



REPUBLIC OF KENYA



In re Estate of Jackson Mambo Mmbwanga (Deceased) (Succession Cause 207 of 1989) [2025] KEHC 15243 (KLR) (22 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15243 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 207 OF 1989
S MBUNGI, J
OCTOBER 22, 2025**

BETWEEN

DANIEL LUTA MAMBO APPLICANT

AND

MOSES MWANGA MAMBO 1ST RESPONDENT

TITO MMBWANGA 2ND RESPONDENT

AND

BETTY MMBONE JUMBE INTERESTED PARTY

ERNEST NYABELA INTERESTED PARTY

AGGREY SHIKURI INTERESTED PARTY

STANELY SHIRANDULA INTERESTED PARTY

RULING

1. Before this Court are two applications for consideration.
2. The first application is by Stella Kombo, dated 15th September 2025, seeking to be enjoined in these proceedings as the 5th interested party.
3. She contends that she is an innocent purchaser for value, asserting ownership of land parcel Isukha/Lubao/2725, which resulted from the subdivision of Isukha/Lubao/2694, itself a subdivision of the original parcel Isukha/Lubao/476.
4. She avers that she purchased the said parcel on 17th August 2011, having paid the full purchase price, and that the property was registered jointly with one Esther Khasandi Wangia. According to her, they acquired Isukha/Lubao/2694, which was subsequently subdivided into two portions, namely Isukha/Lubao/2725 and Isukha/Lubao/2726, and duly transferred to her and the said Esther Khasandi.



5. She further asserts that the question of ownership of the suit property was conclusively litigated in Kakamega HCC No. 56 of 2013 and Kakamega ELC No. 505 of 2014. She maintains that she stands to suffer irreparable loss should her title be cancelled, as she has undertaken substantial developments on the land, including the construction of Jabstir Academy, and emphasizes that, having lawfully purchased the property, she ought not to be prejudiced.
6. Conversely, the applicant/objector had earlier filed a Chamber Summons dated 7th January 2025, seeking the following orders;
 - a. That the grant of letters of Administration issued to Moses Mmbwanga Mambo on 8th December 1989 and confirmed on 30th January 2007 be revoked and or annulled
 - b. That a fresh grant of letters of Administration be issued to the Applicant and a fresh confirmation be done within the timelines provided by this Honorable court.
 - c. That all the subdivisions arising from title NO Lr Isukha/lubao/ 476 be nullified and canceled, and the land reverted to the deceased herein Jackson Mamabo Mmbwanga.
 - d. That inhibition orders be registered on land titles LR Isukha/lubao/2695, Isukha/lubao/2725, And Isukha/lubao/2726, prohibiting any transactions pending the hearing and determination of these proceedings.
7. The Application is premised on the grounds set out on its face and on the supporting affidavit sworn on 7th February 2025 by the applicant/ objector, who avers that he is the biological son of the deceased, while the administrator/ respondent is his brother.
8. He avers that prior to his demise, the deceased was the registered proprietor of land parcel Kakamega/Lubao/476, which constituted the sole asset available for distribution among the surviving beneficiaries.
9. He relies on the grant of letters of administration issued to the administrator, pursuant to which the estate was distributed to nine beneficiaries, each being allocated 0.35 hectares of the said land.
10. According to the applicant, the administrator failed to effect transmission and distribution of the estate in accordance with the certificate of confirmed grant issued on 30th January 2007.
11. He contends that the administrator irregularly partitioned the estate into two portions, allocating 0.35 hectares to one of the beneficiaries, Tito Mmbwanga, while the remaining 2.85 hectares was transferred to Esther Khasandi Wangia, who was not a beneficiary of the estate.
12. He asserts that the distribution was fraudulent, resulting in a stranger acquiring the rightful share of the bona fide beneficiaries, thereby disinherit them.
13. He further states that the said purchaser, Esther Khasandi, proceeded to subdivide LR Isukha/Lubao/2696 into two distinct titles, namely Isukha/Lubao/2725, which she retained in her name, and Isukha/Lubao/2726, which she subsequently transferred to one Stella Namakhulu Kombo, who, according to him, used the said title to secure a loan facility of Kshs. 30 million from Kenya Commercial Bank.
14. He further contends that the subsequent purchaser, Stella Kombo, unlawfully evicted the family of the late Jackson Mambo from their rightful portion of the land.
15. He accordingly prays that the summons be allowed, asserting that the administrator unlawfully administered the estate in contravention of the law, thereby disinherit the bona fide beneficiaries.



16. In response, the 2nd respondent filed a replying affidavit, averring that the grant had been confirmed on 2nd March 2006, duly incorporating all the beneficiaries, each of whom was allocated an equal share of 0.35 hectares. It was further stated that, prior to that, on 3rd June 1998, the Court had issued an order directing the District Surveyor to visit the land and effect demarcation among all the beneficiaries. He claimed that the applicant and the 1st respondent wanted to sell the estate as a whole, including his portion. He acted and registered his portion, which is 0.35 Ha in his name.
17. He claimed that the district surveyor demarcated the estate into two sections, 0.35 acres and 2.85 Ha, which were now Isukha/Lubao/2694 and Isukha/Lubao/2695, which were his portion since the other beneficiaries were not interested
18. He stated that he registered his section of the estate, and the remaining 2.85 Ha was left for the other beneficiaries and interested parties. According to him, the land Parcel isukha/Lubao/476 no longer existed and further claimed he is the only beneficiary who resides in his portion of land being Isukha/Lubao/2695 which he has developed and that the summons for revocation of the confirmed grant is ill motivated .
19. He avers that the applicant and the 1st respondent sold their share to a third party, Esther Wangia, through a sale agreement he attached, claiming that she had developed it extensively and further that none of the other beneficiaries stayed in the parcel of land, as they sold it to third parties who have already have titles to their portion of land.
20. He opposed the application, claiming that the land parcel Isukha/Lubao/476 no longer exists.
21. The application was canvassed by way of written submissions.

Submissions

22. In his submissions dated 21st August 2025, the 2nd respondent relied on his replying affidavit by stating that the application for the grant and issuance of a fresh grant was misconceived and brought in bad faith.
23. The respondent referred to section 76 of the *Law of Succession Act* by claiming that the alleged improper distribution or concealment of facts was ill-conceived since all the beneficiaries were allocated equal shares of 0.35 Ha of the estate Isukha/Lubao/476 and the court's order of 3rd June 1998 was properly implemented without any fraud, mistake, or non-disclosure to justify revocation.
24. He oppose the revocation of the grant and issuance of a new one, claiming that the original land parcel, Isukha/Lubao/476, was fully partitioned and in 2008 all the beneficiaries were allocated their share of the land, thus this application is a waste of the court's time.
25. He claims that he has made development in his own parcel of land, being Isukha/Lubao/2695, while his siblings sold their estate, Isukha/Lubao/2694, to third parties such as Jabstar Academy and Esther Wangai and relocated to Moi's bridge.
26. At the time of writing this ruling, the applicant/ objector had not filed his submissions.

Analysis and determination

27. I have carefully considered the two applications, the affidavits in support, the replying affidavit, and the written submission on record. The main issues for determination are;
 - i. Whether Stella Kombo ought to be enjoined in these proceedings as the 5th interested party.



- ii. Whether the grant issued on 8th December 1989 and confirmed on 30th January 2007 ought to be revoked or annulled.
28. The application by Stella Kombo seeks to be enjoined as the 5th interested party. She asserts that she is an innocent purchaser for value, having acquired land parcel Isukha/Lubao/2725, which emanated from subdivisions of the original parcel Isukha/Lubao/476. She has annexed documents demonstrating purchase, registration, and subsequent developments, including the establishment of Jabstir Academy.
29. The threshold for enjoining a party as an "interested party" in succession proceedings is not defined in the *Law of Succession Act* but has been elaborated through jurisprudence, often drawing from Order 1 Rule 10 of the Civil Procedure Rules where procedural intersections arise.
30. An interested party must demonstrate a recognizable stake in the proceedings such that the outcome may legally affect their rights, and their participation will facilitate full and effective adjudication without undue prejudice or delay to existing parties.
31. In this matter, Stella Kombo has demonstrated a clear and significant stake as the registered owner of parcel Isukha/Lubao/2725, which originates from the subdivision of the deceased's estate property. Her ownership, obtained in good faith through purchase from some of the beneficiaries of the estate. The validity of the sale transaction was upheld by two court decisions in Kakamega HCC No. 56 of 2013 and ELC No. 505 of 2014 . The two courts declared Stella Kombo as the owner of the parcel of land Isukha/lubao/2725.
32. Exclusion from these proceedings would expose her to irreparable loss, including potential nullification of her title and ownership of the land.
33. While the Probate and Administration Rules do not expressly provide for formal joinder, Rule 73 empowers the Court to regulate proceedings to prevent abuse. Ms. Kombo's application is timely, supported by documentary evidence such as the sale agreements which the Applicant/objector is not disputing. The sale agreement involving the Applicant/objector is dated 5th February 2009.
34. The outcome of this matter may directly affect her proprietary rights over Isukha/Lubao/2725, a parcel she claims to have lawfully purchased and developed. Denying her audience would occasion grave prejudice. Accordingly, her application to be enjoined as the 5th interested party is merited and is hereby allowed.
35. Now to the second application, where the applicant/objector seeks the revocation of the grant under Section 76 of the *Law of Succession Act*.
36. The provision empowers the court to revoke a grant where it was obtained fraudulently by making false statements or concealment of material facts, The grant holder failed to proceed diligently with the administration of the estate of the grant has become useless or inoperative.
37. In *Matheka & another v Matheka* [2005] eKLR, the Court underscored that revocation is not to be granted lightly; it must be grounded on cogent evidence of fraud, concealment, or fundamental defects in the proceedings.
38. In the present case, the record demonstrates that the grant was confirmed on 30th January 2007, and each beneficiary was allocated an equal share of 0.35 hectares. The 2nd respondent has further shown that pursuant to an earlier court order of 3rd June 1998, the District Surveyor visited and demarcated the land. The evidence reveals that some beneficiaries, including the applicant, disposed of their respective portions to third parties, among them Esther Khasandi, who subsequently transferred



portions to Stella Kombo. A fact the Applicant/objector does not dispute. The sale of the land even occurred after the confirmation of the grant.

39. The gravamen of the applicant's complaint is that the administrator failed to transmit the estate in accordance with the confirmed grant, thereby disinheriting some beneficiaries. However, the applicant has not demonstrated that the confirmed grant was obtained fraudulently or that there was concealment of beneficiaries.
40. On the contrary, the evidence points to voluntary disposal of portions by some beneficiaries, which cannot be undone through revocation of a grant that has already been fully implemented.
41. The Court of Appeal in *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR affirmed that once a grant has been confirmed and distribution completed, the proper recourse is not revocation but appropriate civil proceedings against parties alleged to have unlawfully acquired interests in the estate.
42. Similarly, in *Samuel Wafula Wasike v Hudson Simiyu Wafula* [1993] eKLR, the Court held that revocation is not available where the complaint relates to post-confirmation dealings, which ought to be challenged through separate suits.
43. It is note worthy that it is only the Applicant/Objector who is complaining about the distribution the administrator has explained that it is other beneficiaries who wanted their shares amalgamated so that they could sell the land as one block that is how he ended up having a title deed in his name for his share which measures 0.35 Hactares just as indicated in the certificate of confirmed grant. The purchaser was invited by themselves, so they can't turn around now and say that the estate was shared to a stranger. Since his share was intact he had no reason to refuse to transfer the amalgamated portion to the stranger and at that point of transfer no one objected.
44. It is view of this court that this belated change of mind on the part of the Applicant/Objector is actuated by other reasons for he was aware and participated in the whole process of obtaining the grant, confirmation of the grant and the selling of his portion measuring 0.3 Hectares to Esther Wangia who in turn sold to Stella See the land sale agreement dated 5th February, 2009 clause 3.
45. Guided by the above authorities and reflecting on the law, I am persuaded that the application for revocation lacks merit. The applicant has not demonstrated fraud, concealment, or fundamental defects in the grant-making process to warrant revocation under Section 76 of the Act and failure on the part of administrator to transmit the estate as per the confirmed certificate of grant for it was the wish of the beneficiaries to amalgamate all other portions (apart from his) into one so that they can sell as a block.

Conclusion

46. In the result, and for the reasons given above, I make the following orders:
 - a. The application dated 15th September 2025 by Stella Kombo is hereby allowed. She is enjoined as the 5th Interested Party in these proceedings in event of future proceedings.
 - b. The application dated 7th January 2025 by Daniel Luta Mambo seeking revocation of the grant is hereby declined.
 - c. This being a family matter I'm inclined to order the Applicant to pay costs of this Application to the Respondents and the 5th Interested party in the Application filed by the 5TH Interested party for to me he had no good reason to file the Application for he is fully aware what had happened and he was an active participant.



- d. Leave granted to Ms. Kadenyi to Appeal before the Court of Appeal .
- e. A copy of the ruling provided to the parties upon payment of the requisite fees.
- f. Orders accordingly.
- g. Right of Appeal 30 days.

DATED SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 22nd DAY OF OCTOBER, 2025.

S.N. MBUNGI

JUDGE

In The Presence Of;

CA: Angong'a

Mr Mulama for the 5th interested party present online.

Ms Kadenyi for the Applicant/Objector and 1st Interested party present online.

