the value of land has risen exponentially. It may be that the value of the estate overshoot the pecuniary jurisdiction of the court after the devolved government was established. That does not mean that the Principal Magistrate’s Court lacked jurisdiction from the outset.

43. On the second issue, the law providing for revocation of grants is section 76 of the *Law of Succession Act*, Cap 160 of the Laws of Kenya. The section provides as follows;

“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 orders 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.”

44. It is trite law that he who alleges must prove. A party that desires the court to find in its favour based on a particular factual assertion bears the burden of adducing cogent evidence to establish that fact to the satisfaction of the court. In the present case, the Appellant carries the duty to prove, on a balance



- of probabilities, that the Respondents obtained the Grant of Letters of Administration to the estate through fraudulent means.
45. However, where allegations of fraud are raised, as is the case here, the standard of proof, though civil, is higher than the ordinary balance of probabilities. The evidence must be clear, consistent, and convincing.
  46. Courts have repeatedly held that fraud is a serious imputation, and therefore it must be specifically pleaded, strictly proved, and supported by credible evidence. Mere suspicion, conjecture, or unsubstantiated claims are not sufficient.
  47. The Court of Appeal in *Kinyanjui Kamau v George Kamau* [2015] eKLR stated thus:

“It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo v Ndolo* (2008) 1 KLR (G&F) 742, wherein the Court stated that:

“...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely, proof upon a balance of probabilities. Still, the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”
  48. Having laid the foundation for evaluating the second issue, the central question before this Court is whether the evidence on record sufficiently establishes fraud or forgery on the part of the Respondents in the process leading to the acquisition and confirmation of the grant.
  49. The Appellants allege that the 1<sup>st</sup> Appellant’s signature and National Identification number were forged to mislead the court into issuing the grant. They further contend that the grant was obtained fraudulently by deliberate concealment of material facts, notably by excluding certain rightful heirs from the list of beneficiaries. They aver that no consent was sought nor obtained from them before the filing or confirmation of the grant and that forged documents were filed to feign their participation.
  50. In the present case, the Appellants did not tender before this Court any expert report or forensic evidence to support the allegation that the 1<sup>st</sup> Appellant’s signature or ID number was forged. There is no document or examiner’s report, nor has any formal investigation or police finding on forgery been tabled. While the 1<sup>st</sup> Appellant made reference to an OB number, a mere report to the police is not conclusive evidence of forgery.
  51. Having said that, the court notes that the process of confirmation of grant was wanting. Other than the Appellants, there are clearly other dependants of the deceased who were not privy to the succession process. From the 1<sup>st</sup> Appellant’s affidavit, the deceased left surviving him nine (9) children from the 1<sup>st</sup> house, 5 children from the 2<sup>nd</sup> house, 6 children from the 4<sup>th</sup> house and 3 children from the 5<sup>th</sup> house. Each house has suffered loss of a sibling and it is not indicated whether the 8 deceased children had dependants who survived them. It is also not clear whether any of the widows of the deceased is still alive.
  52. It is trite law that the work of the probate court is to identify the rightful beneficiaries of the deceased, any genuine, liabilities left by the deceased, and the assets of the deceased. Thereafter, the court is empowered by law to distribute the estate of the deceased in accordance with the wishes of the deceased, as consented by the beneficiaries or in accordance with the *Law of Succession Act* on intestacy. See *In Re Estate of Alice Mumbua Mutua (Deceased)* [2017] KEHC 8289 (KLR).



53. Rule 26 of the Probate and Administration Rules provides that:-

- “(1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
- (2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.
- (3) Unless the court otherwise directs for reasons to be recorded, administration shall be granted to a living person in his own right in preference to the personal representative of a deceased person who would, if living, have been entitled in the same degree, and to a person not under disability in preference to an infant entitled in the same degree.”

54. The Appellants submitted that they were excluded from both the grant and its confirmation, contending that their non-participation rendered the proceedings defective under Section 76 of the *Law of Succession Act*.

55. On the facts before this Court, while the Appellants assert non-awareness, the Respondents adduced evidence that the 1st Appellant participated through prior proceedings, that is, Kakamega Misc. Civil Application No. 40 of 2006 and a parallel Succession Cause No. 150 of 2020, where the 2<sup>nd</sup> Appellant and his siblings from their house were named as beneficiaries.

56. Evidence shows that the 1<sup>st</sup> Respondent acknowledged the Appellants’ house in the distribution process and allocated them land, thereby conceding participation in the underlying distribution. These facts directly counter the assertion of exclusion or ignorance.

57. Be that as it may, I have perused the documents filed by the Respondents and note that the proceedings to obtain the grant were defective. It matters not that the defect was born of ignorance, it nonetheless vitiates the proceedings. No consent form was filed in support of the undated Summons for Confirmation of Grant that resulted in the issuance of the Certificate of Confirmation of Grant dated 17<sup>th</sup> November 2005. Additionally, when the Respondents applied for amendment of the Confirmed Grant vide their Notice of Motion dated 19<sup>th</sup> July 2022, the consent form that was signed to confirm that the beneficiaries were in agreement with the proposed mode of distribution was signed by only 12 of the 31 surviving dependants of the deceased. None of the dependants who executed the consent were daughters yet daughters are also beneficiaries of a deceased person and should be notified of succession proceedings to enable them choose whether they would wish to have a share in their deceased parent’s estate and if not, to file a notice signifying the waiver of their rights. The exclusion of the daughters from the proceedings was discriminatory. See Section 38 of the *Law of Succession Act*, Article 27 of *the Constitution*, In re Estate of Isaiah Wahome s/o Ngatia (Deceased) 2025 KECHC 4038 (KLR), Peter Karumbi Keingati 4 others v. Dr. Ann Nyokabi Nguithi & 3 others [2014] KEHC 3563 (KLR), Stephen Gitonga M’murithi v. Faith Ngira Murithi [2015] KECA 347 (KLR) and Mary Rono v. Jane Rono & Another [2005] KECA 326 (KLR).

58. It is also worth nothing that whereas the property of the deceased was ostensibly distributed equitably, some of the beneficiaries received their house’s share of the estate as opposed to their individual share. There may have been an intention that the said beneficiaries hold the devolved shares in trust for



themselves and their siblings. However, the respective share of each sibling was not specified and this could lead to the dispossession of the omitted beneficiaries.

59. In order to ensure expeditious hearing and determination of this cause and to forestall any future objections on the basis of failure to include all the beneficiaries in the succession process, I hereby make the following orders:-
- a. That the Appeal is hereby allowed and the Ruling dated 27<sup>th</sup> February 2024 set aside.
  - b. That Butere SPM's Succession Cause No. 100 of 2003 is hereby transferred to this court for hearing and determination.
  - c. That the Grant of Letters of Administration issued on 17<sup>th</sup> November 2022 is hereby revoked and the Rectified Certificate of Confirmation of Grant dated 11<sup>th</sup> January 2023 cancelled.
  - d. That a fresh Grant of Letters of Administration shall issue to William Kadima Mudenyio, Geoffrey Mudenyio Kadima, Ben Amunga Mudenyio and Daniel Obanga Mudenyio.
  - e. That any of the Administrators shall file and serve Summons for Confirmation of Grant within 30 days.

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

**A. C. BETT**

**JUDGE**

In the presence of:

Mr. Samba for the Appellants

Ms. Omar for the Respondents

Court Assistant: Polycap

