

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO. 26 OF 1999

**IN THE MATTER OF THE ESTATE OF JUMA SHITESWA LINANI
(DECEASED)**

IDDI JUMA
.....**PETITIONER**

VERSUS

ABDI BANUR AURA.....
.....**RESPONDENT**

RULING

1. This matter relates to the estate of the late Juma Shiteswa Linani who died intestate on 26th March 1992. The deceased was polygamous, and the core dispute in this decades-long succession has revolved around the identification of beneficiaries and the confirmation of the mode of distribution of his estate.
2. The primary asset in the estate is land parcel **EAST/WANGA/LUBINU/1123**. From the record, the succession process has been protracted and contentious, characterized by material non-disclosure and subsequent efforts at rectification.
3. On 24th September 1998, a chief's letter listed the survivors as three widows and nine sons, completely excluding any daughters.
4. On 4th May 1999, a grant of letters of administration intestate was issued to Iddi Juma, one of the deceased's sons.
5. On 24th June 2009, the grant was confirmed, leading to the subdivision of the original parcel into titles EAST/WANGA/LUBINU/4189, 4190,

4191, 4192, 4193, 4194, 4195, 4196, 4197, 4198. These were distributed exclusively among eight sons:

- a. Mustafa Afuna
- b. Iddi Juma
- c. Muhammad Juma
- d. Ashid Juma
- e. Twara Juma
- f. Khwahib Juma
- g. Abdinur Juma
- h. Shuaib Juma

6. The estate was thus administered and distributed on the erroneous and unlawful premise that the deceased had no female children.
7. This distribution was predicated on a fatally defective process that concealed the existence of the deceased's daughters, contrary to the Law of Succession Act which mandates equal inheritance for all children regardless of gender.
8. On 10th May 2021, an affidavit in support of a petition for letters of administration by Abdi Banur Aura presented a full and accurate list of beneficiaries. This list included two widows, eight sons, and eight daughters, thereby exposing the initial fatal omission.
9. On 24th March 2023, upon an application by Abdi Banur Aura for revocation of the grant under Section 76 of the Law of Succession Act Cap 160, this court declined to revoke but made critical remedial

orders. The court found that the grant had been obtained through a defective process as it concealed the existence of the daughters. To cure this, the court:

- a. Appointed Abdi Banur Aura as a joint administrator with Iddi Juma
- b. Directed that the eight daughters of the deceased be availed in court to formally state their desires regarding the distribution of the estate.

10. On 12th May 2022, pursuant to the court's order, seven daughters filed affidavits and each deposed that they were aware of the succession, that Iddi Juma had used his own funds to prosecute it and clear a loan charged on the estate property, and that they each were happily disclaiming their share in the estate in favour of Iddi Juma. This was to be effected on the condition that he doesn't use the estate to compensate himself for paying the loan. The daughters included:

- a. Maryam Amwere Juma
- b. Halima Shisia
- c. Ummi Juma
- d. Hadija Juma
- e. Josephine Nechesa Wanga
- f. Fatuma Juma,
- g. Mwanaisha Makhokha Bakari (died on 11th December 2024)

11. On 16th May 2023, in a further ruling on an application by Iddi Juma, the court issued specific orders requiring:
 - a. The seven daughters to appear in court and affirm their disclaimers
 - b. Iddi Juma to provide evidence of the alleged loan and its repayment by him
 - c. Iddi Juma to state if he sought reimbursement.
12. On 24th July 2025, six of the aforementioned daughters physically appeared before this court and signed affirmations confirming the contents of their affidavits and their desire to cede their shares to Iddi Juma.
13. The applicant, Iddi Juma, has now filed the instant application dated 27th October 2025, seeking the final orders enumerated in the opening paragraph.
14. The application is opposed by Zuhura Ondiso Juma, the eighth daughter, who in a replying affidavit insists on a fresh distribution of the entire estate, which would necessitate the cancellation of all titles issued in 2009.
15. The respondent, Abdi Banur Aura, as co-administrator, generally supports the position but has raised issues of costs and contribution.
16. From the pleadings, affidavits, and submissions, the following issues fall for determination:

- a. *Whether the affidavits and court appearances of the seven daughters satisfy the directions of this court made on 24th March 2023 and 16th May 2023.*
- b. *Whether the distribution of the estate as effected among the eight sons and excluded the deceased's daughters in 2009 should be set aside in light of the proven wishes of the majority of the daughters.*
- c. *Whether Iddi Juma is entitled to reimbursement for the loan he discharged and the costs of succession.*

Analysis

17. Section 76 of the Law of Succession Act empowers the court to revoke or annul a grant of representation. 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;”

18. The court has inherent jurisdiction under Rule 73 of the Probate and Administration Rules to make such orders as are necessary for the ends of justice.

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

19. In addition, **Section 76(a)(b) of the Law of Succession Act** provides for the revocation of the grant:

“(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;”

20. The grant confirmed on 24th June 2009 and all resultant transactions, including the subdivisions creating titles EAST/WANGA/LUBINU/4189, 4190, 4191, 4192, 4193, 4194, 4195, 4196, 4197, 4198, are hereby revoked and annulled in their entirety.

The grant was obtained when the daughters of the deceased were excluded from the beneficiary list.

21. In the case of **Albert Imbuga Kisigwa v Recho Kavai Kisigwa, Succession Cause No.158 OF 2000**, Mwita J. made remarks on the guiding principles for the revocation. He stated;

“Power to revoke 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.”

22. The distribution that followed was substantively defective as it disinherited eight lawful dependants and beneficiaries. Under Kenyan law, all children, including daughters, have equal inheritance rights. The initial exclusion was a fundamental violation of this principle. Concealment renders the entire proceeding defective. **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.”

23. While the court on 24th March 2023 opted for a remedial approach, the persistence of the dispute, the demand for justice by Zuhura Ondiso Juma, and the need for a clean, transparent, and incontestable finality necessitate this full revocation. The proper course is to start afresh from a point of correct legal principle

24. The deceased died intestate hence the distribution of his estate is governed by the Law of Succession Act Cap 160. **Section 40 of the Law of Succession Act** provides for polygamous unions. It demands that all children of the deceased, irrespective of gender, are beneficiaries with equal standing before the law.

“40. Where intestate was polygamous

(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each

house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”

25. The initial distribution that excluded the daughters was therefore fundamentally flawed and contrary to the Act. This was established **in re Estate of Kipyegon Arap Chepkwony (Deceased) (Succession Cause E018 of 2020) [2025] KEHC 1239 (KLR)**, that:

“ It is the finding of this court that the resolution by the panel of elders is an affront to the principles of equality entrenched in the Constitution and therefore the estate of the deceased should be distributed in accordance with section of 38 the Law of Succession Act which provides as follows; “Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.” The said section mandates equal inheritance for all the children of the deceased irrespective of gender. In re Estate of Francis Andachila Luta (Deceased) (Succession Cause 875

of 2012) [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment) Musyoka J stated as follows; “Let me revisit section 38 of the Law of Succession Act. It provides for equal distribution of the estate amongst the children. The language of section 38 is gender neutral. It does not classify children into male and female, nor sons and daughters, nor men and women. There is no discrimination nor differentiation nor classification nor categorization along gender lines. That would mean that sons and daughters of a dead person are entitled on equal basis to a share in the estate of their dead parent. Section 38 does not make marriage a factor in the distribution of the estate of a dead parent. Gender and marital status are factors under customary law, but not under the Law of Succession Act. The estate herein is not subject to customary law, for the reasons that I have discussed in paragraphs 13, 14 and 15 a foregoing. The estate is subject to the Law of Succession Act, which is blind on biases founded on gender and marital status.”

26. However, the law also recognizes the right of a beneficiary to renounce or disclaim their interest in an estate. A disclaimer, once made freely, voluntarily, and with full knowledge, is irrevocable. The court's primary duty in succession matters is to give effect to the

provable wishes of the beneficiaries regarding distribution, provided such wishes are not illegal or against public policy.

27. The court's directive of 24th March 2023 was clear, that the daughters were to be availed to make known their desires on distribution. This was reinforced by the order of 16th May 2023 requiring them to appear and confirm their affidavits.

28. Six daughters have not only filed detailed affidavits of disclaimer but also presented themselves in open court on 24th July 2025 to reaffirm their position. This affirmation of sworn documentation and personal appearance leaves no room for doubt as to their intentions. Their disclaimers are found to be free, voluntary, informed, and unequivocal. The desire of Mwanaisha Makhokha Bakari, though she is deceased, was similarly clear from her affidavit. Her share, having been validly disclaimed in favour of Iddi Juma during her lifetime, forms part of his entitlement. In **Re Estate of Simon Ikandi Gitunga (Deceased) Succession Cause No. 5 of 1995**, the court stated that

“Concerning renunciation of right to inheritance, it should be noted that a beneficiary under a will or a survivor in intestacy cannot be compelled to take a share in the estate against their wish. In other words, it is not mandatory that a beneficiary take his bequest or legacy under the will of the deceased or that a survivor in intestacy takes the share allotted to them. In both cases,

there is liberty to renounce or disclaim the right to the share. The usual practice is for such beneficiary or survivor or heir to file a Deed or instrument of renunciation disclaiming such right"

29. The protestations of Zuhura Ondiso Juma, while respecting her right to a share, cannot invalidate the express and proven wishes of her seven sisters. Each beneficiary has an independent right to decide what to do with their share. The court cannot force a benefit upon an unwilling beneficiary, nor can it allow one beneficiary's different choice to override the lawful choices of others.
30. On the mode of fresh distribution, the asset, land parcel E/WANGA/LUBINU/1123, shall be subdivided afresh to account for all the deceased's children, the eight sons and the eight daughters.
31. The rightful shares of the seven daughters who have disclaimed shall be pooled together. This pooled share shall be added to the definitive share of Iddi Juma.
32. Zuhura Ondiso Juma shall receive her full, separate, and individual share as a child of the deceased. The remaining seven sons shall each receive their individual, equal shares.
33. This approach achieves multiple objectives. It corrects the historical injustice of exclusion, respects the autonomous decisions of the seven daughters, satisfies the rightful claim of the eighth daughter, and provides a clear, equitable, and final settlement.

Orders

34. This court sets aside the certificate of confirmation of grant issued on 24th June 2009 and all subsequent transactions, including the subdivision of title E/WANGA/LUBINU/1123 into parcels EAST/WANGA/LUBINU/4189, 4190, 4191, 4192, 4193, 4194, 4195, 4196, 4197, 4198 and their registration.
35. The holders of titles E/WANGA/LUBINU/4189, 4190, 4191, 4192, 4193, 4194, 4195, 4196, 4197, 4198, are ordered to surrender the respective title deeds to the Land Registrar, Kakamega County, within thirty (30) days from today's date for cancellation.
36. The deceased's estate shall be equally distributed among his sixteen (16) children (sons and daughters).
37. The shares of the seven daughters who have renounced their shares in favor of the petitioner, Iddi Juma, shall go to the petitioner, the said Iddi Juma.
38. The petitioner's request to be compensated the money he paid to have the title deeds discharged, is declined, for the seven daughters of the deceased relinquished their share in his favor to act as a reimbursement of the money he paid for the discharge.
39. The distribution shall be done in such a way that no one is displaced from where he has put up a homestead.
40. Right of appeal 30 days.

**DATED, SIGNED and DELIVERED in open court at KAKAMEGA this 16th
Day of December, 2025.**

S.N MBUNGI

JUDGE

Delivered in the presence of:

Court Assistant - Elizabeth Angong'a

The parties

Ms Malanda for the petitioner online