



In re Estate of Joseph Wanjala Chalichali (Deceased) (Miscellaneous Succession Cause E007 of 2024) [2025] KEHC 16264 (KLR) (12 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16264 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS SUCCESSION CAUSE E007 OF 2024**

S MBUNGI, J

NOVEMBER 12, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH WANJALA CHALICHALI
(DECEASED)**

IN THE MATTER OF

LINET NAKHUNGU KIIYA 1ST PETITIONER

MARY WANDABWA SIRENGO 2ND PETITIONER

BETTY NANJALA MANDILLAH 3RD PETITIONER

JUDGMENT

1. The objector herein filed a summons for revocation of a grant based on the following orders;
 - a. Service of this application is dispensed with in the first instance.
 - b. A temporary injunction be issued restraining the Respondent herein, their agents, servants and or anybody acting on their behalf from meddling with the estate in any manner, including changing the occupation arrangements of the beneficiaries of the estate, selling, charging or in any other manner compromising the ownership of the properties of the estate which they have already transferred into their names pending the hearing of this application inter-parties and therefore the determination of the succession cause thereof.
 - c. The respondents were ordered to surrender to the court the grant of letters of administration thereof made in Kakamega Chief Magistrate’s court, Succession Cause No. E586 of 2023, pending the hearing and determination of the application inter parties.
 - d. The respondent is ordered to refund Kshs. 400,000/= each, totalling to Kshs. 800,000/= into the deceased’s account, being account no. XXXXXXXXXXXXX National Bank of Kenya, Moi’s Bridge branch.



- e. The grant of Letters of Administration thereof made on 12th March,2024 and confirmed on the 14th March,2024, be revoked.
2. The objector filed an affidavit in support of their summons for annulment of the grant dated the same date as the summons, stating that she is the 1st wife of the deceased, whose estate the matter refers to. She denied being involved in the petitioning for the letters of administration at the chief magistrate's office at Kakamega, and denied that her children were involved.
 3. She denied having signed the consent form No. 38, nor did her children, stating that the signatures were forged by one person, and none of them signed the consent form as beneficiaries and claimed that the respondent misdirected the court in being issued with the confirmed grant.
 4. The applicant claims that she never appeared in court during confirmation of the grant, which they claimed was done in a rush, having been filed on 12/3/2024 and confirmed on 14/3/2024, which was less than the six-month statutory period mandate.
 5. She claimed that the deceased's monies were illegally shared as the matrimonial land was sold by the deceased and herself so that they would relocate to the Baraton area, Trans Nzoia county, and avers that the respondent did everything to hasten the process to disinherit her.
 6. She avers that the respondent listed only one property that was money in the bank when the estate of the deceased consisted of more properties, which she claimed was transferred off during the pendency of the suit.
 7. She stated that the estate of the deceased was situated in Bungoma and Trans Nzoia counties, and the respondent forum shopped and took the matter to the Kakamega court. Thus, this court lacks jurisdiction to hear the suit, and further, the letters of administration were obtained through fraud, and thus, the grant was defective in substance.
 8. In opposition to the summons for revocation dated 3rd July 2024, the respondent filed a replying affidavit dated 16th September 2024 stating that the application is misconceived and bad in law and disputed the claim that the court lacks jurisdiction and avers that the court is only an appellate jurisdiction over the proceedings in Kakamega Chief Magistrate's court succession cause No. E007 of 2024, and as such, this court cannot hear the objection by the objector as it is within the jurisdiction of the chief magistrate's court in succession cause No. E007 of 2024 .
 9. The respondent aver that the Grant of letters of administration was issued on 12th March 2024 and confirmed on 14th March 2024, and distributed only the money the deceased held in his National Bank of Kenya, Moi's Bridge Branch in Kakamega. They claim that the objector, the 1st respondent and herself benefited from the money, with each getting Kshs. 405,000/= which was towards the school fees of the children of the deceased, and further the deceased's savings of Kshs. 12,625 was also distributed. She further avers that the deceased had several interests in the lands which were registered both in his name and unregistered, which included: Kimilii/Kamakuywa/4735; Bungoma /Kabuyefwe/2789; Ndalul farm- plot 137, Kibisiis Farm plot 481 (11/2 acres; Mautuma farm- 2acres; Mbao Farm/ Big tree farm and ancestral land plot 481.
 10. She asserts that since she got married to the deceased, they occupied land parcel Bungoma/ Kabuyefwe/2789, while her co-wife, Mary Wandabwa Sirengo, occupied the Ndalul farm, and the objector lived in Mbao farm/ Big tree, where the deceased was buried. She claimed that the Matuma farm was sold to one Paul and still had a balance of Kshs. 300,000/= and the objector helped him finish the land transfer and took the Kshs. 300,000/=, making the total amount she received Kshs. 705,000/=



11. She claimed that the objector was the one forum shopping and propagate extra-judicial family feuds between the respondents and her co-wives and prayed that the application be disallowed and directed to the right forum, being Kakakmega Magistrate’s court Succession Cause No E586 of 2023.

Analysis and determination

12. This court has considered the summons for revocation of the grant, the affidavits in support and against the summons, together with the rival submissions by both parties. The court needs to address the main issue raised of whether this court has the jurisdiction to hear and revoke a grant that had been issued at the chief magistrate’s court.
13. The law is well grounded on the issue of jurisdiction as was attested in the famous case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1, where it was held that: “Jurisdiction is everything. Without it, a court has no power to make one more step. A court of law downs its tools the moment it holds the opinion that it is without jurisdiction.”
14. Sections 47 and 48 of the *Law of Succession Act* CAP 160 deal with the jurisdiction of the High Court and Magistrate’s Court in handling succession cases. Section 47 grants the High Court jurisdiction “to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”
15. Section 48(1), as amended by Act No. 12 of 2015, vests concurrent jurisdiction in the Magistrate’s Court, subject to its pecuniary limit, to “entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”
16. Rule 44(1) of the Probate and Administration Rules expressly provides that: “any person interested in the estate of the deceased seeks to have a grant revoked or annulled, he shall apply to the court that made the grant.”
17. This rule is unequivocal. An application for revocation of a grant must be filed before the very court that issued the impugned grant.
18. In re Estate of Barkibei Kibor (Deceased) (Miscellaneous Application E019 of 2023) [2025] KEHC 3880 (KLR) (28 March 2025) (Ruling), the High Court held that under Section 48(1) a magistrate’s court possesses the power not only to issue but also to revoke or annul a grant it has issued, and that the High Court may only intervene through appeal or supervisory review under Article 165(6) of *the Constitution*.
19. Similarly, In re Estate of Chemase Ego (Deceased) [2025] KEHC 527 (KLR), the court reiterated that the probate court, which issued the grant, retains jurisdiction to address any challenge relating to its validity until the conclusion of the matter.
20. The same approach was upheld in re Estate of Samwel Kiprono Soi alias Kiprono Soi (Deceased) (Succession Cause 2 of 2016) [2025] KEHC 4068 (KLR) (2 April 2025) (Ruling), where the court held that the applicant must seek revocation before the court of origin, as the High Court cannot assume original jurisdiction.
21. While I do acknowledge that Article 165(6) and (7) of *the Constitution* of Kenya, 2010 grants the High Court supervisory jurisdiction over subordinate courts, that jurisdiction is not a substitute for an appeal or review. It is exercised sparingly where a subordinate court acts outside its lawful mandate.



22. The Supreme Court in *Republic v Karisa Chengo & 2 Others* [2017] eKLR emphasised that jurisdiction flows from *the Constitution* or statute, and that no court may arrogate to itself jurisdiction not conferred by law.
23. Consequently, this Court cannot invoke Section 47 or Article 165 to assume original jurisdiction to revoke a grant that was properly issued and confirmed by a subordinate court acting within its statutory remit.
24. On the totality of the foregoing, I find that this Court lacks original jurisdiction to entertain the summons for revocation of the grant filed herein. The proper forum for that application is the Kakamega Chief Magistrate's Court Succession Cause No. E586 of 2023, being the court that issued the grant.
25. Should the Objector be dissatisfied with the determination of that court, she may exercise her right of appeal to the High Court under Section 50(1) of the *Law of Succession Act*.
26. This court therefore declines jurisdiction and orders that the file be remitted to the Kakamega Chief Magistrate's Court for consideration of the Objector's application under Rule 44(1) of the Probate and Administration Rules.
27. Considering the nature of the dispute and the relationship of the parties as co-wives and beneficiaries of the same estate, I order that each party shall bear her own costs.

Orders

- a. The Summons for Revocation dated 3 July 2024 is dismissed for want of jurisdiction.
- b. The Applicant to file fresh summons for revocation before the Kakamega Chief Magistrate's Court for appropriate determination under Rule 44(1) of the Probate and Administration Rules.
- c. Each party to bear its own costs.
- d. Right of Appeal 30 days.
- e. The file is closed.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 12TH DAY OF NOVEMBER, 2025

S.N. MBUNGI

JUDGE

In the presence of:

Court Assistant: Elizabeth Agong'a

Parties absent though aware of the ruling date.

The Court Assistance to upload the ruling on the CTS forthwith.

