



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Julius Mwova Musyoka (Deceased) (Succession Cause
34 of 2008) [2025] KEHC 18177 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18177 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 34 OF 2008
EN MAINA, J
DECEMBER 4, 2025**

BETWEEN

HARRISON MUSYOKA MWOVA 1ST APPLICANT

URBANUS MWANIA MWOVA 2ND APPLICANT

AND

ONESMUS MBITHI MWOVA RESPONDENT

RULING

1. The Applicants have filed a Summons for Revocation of grant dated 22/04/2025 seeking to have the grant of letters of administration issued to Onesmus Mbithi Mwov on 27/11/2024 annulled and a fresh grant be issued on the ground that he deliberately left out in some assets in the inventory. The said assets are Kibauni/Kamuthwa/18, Kibauni/Kamuthwa/4 and Kibauni/Ngungi/2 and because there was a multiplicity of causes in respect of the deceased. It was also contended that in the interest of the estate, the grant should be issued to more than one person.
2. In response to the Summons, the Respondent filed a replying affidavit dated 9/05/2025 in which he contended that the conditions for revocation set out in Section 76 of the *Law of Succession Act* had not been met; that the same issues were raised in the protest dated 29th September 2022 that was dismissed for non-attendance by the court on 9th October 2024. He stated that the properties named were not within his knowledge and therefore he did not fail to disclose them deliberately. He stated that since Kibauni/Kamuthwa/18 and Kibauni/Kamuthwa/4 have been confirmed to belong to the deceased, then the certificate of confirmed grant should be rectified to include them. That as per the certificate of grant, Plot number 28 Ikalaasa Market was to be sold and proceeds shared between the beneficiaries but the Applicants have refused to give vacant possession frustrating the potential purchasers and at no point was it bequeathed to the 1st Applicant.
3. The application was disposed of by way of written submissions.



4. The Applicants filed submissions dated 16th June 2025 wherein they relied on the cases of Re Estate of Joseph Kithome Kisilu [2018] e KLR, Re state of Turuchiu Marete (deceased) [2019] eKLR. They urged the court to grant the orders sought.
5. The Respondent in submissions dated 26th June 2025 urged this court to dismiss the summons as the Applicants had an opportunity to ventilate the issues raised herein in their dismissed application but all they wanted was for the matter to stay in limbo indefinitely. Secondly, that there was no basis for appointment of another administrator as the current one had not failed in his duties.

Analysis and Determination

6. I have looked at the court record and I have noted that the Applicants herein had filed a protest to the confirmation of grant raising similar grounds to those currently before the court. They failed to attend court on 24th February 2023, 4th May 2023, 29th June 2023, 26th October 2023, 21st November 2023, 24th July 2024 and 9th October 2024 and consequently, the protest was dismissed by the court (Muigai J) on 9th October 2024.
7. The Applicants are now asking the court to annul the grant issued on 27th November 2024 on the grounds that Kibauni/Kamuthwa/18, Kibauni/Kamuthwa/4 and Kibauni/Ngungi/2 are assets of the estate and they had been left out.
8. The power of this court to revoke grant is provided for under Section 76 of the [Law of Succession Act](#), Cap 160, Laws of Kenya which provides that;

“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 order or allow; 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.”



9. The applicants other than asserting the Administrator/ Respondent has left out certain assets, which he has conceded may be included in the distribution, have not adduced any other grounds as would render the Administrator/Respondent incompetent to continue with the administration of this estate and have therefore, not convinced this court there is need for additional administrators. The roles – duties and responsibilities of an Administrator are merely to aid the court in identifying the full assets of the deceased, the beneficiaries of the estate and their shares which in this case the Administrator has not deliberately failed to do.
10. From the two search documents dated 8th April 2025, there is prima facie evidence that LR No. Kibauni/Kamuthwa/18 and LR No. Kibauni/Kamuthwa/4 belong to the deceased Julius Mwova Musyoka. However, there is no evidence that LR No. Kibauni/Ngungi/2 belonged to the deceased as no proof of ownership was produced. The agreements provided cannot by themselves amount to conclusive proof. Either an official search should be produced or viva voce evidence should be led. In the premises, the grant shall be rectified to include the two properties LR No. Kibauni/Kamuthwa/18 and LR No. Kibauni/Kamuthwa/4 and the same shall be divided equally among all the beneficiaries as indicated in the already issued Certificate of Confirmation of grant.
11. The property LR. No. Kibauni/Ngungi/2 will be set aside until such a time when proof that it belonged to the deceased is produced.
12. A rectified certificate of confirmation of grant shall issue to reflect the orders of this court.
13. Parties to bear their own costs.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY THIS 4TH DECEMBER, 2025.

E. N. MAINA

JUDGE

In The Presence Of:

Mr. Sila for Petitioner

Mr. L. M. Wambua for Objector

Geoffrey – Court Assistant/Interpreter

