



REPUBLIC OF KENYA



**In re Estate of Muchelwa Sholosi (Deceased) (Succession Appeal  
E028 of 2024) [2025] KEHC 15815 (KLR) (3 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15815 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION APPEAL E028 OF 2024  
S MBUNGI, J  
NOVEMBER 3, 2025**

**BETWEEN**

**CHRISTOPHER MUHATI ..... APPELLANT**

**AND**

**CLEMENTINE AFWANDI ANUSU ..... RESPONDENT**

*(Being an appeal against the entire judgment of the Chief Magistrate's  
Court at Kakamega, Hon. Z.J. Nyakundi, SPM) delivered on 26th  
November 2024 in the succession Cause No.617 of 2022, Kakamega)*

**JUDGMENT**

1. The appellant herein, who was the objector at the lower court, had filed a summons for revocation of the grant dated 08<sup>th</sup> November 2023 under section 76 of the *Law of Succession Act*, seeking that the grant of letters of administration issued to the petitioner, Clementine Afwandi Anusu, be revoked and a new grant be issued to him. He averred that one of the deceased parcels, No. Kakamega/Shitoli/893 was left out in the estate.
2. In his grounds for revocation, the appellant avers that the petitioner had indicated one of his sisters, Marceline Khamuka, was a beneficiary in the proceedings, yet did not allocate her any share and filed the proceedings secretly without the knowledge or consent of the objector.
3. He stated that the petitioner had left out the names of the deceased's two sons, Christopher Muhati and Jafred Sholosi, who live on the parcel of land, and further left out the deceased's land Kakamega/Iguhu/893 as the parcel of land.
4. In his ruling dated 26<sup>th</sup> November 2024, the trial court held that the respondent was served with the application but they failed to respond to the court order and the letter of administration issued to the petitioner/ respondent were revoked and they later filed summons from rectification dated 20/5/2024 and proposed the beneficiaries who were left out Christopher Muhati and Jafred Sholosi equally share



on the land parcel No. Kakamega /Shitoli/893 and Mercilina Khamuka share with the other daughters on the land parcel Kakamega/Iguhu/528.

5. The trial courts stated that the persons who were left out of the deceased's estate were given a share of the estate. Mercilina Khamuka was given land parcel No. Kakamega/Shitoli/528 and Christopher Muhati (the objector) and Jafred Shilosi Muchelwa were given Land Parcel No. Kakamega/Shitoli/893, which is both in the name of the deceased and hence no one was left in the distribution of the estate.
6. He dismissed the application for revocation for lack of merit.
7. The appellant, being dissatisfied with the ruling of the Honourable court, has now appealed against the decision based on the following grounds;
  - a. That the learned trial magistrate erred in law and in fact in relying on the summons for rectification of the grant dated 20/5/2024, which application was filed after the grant of letters of administration had been revoked by the Honourable Court on 10<sup>th</sup> January 2024, and he did not find that the application dated 20/5/2024 was misplaced and was not properly on record.
  - b. That the Learned trial magistrate erred in law and fact and misdirected himself by failing to exercise judicial authority on known legal principles and rendering an unjust judgment. More specifically, the respondent, after filing succession proceedings, purporting that they were born two sisters in the family, admitted her mistakes when she filed a summons for rectifications of the grant dated 20/5/2024, where now she is recognising the appellant and his brother Jafred as her brothers.
  - c. That the learned trial magistrate erred in law and in fact in making findings that were totally misdirection and legal deviations from the express provisions of the law and known legal principals more specifically the respondent herein clearly proposes in the replying affidavit and went further to pray in the submissions that the respondent be made a co-grant holder and share both parcels of land of the deceased with his brothers and sister equally but the learned magistrate delivered his ruling contrary to the wishes of the respondent herein and did not consider paragraph 12 of the replying affidavit as prayed by the respondent herself in her submissions dated 24<sup>th</sup> August 2024.
  - d. That the learned trial magistrate grossly erred in not considering at all the evidence tendered in support of the appellant's case. Despite there being clear errors that the death certificate was obtained fraudulently by the respondent herein, the learned magistrate ignored the fact that the respondent did not produce a burial permit upon which the certificate of death resulted. It is well well-known principle that the death certificate emanates from a burial permit.
  - e. That the learned trial magistrate erred in law and in fact in all circumstances of the matters, failed to achieve the objective, function and the purposes of the court, ad to do justice as regards the suit that was before him, and accordingly erred in law by making decisions that he did more specifically awarding costs to the respondent being well aware that this is a family matter and no costs are payable and if at all it was a must for costs to be awarded then the learned magistrate ought to have given specific reasons why he was awarding the costs.
  - f. That the learned trial magistrate exhibited actual bias against the appellant herein, and more specifically, that the appellant is occupying, utilising and developing land parcel No. Kakamega/Iguhu/528, since he was born up to date, that he is now aged 71 years, and now with the ruling herein, he is being forced to vacate at his old age.



8. Having analysed the court records, I note that the deceased, Muchelwa Sholosi, died intestate on 4<sup>th</sup> March 2002; his daughter, Clementine Afwandi, applied for grants of letters of administration intestate, stating that the deceased was survived by two beneficiaries, being herself and Marceline Khamuka, also a daughter. She stated that the deceased estate comprised L.P. No. Kakamega/Iguhu/528 measuring 0.37 Ha.
9. On 27<sup>th</sup> February, 2023, the letters of administration intestate were issued to Clementine Afwandi Anusu. I note that in the consent form, the administrator, Clementine Afwandi Anusu, allocated herself the whole parcel, being Kakamega /Iguhu/528, while the other daughter, Marceline Khamuka, was not allocated any share. On 11<sup>th</sup> September 2023, the grant was confirmed, where Clementine Afwandi Anusu was allocated the whole parcel of the deceased's land.
10. On 08<sup>th</sup> November 2023, Christopher Muhati filed an objection seeking the revocation of the grant, seeking that the name of the petitioner, Clementine Afwandi, be revoked from the deceased parcel of land and the same revert back to the name of the deceased and a new grant be issued to include the deceased and other beneficiaries, being himself, Christopher Muhati, Clementine Afwandi Anusu, Marcelina Khamuka and Jafred Sholosi.
11. He further avers that the petitioner had deliberately left out one of the deceased land parcels, Kakamega/Shitoli/893, in the list of assets, claiming that she secretly sought the succession procedures without including all the deceased beneficiaries and properties.
12. On 10<sup>th</sup> January 2024, the court issued orders for revocation of the grant that was issued to the petitioner and on 20<sup>th</sup> May, 2024, the petitioner filled for summons for rectification of the grant which was issued on 14<sup>th</sup> September 2023 including the names of the deceased beneficiaries Christopher Muhati Muchelwa and Jafred Sholosi Muchalwa in the confirmed grant as well as including his parcel of land Kakamega/Shitoli/893 that had been left out during the distribution process claiming that the two deceased sons had initially denied participating in the succession process and that she proceeded in the process of succession without the son. She states that the deceased had two parcels, being Kakamega/Iguhu/528 and Kakamega/Shitoli/893, and that the first parcel, Kakamega/Iguhu/528, was allocated to the daughters and the second parcel, Kakamega/Shitoli/893, was allocated to the sons.
13. The trial court in its ruling dated 26<sup>th</sup> May 2024 noted that the applicants had been served on 20/11/2023 but failed to file a response, and on 10/1/2024, the grant was revoked and the summons for rectification was filed on 20/5/2024 proposing to include the two deceased sons that had been left out, as well as the land parcel Kakamega/Shitoli/893.
14. The court dismissed the claim for revocation stating that the deceased son had already been catered for in the summons for rectification and the deceased estate that was left out was included in the deceased estate stating that the summons for rectification had already cured the ills that were addressed in the summons for revocation and hence the application for revocation lacked merit and ought to be dismissed with costs.
15. The applicant, being dissatisfied with the decision of the lower court, has now filed the above appeal.

#### Analysis and determination

16. I have analysed the lower court records, the parties' submissions and application and find the following issues for determination;
  - i. Whether the learned magistrate erred in law by treating the summons for rectification filed after revocation as a valid cure to the defective proceedings;



- ii. Whether the trial court properly applied the principles under section 76 of the *Law of Succession Act* on revocation of grants; and
  - iii. What orders ought to issue in the interests of justice and proper administration of the estate.
17. Section 76 of the *Law of Succession Act* allows the court to revoke or annul a grant if obtained by concealment of material facts, by false statement, or if proceedings were defective in substance.
18. This was stated in the case of *Matheka & Another v Matheka* [2005] eKLR, where the High Court held that concealment of material facts, especially the exclusion of rightful heirs, goes to the root of justice and warrants revocation. Similarly, in *Re Estate of Mwaura Muiru* (Nairobi Succ. Cause No. 160 of 1995), it was observed that an administrator must make “full and frank disclosure of all beneficiaries and assets, failing which the grant cannot stand.”
19. Section 74 of the *Law of Succession Act* and Rule 43 of the Probate and Administration Rules focus on rectification of a grant; however, rectification is limited to correcting clerical or typographical errors or mistakes in names or descriptions, or for adjusting shares in accordance with an already confirmed grant. It cannot be used to introduce new beneficiaries or new assets, as the petitioner had initiated. The Court of Appeal in *re Estate of Gitau* [1991] KLR 119 affirmed that “rectification is not a device to circumvent the procedure for revocation where concealment or fraud is alleged.”
20. It is clear from the trial court’s record that by the time the respondent filed her summons for rectification on 20 May 2024, the earlier grant had already been revoked on 10 January 2024; hence, the revoked grant ceased to exist in law and consequently, there was nothing left to rectify. The learned magistrate, therefore, misdirected himself by treating that application as valid and using it as a basis to dismiss the revocation cause.
21. The evidence on record shows that the respondent petitioned for letters describing the deceased as survived by only two daughters. That was factually false and materially misleading, as there were two living sons, Christopher Muhati and Jafred Sholosi, who occupied the deceased’s land.
22. The non-disclosure of the sons from the list of beneficiaries and the omission of parcel Kakamega/Shitoli/893 from the asset list are clear violations of section 51(2)(g) of the Act and Rule 7(1)(e) of the Probate and Administration Rules, which require the petitioner to disclose all surviving heirs and assets.
23. In *Re Estate of Ngengi Muigai (Deceased)* [2020] eKLR, the court held that a grant obtained without disclosure of all beneficiaries “amounts to a fraudulent misrepresentation” warranting revocation. The same reasoning applies here.
24. Even though the respondent later “admitted her mistake” by filing the rectification summons, such admission only reinforces that the original process was tainted. The law demands that succession proceedings be transparent from the start; the later confession cannot sanitise an illegality.
25. The appellant’s grievance that the learned magistrate disregarded his long occupation of the ancestral land is not without merit. Succession courts are courts of equity, and must balance legal formalities with the dictates of fairness and family harmony. Section 47 of the Act and Rule 73 of the Probate and Administration Rules vest the court with inherent power to make such orders as may be necessary for the ends of justice.
26. Upon my own reevaluation of the record, I am satisfied that the proceedings leading to the confirmation of the grant were defective in substance; they were founded on concealment of



beneficiaries and property; and the learned magistrate erred in relying on an invalid rectification summons to dismiss the application.

27. Having reconsidered the evidence and the law, this Court finds merit in the appeal. The judgment and orders of Hon. Z. J. Nyakundi (SPM) dated 26 November 2024 are hereby set aside and substituted with the following orders:
- a. The ruling of the Chief Magistrate's Court dated 26th November 2024 is set aside;
  - b. The grant of letters of administration issued to the Respondent on 27th February 2023 and confirmed on 11th September 2023 is revoked;
  - c. The summons for rectification dated 20th May 2024 is struck out for being incompetent;
  - d. A fresh petition shall be filed within 60 days listing all beneficiaries (Christopher Muhati, Jafred Sholosi, Clementine Afwandi Anusu, Marceline Khamuka) and both parcels (Kakamega/Iguhu/528 and Kakamega/Shitoli/893);
  - e. The fresh petition shall be heard by a different magistrate;
  - f. Each party shall bear their own costs of both the lower-court proceedings and this appeal, this being a family matter.
  - g. Right of Appeal 30 days.
  - h. File closed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 3<sup>RD</sup> DAY OF NOVEMBER, 2025.**

**S.MBUNGI**

**JUDGE**

In the presence of:-

CA: Angong'a

Ms Cherono holding brief for Ms Nandwa for the Respondent present online.

