

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 192 OF 1993

**IN THE MATTER OF THE ESTATE OF ENOCK MUCHIKA - DECEASED
JANET BARASA..... PETITIONER**

VERSUS

PATRICK MUCHIKA.....

OBJECTOR

RULING

1. The deceased died intestate on 2nd July 1991. On 21st June 1993, an affidavit in support of the petition for letters of administration was filed wherein the petitioners, Janet Barasa, sister to the deceased and Zipporah Muchika, widow to the deceased, indicated that the deceased was survived by the following beneficiaries:
 - a. Zipporah Muchika (widow)
 - b. Selena Nyakoa (sister)
 - c. Janet Barasa (sister)
 - d. Patrick Muchika (son)
2. The estate of the deceased was listed as comprising of two properties:
 - a. BUNYALA/NAMIRAMA/1065
 - b. S/KABRAS/SAMITSI/433
3. On 28th March 1994, the court granted letters of administration to Janet Barasa and Zipporah Muchika. The grant was subsequently confirmed on 30th November 1994, distributing the estate as follows:

- a. BUNYALA/NAMIRAMA/1065 - to Zipporah Muchika and children
 - b. S/KABRAS/SAMITSI/433 - to be subdivided into:
 - i. 2 acres to Selinah Nyakoa
 - ii. 1 acre to Patrick Muchika
 - iii. 2 acres to Janet Barasa
4. The subdivision was effected, resulting in the creation of:
- a. S/KABRAS/SAMITSI/972 to Janet Barasa
 - b. S/KABRAS/SAMITSI/973 to Patrick Muchika
 - c. S/KABRAS/SAMITSI/974 to Selinah Nyakoa
5. On 14th May 2025, Patrick Muchika filed summons for revocation of grant under Section 76 of the Law of Succession Act and Rules 44 and 73 of the Probate and Administration Rules. The application is supported by the grounds on the face of the application and the supporting affidavit of the same date.
6. The Applicant seeks the following orders:
- a. Temporary injunction restraining the respondents from dealing with the properties;
 - b. Revocation of the grant issued on 28th March 1994;
 - c. Revocation of the certificate of confirmation of grant dated 30th November 1994;
 - d. Cancellation of the subdivisions and reversion of the properties to the deceased's name;
 - e. Issuance of a fresh grant to the objector.

7. The application is opposed through the replying affidavit of Janet Barasa sworn on behalf of herself and her sister on 28th May 2025.
8. The applicant contends that:
 - a. The grant was obtained fraudulently by making false statements and concealing material particulars from the court;
 - b. The proceedings to obtain the grant were defective in substance;
 - c. The petition was filed secretly without the knowledge and consent of the applicant and other beneficiaries;
 - d. The petitioners failed to disclose that there were other beneficiaries entitled to the estate;
 - e. The petitioners did not obtain the consent of other beneficiaries;
 - f. The Applicant and his siblings were left out of the process;
 - g. The petitioners have caused the deceased's land to be partitioned and transferred to strangers;
 - h. The chief's letter dated 7th May 2022 shows additional beneficiaries
9. The Respondent contend that:
 - a. The application is scandalous, frivolous, vexatious and grounded on pure malice;
 - b. The applicant was a minor at the time of filing the succession cause and his interests were represented by his mother, Zipporah Muchika;

- c. The property S/KABRAS/SAMITSI/433 was purchased by the respondent through her own funds and registered in the deceased's name to hold in trust for them;
- d. The deceased never lived on the suit property but on BUNYALA/NAMIRAMA/1065 which was purchased for him by the respondent;
- e. The one acre given to the applicant was a token of appreciation and not a matter of right;
- f. The applicant has been in occupation of his portion S/KABRAS/SAMITSI/973 and has constructed a house thereon;
- g. The application has been brought after inordinate delay of 31 years;
- h. The timing of the application, coming shortly after the death of the Applicant's mother, is suspect.

Analysis

10. On whether grounds for revocation have been established, **section 76 of the Law of Succession Act** provides:

“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:

(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;”

11. On whether the grant was obtained through fraud, concealment or misrepresentation, the applicant argues that the administrators failed to disclose the children of the deceased, and the administrators listed the deceased’s sisters as beneficiaries. The court notes that the affidavit in support of petition filed in 1993 indicated only: Zipporah Muchika (widow), Janet Barasa (sister), Selina Nyakoa (sister), Patrick Muchika (son). It omitted the other children reflected later in the Chief’s letter of 2022, namely: Levi Simiyu, Wycliffe Muchika, Priscah Wayeta, Susan Mwandichi and Florence Muchika. Omission of children, whether minors or adults, constitutes concealment of material facts. **In Kagau & another v Kagau & another (Civil Appeal 477 of 2018) [2025] KECA 696 (KLR) (11 April 2025)**, it was held that:

Failure to disclose all legal heirs constitutes a valid ground for revocation of a grant. The High Court, on a preponderance of all the facts and evidence placed before it, found that the appellants had knowledge of the 1st respondent’s relationship with the deceased and the children’s dependency but omitted them from the list of beneficiaries, making the grant defective.”

12. On the applicant's interests being considered when the grant was given, I find that the applicant's interests as a minor were adequately represented by his mother, Zipporah Muchika, who was one of the administrators.
13. Regarding the allegation of fraudulent acquisition of the grant, the burden of proof lies with the applicant. In **Urmilla W/O Mahendra Shah vs. Barclays Bank International Ltd and Another [1979] KLR 76; [1976-80] 1 KLR 1168**, it was held by the Court of Appeal that:
- “Allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required. A higher standard of proof is required to establish such findings, proportionate to the gravity of the offence concerned.”*** The Appellant has not proved fraud on the part of the Respondents.
14. On the issue of whether the property S/KABRAS/SAMITSI/433 formed part of the deceased's estate, the respondent has raised a credible claim of trust. She has provided a 1987 loan application for purchase of land, an averment that the deceased never lived on the suit land and evidence that they have been in occupation since 1987. However, in this matter, this court lacks jurisdiction to hear issues on trust. In **re Estate of Atibu Oronje Asioma (Deceased)**

(Succession Cause 312 of 2008) [2022] KEHC 11046 (KLR), it was held that the High Court does not have jurisdiction in probate proceedings to entertain a suit or application relating to declaration of trust:

“Article 162(2) of the Constitution envisaged a court with jurisdiction to handle disputes relating to title or ownership of land. Under article 165(5) of the Constitution the High Court should not exercise jurisdiction over the matters to be placed under the court contemplated by article, 162(2). The court envisaged in article 162(2) was subsequently established under the Environment and Land Court Act, to handle the disputes stated in article 162(2). The Land Registration Act and the Land Act identified the Environment and Land Court as the court for the purposes of disputes relating to matters touching on land, including registration, which was at the core of the instant application. Those provisions were in sections 2 and 101 of the Land Registration Act and sections 2 and 150 of the Land Act.

Section 47 of the Law of Succession Act did not grant the High Court elastic jurisdiction to grant such orders as it pleased. It had been equated with section 3A of the Civil Procedure Act as saving the inherent powers of the court. Section 47 of the Law of Succession Act merely stated that the High Court had

jurisdiction to deal with applications and determine disputes that arose over matters that were governed by the Law of Succession Act, and pronounce decrees and make orders as could be expedient, in the context of the provisions of the Law of Succession Act. It did not confer jurisdiction to handle disputes and applications that were not provided for under the Law of Succession Act.”

15. In addition, the respondent has provided prima facie documentary evidence of financing the purchase. However, registration in the deceased’s name prima facie vested legal ownership in him. A claim of trust cannot be conclusively determined by a mere production of a loan application letter.
16. On the aspect of delay considering that the grant herein was confirmed on 30th November 1994. The current application was filed on 14th May 2025, a period of over 30 years. The Applicant has been in occupation of his portion S/KABRAS/SAMITSI/973 and only chose to file this application after the death of his mother. At any time, Revocation can be sought before or after a grant is confirmed considering that there is no statutory time limit.
17. On whether the subdivisions and transfers should be cancelled, if a grant is revoked, all actions taken pursuant to it stand vitiated. However, where third-party rights have arisen, this court has to act cautiously. Parcels 972, 973 and 974 were transferred among family

members only. In such instance, cancellation and reversion is an appropriate remedy to restore the estate before fresh distribution.

18. The power to revoke the grant was addressed in the case of **Albert Imbuga Kisigwa v Recho Kawai Kisigwa, Succession Cause No. 158 of 2000**, where the Court stated as follows:

“(13) Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

Orders

19. Having considered the pleadings, evidence, and the law, this court makes the following orders:
- a. The summons for revocation of grant dated 14th May 2025 is allowed.
 - b. The grant issued on 28th March 1994 and confirmed on 30th November 1994 is hereby revoked under Section 76(a), (b), (c) of

the Law of Succession Act. The petitioner did not disclose all beneficiaries.

- c. All subsequent subdivisions and transfers arising from S/Kabras/Samitsi/433, being 972, 973 and 974, are hereby cancelled, and the land shall revert to the name of the deceased, ENOCK TAWAYI MUCHIKA SHALAKHA, pending redistribution.
- d. A fresh grant shall issue to Patrick Muchika, who is the son to the deceased.
- e. The administrators shall, within 90 days, file for confirmation of grant disclosing all beneficiaries.
- f. Any party asserting a trust claim over S/Kabras/Samitsi/433 is at liberty to pursue the matter in a separate suit in the Environment & Land Court.
- g. Each party shall bear their own cost.
- h. Mention 6.7.2026.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS
1st DAY OF DECEMBER, 2025.**

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

In the Absence of parties though aware of the ruling date.

