



**In re Estate of Ndila Kitema (Succession Cause E020 of 2024)
[2026] KEHC 96 (KLR) (14 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 96 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE E020 OF 2024
RC RUTTO, J
JANUARY 14, 2026
IN THE ESTATE OF NDILA KITEMA**

BETWEEN

RAPHAEL NZIOKI KITEMA ADMINISTRATOR

AND

JOSEPH MUOKI KITEMA 1ST ADMINISTRATOR

JANE NDUNGE KITEMA 2ND ADMINISTRATOR

RULING

1. Before this court for determination are two applications. The first is a Chamber Summons Application dated 30th June 2025, filed by the 3rd Administrator/Applicant, seeking the partial confirmation of grant issued on 3rd June 2025 be suspended, annulled/revoked.
2. The Applicant's application is premised on the grounds set out on the face of the application and the supporting affidavit sworn by the Applicant. The crux of the application is that the grant was partially confirmed on 3rd June 2025 after an application by one of the administrators, Jane Ndunge Kitema. He alleges that he never consented to the distribution as per the partial confirmed grant. He states that his then advocates on record, the firm of J.M Kimathi & Partners Advocates, colluded with the firm of L.N Ngolya Company Advocates to defraud the estate in the form of excess fees.
3. In opposition to the said application, the 1st and 2nd Administrators/Respondents filed a Replying Affidavit sworn on 10th July 2025. They contend that the summons filed by the 3rd Administrator is irredeemably defective, grossly incompetent, misleading, scandalous, replete with falsehoods, evasive, an abuse of the court process and a mere afterthought. They depose that prior to the confirmation of the grant, all the administrators, together with some beneficiaries, held a meeting on 21st March 2025 at the chambers of the 3rd Administrator's advocates in Nairobi, during which they unequivocally agreed that the uncontested assets forming part of the estate would be distributed through partial



confirmation of grant. It was further agreed at the said meeting that both firms of advocates on record would be paid their respective professional fees. They state that when the matter came up for partial confirmation on 3rd June 2025, the 3rd Administrator was aware of the same and had duly instructed his advocates to have the summons for partial confirmation dated 27th May 2025 allowed, which the court did. They aver that no evidence has been placed before court by the 3rd Administrator to demonstrate that either the 1st and 2nd Administrators or the advocates on record engaged in any fraud, unethical, unprofessional or deceitful conduct in relation to the partial confirmation of the grant.

4. They further depose that despite agreeing on two separate occasions to meet at ABSA Bank, Machakos Branch, for purposes of transmitting the funds held in the deceased's bank accounts to the beneficiaries, the 3rd Administrator failed to attend the meetings scheduled for 23rd June 2025 and 4th July 2025 respectively. They assert that the partial confirmation does not prejudice the 3rd Administrator in any manner, as the proceeds from the sale of the two motor vehicles and the funds held in various bank accounts were to be shared equally among all the beneficiaries after settlement of the advocates' fees. They aver that instead of cooperating with his co-administrators, the 3rd Administrator deliberately frustrated the administration process, thereby subjecting the other beneficiaries to undue hardship. They further state that the email correspondence annexed to the summons was prompted by the 3rd Administrator, who insisted that Samuel Kitema Paul and Philomena Meli Musyimi be treated as a single beneficiary, a position which they acceded to. They also depose that the 3rd Administrator has persistently and unjustifiably refused to release Motor Vehicle Registration No. KAT XXXG for valuation and continues to use the same for his personal benefit, notwithstanding that it is an asset of the estate. They further state that efforts were made to persuade the 3rd Administrator to agree to jointly instruct a single advocate for the estate but he declined and instead insisted on instructing the firm of J.M. Kimathi & Partners Advocates LLP to act for him. They contend that, in the circumstances, the said advocates are entitled to their professional fees, which were agreed upon by all concerned.
5. Also in opposition to the said application is the Replying Affidavit of Dunstan M. Wambua, a partner at J.M. Kimathi & Partners Advocates LLP, sworn on 18th August 2025. He deposes that he had conducted the matter on behalf of the 3rd Administrator from 23rd September 2024. He further states that prior to service of the summons dated 30th June 2025, the Respondents' advocates served his firm with the summons dated 10th July 2025, which he forwarded to the 3rd Administrator/Applicant via WhatsApp. He avers that he did not receive any instructions or response from the 3rd Administrator thereafter.
6. In substantive response to the summons dated 30th June 2025, Mr. Wambua states that on 21st March 2025, all three administrators, together with their respective advocates held a lengthy meeting during which they agreed that the funds held in the deceased's bank accounts would be utilized to settle the advocates' professional fees, with the balance to be shared equally among all the beneficiaries. He further states that the parties agreed that Motor Vehicles Registration Nos. KAT XXXG and KSM XXX be sold and the proceeds shared equally among the beneficiaries. He avers that the only unresolved issue arising from that meeting concerned the mode of distribution of the various parcels of land, which the parties agreed to deliberate upon further. Counsel further deposes that during the said meeting, the 3rd Administrator proposed to retain Plot No. 31/5/26 together with the developments thereon, a position which was not agreed upon and had not been resolved as at 3rd June 2025 when the grant was partially confirmed. He states that on 16th June 2025, he shared the certificate of partial confirmation of grant issued on 5th June 2025 with the 3rd Administrator, following which the 3rd Administrator agreed to meet with the other two administrators at ABSA Bank, Machakos on 23rd June 2025 for purposes of distributing the funds held in the various ABSA Bank accounts in accordance with the said certificate.



7. Counsel further states that on 23rd June 2025, the 3rd Administrator met with him to seek clarification regarding the certificate of confirmation of grant. During that meeting, the 3rd Administrator expressed the view that Samuel Kitema Paul and his stepmother, Philomena Meli Musyimi, ought not to receive equal shares and should instead be treated as a single unit for purposes of distribution. Counsel states that he concurred with that position, which was also agreed to by the advocates for the 1st and 2nd Administrators and subsequently confirmed via email correspondence. He further states that the banking exercise was deferred to 4th July 2025 and that on that date, at the request of the 3rd Administrator, he travelled to Machakos for the said exercise. He avers that at approximately 9.09 a.m., the 3rd Administrator informed him by telephone that he was on his way, which communication was the last he received from him. As a result, the banking exercise could not proceed and was eventually called off at 3.00 p.m.
8. Counsel Mr. Duncan further deposes that following the amendment of the petition, the estimated value of the deceased's estate stood at Kshs.100,000,000/=. He states that after the meeting held on 21st March 2025, he prepared and shared with the 3rd Administrator a fee note dated 16th April 2025. He further states that during a subsequent meeting, he explained to the 3rd Administrator how he arrived at the sum of Kshs.1,560,000/=:, exclusive of disbursements, being the applicable instruction fees, taking into account the estimated value of the estate at Kshs.100,000,000/= and guided by Schedule 10 of the Advocates Remuneration Order. He further deposes that he was later persuaded to accept the sum of Kshs.1,599,600/= as computed by his counterpart and as reflected in the Certificate of Confirmation of Grant. He avers that the summons dated 30th June 2025 was filed together with a defective Notice of Change of Advocates and is therefore a non-starter. He further contends that the 3rd Administrator has not demonstrated to the court that the equal sharing of the deceased's estate among the beneficiaries as set out in the Certificate of Confirmation of Grant, is unfair or unjust to him or to any of the beneficiaries so as to warrant a fresh distribution.
9. The 3rd Administrator filed a Further Affidavit in response to the affidavits filed by both his former counsel on record and the 1st and 2nd Administrators. In response to the Replying Affidavit filed by the Respondents, the 3rd Administrator deposes that he was not privy to any meeting held at his former advocate's offices and that he did not issue any instructions to his former advocate, Dunstan M. Wambua, to pursue partial confirmation of grant. He avers that the partial confirmation was driven purely by counsel's desire to unconscionably increase professional fees. He further states that he never agreed to the professional fees claimed by the advocates and that to the contrary, there existed a duly executed legal fee agreement dated 11th September 2024, under which his former advocates agreed to charge a cumulative fee of Kshs.250,000/=:, exclusive of court attendance, for representing his interests. He contends that the subsequent escalation of fees to Kshs.1,600,000/=: was intended to fleece the estate, thereby giving rise to his belief that there was collusion between the two firms of advocates.
10. The 3rd Administrator further deposes that no document was availed to him for execution and that there was no consensus on the list of beneficiaries. He states that as late as 23rd June 2025, two beneficiaries were listed as representing the same household, which necessitated discussions among the advocates on rectification of the same through email correspondence. He avers that the process of partial confirmation was hurried in order to secure payment of the proposed professional fees. He further states that the meetings scheduled at ABSA Bank, Machakos Branch, were organised by the advocates and not by him. He avers that upon seeking an independent opinion regarding the issuance of the partial confirmation of grant without his knowledge or participation, he was advised on alternative avenues to approach the court, which prompted him to file the present application in order to safeguard the estate from being haemorrhaged.



11. With regard to Motor Vehicle Registration No. KAT XXXG, the 3rd Administrator states that he has no objection to its sale. He deposes that he has been in use of the vehicle for the past fifteen (15) years and is willing to purchase it at the prevailing market value upon completion of valuation. He further states that the deceased also left Motor Vehicle Registration No. KCM XXX, a Chevrolet pick-up, which is currently available for use by beneficiaries in Kithyoko and that no orders have been sought by the other administrators in respect thereof. He contends that this selective focus demonstrates a vendetta against him arising from his challenge to the partial confirmation of grant.
12. He further avers that he harbours no ill intent towards his co-administrators or the estate, noting that he is himself a beneficiary and stands to be directly affected by the administration thereof. He states that there is nothing improper in changing legal representation, particularly where he felt that his interests were not being adequately articulated. Finally, he contends that since the 1st and 2nd Administrators were not parties to any meetings between himself and his former advocates, they lack locus standi to comment on matters relating to legal fees, which he maintains were the subject of a private agreement between himself and his former advocates.
13. In response to the Replying Affidavit of Dunstan M. Wambua sworn on 18th August 2025, the 3rd Administrator reiterates that there was no agreement regarding the partial confirmation of grant as alleged by his former advocate. He contends that any such agreement ought to have been reduced into writing and executed by all the parties involved. He acknowledges that there was communication from his former advocates, however, he avers that none of the documents annexed by Mr. Wambua demonstrates his consent to the proposed mode of distribution or evidences his participation in or agreement to, any meeting purportedly scheduled in Machakos. He further states that the interim fee note was a unilateral document to which he did not consent and that the arbitrary escalation of professional fees constituted one of the primary reasons that prompted him to approach the court seeking revocation of the partial confirmation of grant. In conclusion, he avers that he has never opposed the equal distribution of the deceased's estate among the beneficiaries and that he remains keen on discharging his duties as an administrator strictly within the confines of the law.
14. The second application dated 10th July 2025 filed by the 1st and 2nd Administrators/Respondents seeks the revocation of the appointment of Raphael Nzioki Kitema as an administrator and for the deceased's estate to be administered solely by the Respondents. The application is supported by the grounds set out on its face and a Supporting Affidavit sworn by Jane Ndunge Kitema on behalf of the Respondents. She deposes that the 3rd Administrator has persistently refused to cooperate with his co-administrators in the administration of the estate thereby exposing the estate to wastage. She further states that following the partial confirmation of grant, the 3rd Administrator declined to cooperate in the execution of the Certificate of Confirmation of Grant, notwithstanding that the distribution of the assets therein had been agreed upon. She avers that a meeting was held on 21st March 2025 at the offices of J.M. Kimathi & Partners Advocates LLP which was attended by all the administrators and during which they agreed that the uncontested assets of the estate be distributed through partial confirmation of grant. She further states that the administrators agreed on two occasions to meet at ABSA Bank, Machakos Branch for purposes of administering the estate in accordance with the partially confirmed grant but that the 3rd Administrator failed to attend on both occasions. She avers that as a result, the 1st Administrator and herself incurred significant expenses travelling over 240 kilometres to and from Machakos Town in an effort to implement the Certificate of Partial Confirmation of Grant.
15. She further deposes that her mother, who has been ailing for some time, has been unable to access adequate medical care due to the 3rd Administrator's refusal to cooperate in releasing funds held in the estate's accounts. She also states that Beatrice Mutemi Kitema, the 3rd Administrator's mother,



requires financial support from the estate as she is not in gainful employment. She alleges that the 3rd Administrator has refused to release Motor Vehicle Registration No. KAT 318G for valuation in accordance with the partially confirmed grant and continues to use the said vehicle for personal benefit. She therefore contends that the 3rd Administrator is intermeddling with the estate and that his conduct is inconsistent with the law, rendering him unfit to continue acting as an administrator.

16. In opposition to the application by the 1st and 2nd Administrators, the 3rd Administrator filed a Replying Affidavit sworn on 17th September 2025. In his response, the 3rd Administrator denies the allegation that he has refused to cooperate with his co-administrators, stating that, to the contrary, he has remained keen to ensure that the estate is not haemorrhaged through illegal or unnecessary expenditure. He deposes that he did not append his signature to the application for partial confirmation of grant as the same was processed and issued without his participation or contribution and that it ought therefore to be revoked. He further states that there are outstanding issues regarding the list of beneficiaries, which, in his view, necessitate correction of the partially confirmed grant in the first instance. He reiterates that there was no agreement on the issuance of the partial confirmation of grant and contends that any such agreement ought to have been evidenced through a duly executed consent which he maintains was never executed by him.
17. In response to the allegation that the 1st and 2nd Administrators incurred transport expenses, the 3rd Administrator states that transport allowances have always been provided at Kshs. 5,000/= which he avers is sufficient to facilitate travel to Machakos, noting that the administrators are based in Nairobi. He further contends that the issue of an ailing parent is unrelated to the administration of the estate, asserting that each administrator bears personal responsibility for the care of their dependants. He adds that beneficiaries receive a monthly stipend from the estate to cater for such needs.
18. With regard to Motor Vehicle Registration No. KAT XXXG, the 3rd Administrator deposes that he has had custody of the vehicle even during the deceased's lifetime, having used it to transport her to hospital and having met its insurance and maintenance costs over the years. He states that he has added value to the vehicle and that, notwithstanding the foregoing, none of the administrators has formally requested a valuation of the vehicle for purposes of sale. He avers that he is ready and willing to purchase the vehicle once valuation is undertaken. The 3rd Administrator further alleges that the 1st Administrator is involved in an ongoing matter at the Milimani Commercial Court, Civil Case No. 112 of 2018, *Ndila Kitema v Joseph Muoki*, in which the deceased had sued the 1st Administrator for interference with her property together with the 2nd Administrator and that the said matter remains pending. He alleges that the 2nd Administrator seeks to take advantage of this situation by having him removed so as to exercise unilateral control over the administration of the estate. He further alleges that the 2nd Administrator has on several occasions executed documents without obtaining the signatures of the other administrators and that as a result, there is no conclusive evidence demonstrating consensus among all the beneficiaries who ought to be involved in the decision-making process. He contends that the application before court has been brought in bad faith and with the intention of hemorrhaging the estate.
19. When both applications came up for directions on 18th September 2025, the court directed parties to file their submissions in respect of both applications for determination in this ruling. The 3rd administrator's submissions are dated 31st October 2015 and 1st & 2nd Petitioner's submissions on both summons applications is dated 2nd October 2025 while the 3rd Administrator's former advocates submissions is dated 28th October 2025.



3rd Administrator's Submissions

20. The 3rd Administrator's submissions commenced with an introduction and a brief factual background to the application. He identified three issues for determination, that is; whether his application for revocation of the partially confirmed grant is merited; whether the application by the 1st and 2nd Administrators dated 10th July 2025 is merited; and whether his application ought to be dismissed on account of alleged technical defects in the Notice of Change of Advocates filed.
21. On the first issue, the 3rd Administrator relied on Section 82(a) of the *Law of Succession Act*, submitting that an administrator is under a statutory obligation to take all necessary steps in the best interests of the estate and the beneficiaries. He argued that this obligation includes moving the court to revoke the partial confirmation of grant issued on 3rd June 2025, particularly with respect to the confirmation of funds held in ABSA Bank Account No. 2038584378, which were sanctioned to be applied towards payment of professional fees for L.N. Ngolya & Co. Advocates and J.M. Kimathi & Partners Advocates LLP with the balance to be distributed equally among the beneficiaries. He submitted that the advocates for the 1st and 2nd Administrators, L.N. Ngolya & Co. Advocates and his former advocates, J.M. Kimathi & Partners Advocates LLP, colluded to have professional fees paid in excess of what was lawfully due, notwithstanding the absence of a proper fee agreement with the administrators. He contended that under the legal fee agreement dated 11th September 2024, his former advocates were only entitled to Kshs. 250,000/=, having been engaged solely to represent his personal interests in the succession cause and not the interests of the entire estate. He argued that the escalation of the fees to Kshs. 1,559,600/= was unconscionable and calculated to unlawfully benefit the advocates at the expense of the estate. While placing reliance on *Re Estate of Makokha Idris* [2019] eKLR and *Republic v Disciplinary Tribunal of the Law Society of Kenya ex parte John Wacira Wamugu & 2 Others* [2016] eKLR, he submitted that the partial confirmation of grant was undertaken without the consensus of all administrators and beneficiaries and amounted to a deliberate attempt to defraud the estate. He further submitted that the summons for partial confirmation of grant dated 27th May 2025 was supported by an affidavit sworn by the 2nd Administrator on the authority of the 1st Administrator only without any indication that she had the authority or consent of the 3rd Administrator, thereby fundamentally vitiating the process that led to the partial confirmation.
22. On the second issue, the 3rd Administrator submitted that the said application was a reactionary response to his application dated 30th June 2025. He argued that the timing of the application demonstrated a calculated attempt to remove him as an administrator so as to facilitate the mismanagement and dissipation of the estate, asserting that his presence as an administrator had hindered such actions. He further submitted that his co-administrators had failed to place before the court any evidence demonstrating non-cooperation on his part as required under Section 76 of the *Law of Succession Act* and as articulated in *Re Estate of Mukhobi Namonya (Deceased)* [2020] eKLR. He contended that the 1st and 2nd Administrators did not demonstrate any genuine effort to involve him in the administration of the estate, but instead sought to ambush him with an already partially confirmed grant for execution. He submitted that he had no objection to the valuation and sale of the motor vehicle forming part of the estate, but asserted that the 1st Administrator and the advocates on record were primarily interested in accessing and disbursing funds from the estate. He further contended that the beneficiaries were already in occupation and utilisation of various properties pending final distribution. He alleged that the 2nd Administrator had failed to execute documents and that one of the reasons advanced was the existence of pending court cases involving her while the 1st Administrator had unilaterally executed documents without the participation of the other administrators, which, in his view, demonstrated an intention to exercise exclusive control over the estate.



23. On the third issue, the 3rd Administrator submitted that he instructed the firm of Wanyoike Thuo Advocates to come on record and act on his behalf in place of J.M. Kimathi & Partners Advocates LLP. He stated that on or about 21st July 2025, the firm of Wanyoike Thuo Advocates duly served J.M. Kimathi & Partners Advocates LLP with a valid and executed Notice of Change of Advocates dated 1st July 2025 via email. He acknowledged that the Notice of Change of Advocates served upon L.N. Ngolya & Company Advocates contained minor clerical errors. He submitted, however, that despite those errors, counsel for the co-administrators acknowledged the change by serving the firm of Wanyoike Thuo Advocates with a Replying Affidavit dated 10th July 2025, thereby confirming awareness and acceptance of the change of advocates. He further submitted that J.M. Kimathi & Partners Advocates LLP, through Mr. Dunstan M. Wambua, subsequently served the firm of Wanyoike Thuo Advocates and filed a response to the application, further evidencing recognition of the change.
24. In opposing the prayer for dismissal of his application on technical grounds, the 3rd Administrator relied on Order 9 Rules 5 and 7 of the Civil Procedure Rules, submitting that the Notice of Change of Advocates was duly served and acknowledged and that the errors complained of were inadvertent and did not in any way negate his intention to change legal representation. He further invoked Article 159(2)(d) of the *Constitution* and relied on the decisions in *Anne Sanapei Massey v Kenya Commercial Bank Limited* [2015] eKLR, *Belinda Murai & 9 Others v Amos Wainaina* [1979] eKLR and *Rose Njoki King'au & Another v Shaba Trustees Limited & Another* [2018] eKLR, to submit that procedural lapses that do not occasion prejudice should not be used to defeat substantive justice. He further submitted that J.M. Kimathi & Partners Advocates LLP elected not to oppose the application for his removal, which, in his view, amounted to a concession that the change of advocates had been properly effected. He added that the Court Tracking System reflected the firm of Wanyoike Thuo Advocates as being properly on record, leaving no doubt as to his intention to effect the change. He urged the court to find that the errors were inadvertent and should not be used as a basis to deny him the right to be heard.
25. In conclusion, the 3rd Administrator urged the court to allow his Summons dated 30th June 2025 as prayed.

1st & 2nd Administrator's submissions

26. With respect to the application dated 10th July 2025, the 1st and 2nd Administrators submit that the 3rd Administrator is unfit to continue acting as an administrator in this cause. They contend that the former advocates for the 3rd Administrator, J.M. Kimathi & Partners Advocates LLP, convened a meeting in Nairobi which was attended by all the administrators, and during which there was unanimous agreement on the partial distribution of the uncontested assets of the estate and on a subsequent meeting at ABSA Bank, Machakos Branch, for purposes of implementing the partial confirmation. They submit that the subsequent conduct of the 3rd Administrator has been injurious to the estate and detrimental to the interests of the beneficiaries. They argue that the 3rd Administrator resides in one of the estate's income-generating residential premises while other beneficiaries live in dilapidated rental houses, yet he does not pay rent to the estate. They further submit that he has been in exclusive use of Motor Vehicle Registration No. KAT XXXG, which is an asset of the estate.
27. While relying on sections 82 and 83 of the *Law of Succession Act*, the 1st and 2nd Administrators submit that the 3rd Administrator has abdicated his duties and responsibilities as an administrator and that the only viable remedy is the revocation of his appointment to ensure orderly and efficient administration of the estate.



28. In opposition to the summons application dated 30th June 2025, the 1st and 2nd Administrators submit that the application is fatally defective and incompetent. They contend that the summons is not signed and there is no demonstrable link between the 3rd Administrator and the impugned summons and that the only inference to be drawn is that Wanyoike Thuo Advocates filed the application without proper authority. They further submit that the summons is dated 30th June 2025 while the Notice of Change of Advocates is dated 1st July 2025, which, in their view, underscores the procedural impropriety of the application. They contend that the summons was intended to mask what they describe as the 3rd Administrator's improper designs on the estate.
29. They further submit that on 6th November 2024, the court granted parties leave to file an amended Form P&A 5 in order to include assets that had not been captured in the initial petition. They state that when the amended form was filed on 26th November 2024, the estimated value of the estate was assessed at Kshs.100,000,000/=. They contend that the 3rd Administrator is unwilling to settle his former advocates' professional fees which are calculated based on the value of the estate. They submit that the dispute between the 3rd Administrator and J.M. Kimathi & Partners Advocates LLP cannot form a valid basis for revocation of the Certificate of Confirmation of Grant. Relying on section 76 of the *Law of Succession Act*, they argue that the summons filed by the 3rd Administrator does not satisfy any of the statutory grounds for revocation or annulment of grant.
30. In conclusion, the 1st and 2nd Administrators submit that the summons dated 30th June 2025 is a diversionary tactic intended to derail the administration of the estate and that even the affidavit sworn by the 3rd Administrator's former advocate, Dunstan M. Wambua, exposes what they term as the 3rd Administrator's misconduct.

3rd Administrator's former advocates submissions

31. The 3rd administrator's former advocate submits that the 3rd Administrator's application ought to be struck out for reason that the summons is not signed and that the summons was filed together with a defective Notice of Change of Advocates. He submits that regarding the Notice of Change of Advocates, that the same indicated that the firm of Wanyoike Thuo Advocates was taking over from the firm of L.N Ngolya & Company Advocates yet the said firm of L.N Ngolya & Company Advocates has never been on record for the 3rd Administrator and as such the notice of change of advocates is fatally defective. The advocate submits that the notice of change of advocates was not even paid for which in totality renders the summons dated 30th June 2025 fatally defective.
32. He submits further that the 3rd administrator does not dispute the fact that a meeting was held in chambers in 21st March 2025 to discuss how to distribute the estate and that he further submits that after the said partial confirmation of grant, the only concern that the 3rd administrator had was why Samuel Kitema Paul, a son of the deceased and Philomena Meli Musyimi, wife to the deceased brother were to receive equal share but his fears were satisfactorily addressed in the emails dated 23rd June 2025.
33. On the question of fees due to the firm of J M Kimathi & Partners Advocates LLP, he submits that the instruction note dated 11th September 2024 was based on the original petition whose value of the state was Kshs 30, 000, 000/= and that the value changed to Kshs.100, 000, 000/= following introduction of some properties which had been left out and that the 3rd administrator never contested the said new value of the estate. In conclusion, he submits that the 3rd administrator has not proved that the partial confirmation was unfair to him or any other beneficiary noting that the funds were to be shared equally amongst all the beneficiaries.



Analysis and Determination

34. I have carefully considered both applications herein and the affidavits by parties and it is my view that there are three issues for determination;
- a. Whether the application dated 30th June 2025 is incompetent on account of alleged procedural defects and the effect thereof.
 - b. Whether the partial confirmation of grant issued on 3rd June 2025 ought to be annulled or revoked.
 - c. Whether the 3rd Administrator is unfit to continue acting as an administrator of the estate and ought to be removed.

Whether the application dated 30th June 2025 is incompetent on account of alleged procedural defects and the effect thereof.

35. The Respondents and the former advocates for the 3rd Administrator have raised a preliminary challenge to the competence of the application dated 30th June 2025. The objections raised are threefold: that the summons is unsigned; that it was filed together with a defective Notice of Change of Advocates; and that the Notice of Change erroneously indicated a firm that had never been on record for the 3rd Administrator.
36. It is trite law that pleadings filed in court must comply with prescribed procedural requirements, including authentication through signature. However, the court must interrogate whether the alleged defects go to the root of the proceedings or are merely procedural lapses curable by the court in the interests of justice.
37. Article 159(2)(d) of the Constitution obliges courts to administer justice without undue regard to procedural technicalities. This principle has been consistently applied in succession matters, which are by nature family disputes, to avoid sacrificing substantive justice at the altar of form.
38. In the present case, notwithstanding the alleged defects, it is evident from the record that the Respondents clearly understood the nature of the application and responded to it substantively by filing detailed replying affidavits and submissions; The firm of J.M. Kimathi & Partners Advocates LLP, whose change was contested, filed a comprehensive replying affidavit and submissions, demonstrating that there was no ambiguity as to representation or prejudice occasioned and the court itself issued directions on the filing of submissions on the merits of the application, thereby treating the application as properly before it.
39. The purpose of a Notice of Change of Advocates is to notify the court and other parties of a change in representation. That purpose was achieved in this instance. Any clerical errors in the notice, including misdescription of the outgoing advocate, did not mislead the parties nor affect the substance of the dispute.
40. In *Belinda Murai & 9 Others v Amos Wainaina* [1979] eKLR, the Court of Appeal held that mistakes of counsel, even where negligent, should not be used to shut out a litigant from the seat of justice.
41. Accordingly, this court finds that the alleged procedural defects in the application dated 30th June 2025 are not fatal. They are curable irregularities which do not render the application incompetent. The court therefore proceeds to consider the application on its merits.



Whether the partial confirmation of grant issued on 3rd June 2025 ought to be annulled or revoked.

42. The 3rd Administrator seeks annulment or revocation of the partial confirmation of grant issued on 3rd June 2025, primarily on the grounds that the same was undertaken without his consent, without consensus among administrators and beneficiaries, and was tainted by alleged collusion between advocates to unlawfully inflate professional fees payable from the estate.
43. The legal basis for revocation or annulment of a grant is found under Section 76 of the [Law of Succession Act](#). A grant may only be revoked where it is shown, inter alia, that it was obtained fraudulently, through concealment of material facts, by making false statements, or where the proceedings were defective in substance.
44. In the present matter, it is not disputed that the partial confirmation related only to liquid assets and proceeds from the sale of motor vehicles, with distribution to be undertaken equally among all beneficiaries after settlement of professional fees. The distribution of immovable property was expressly left unresolved. The evidence before court including affidavits and annexed correspondence, demonstrates that a meeting was held on 21st March 2025 attended by all administrators and their advocates, during which agreement was reached on the distribution of uncontested assets. Further correspondence shows that the 3rd Administrator actively engaged on specific concerns regarding the categorisation of beneficiaries, concerns which were subsequently addressed by counsel.
45. While the 3rd Administrator contends that there was no written consent, the law does not require that agreement among administrators be reduced into a formal written consent in all instances. Consent may be inferred from conduct and participation in the process. The court is satisfied, on a balance of probabilities, that the 3rd Administrator was aware of and participated in the process leading to the partial confirmation.
46. As regards allegations of fraud and collusion between advocates, this court reiterates that fraud is a serious allegation which must be strictly proved. No cogent evidence has been placed before court to demonstrate fraudulent conduct or collusion sufficient to vitiate the partial confirmation. Disputes regarding advocates' fees, including the existence or interpretation of fee agreements, are matters appropriately addressed through taxation under the Advocates Remuneration Order or before the relevant disciplinary bodies and do not of themselves constitute grounds for revocation under Section 76. The partial confirmation did not prejudice any beneficiary as the distribution was equal and limited to uncontested assets.
47. Accordingly, this court finds that the Applicant has failed to establish any of the statutory grounds under Section 76 of the [Law of Succession Act](#) to warrant annulment or revocation of the partial confirmation of grant issued on 3rd June 2025.

Whether the 3rd Administrator is unfit to continue acting as an administrator of the estate and ought to be removed.

48. The 1st and 2nd Administrators seek the removal of the 3rd Administrator on grounds that he has persistently refused to cooperate, frustrated implementation of the confirmed grant, intermeddled with estate property and exposed the estate to wastage.
49. Under Sections 82 and 83 of the [Law of Succession Act](#), administrators are fiduciaries charged with the duty to administer the estate diligently, jointly and in the best interests of all beneficiaries. Where an administrator's conduct undermines these duties, the court has the power to revoke or vary the grant.



50. Rule 73 of the Probate and Administration Rules provides for the inherent power of the court as follows:-

“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.”

51. In re Estate of Elijah Mbono Ntheketha (Deceased) [2017] eKLR the court held:-

“The removal of an administrator amounts to revoking his appointment. Revocation of grants is provided for under section 76 of the Law of Succession Act. An applicant seeking to obtain such revocation must build a case founded on section 76.”

52. The persuasive authority of In re Estate of William Nzioka Mutisya (deceased) [2018] eKLR the court observed that:-

“It is however my view that the administrators may be removed from their duties where, due to wrangles and disagreements amongst themselves, it is impossible for them to proceed diligently with the administration of the estate ... In my view if the Court finds that the administrators are unable to properly administer the estate due to their disagreements, nothing stops the Court from removing them from the administration and appointing new administrators notwithstanding the issue of priority or preference. This must be so because section 66 of the Law of Succession Act provides that:

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interest of all concerned, be made.”

53. An application for removal of an administrator is supposed to be supported by consent of all other beneficiaries. In re Estate of Stephen Chege Kimari (Deceased) [2016] eKLR it was held as follows:-

“5. The application seeks removal of an administrator. The process of removal is akin to that of appointment. The consents of all concerned must be obtained, particularly if they rank equal or higher to the applicant in terms of entitlement to appointment. From the certificate of confirmation of grant, I have counted ten (10) survivors. None of them has filed any papers in support of the application.”

54. I am persuaded by the above authorities and while making reference to them, I note that in the summons dated 27th May 2025, seventeen (17) beneficiaries of the estate have been listed yet there is no evidence before court that the other beneficiaries were served with, notified of, or consented to the application seeking removal of the 3rd Administrator. There is similarly no indication that their views were sought or that they were even aware of the attempt to restructure the administration of the estate.

55. This omission is not a mere technical lapse. Removal of an administrator directly affects the interests of all beneficiaries and alters the governance structure of the estate. Proceeding in the absence of their participation or consent would offend the principles of natural justice and inclusivity that underpin succession proceedings.

56. Beyond the procedural deficiency, the court has also considered the substantive conduct complained of. While the evidence discloses strained relations among the administrators, missed meetings, and



disputes regarding the use and control of certain estate assets, the court is not persuaded that the conduct of the 3rd Administrator has reached a level of gravity that renders him wholly unfit to continue acting as an administrator.

57. The 3rd Administrator's conduct appears to stem more from mistrust and disagreement over process rather than from demonstrable dishonesty, incapacity, or wilful dissipation of the estate. These challenges, while disruptive, are amenable to correction through clear directions rather than outright removal. The court is also mindful that the estate has remained unadministered for an extended period, and that removing an administrator without the involvement of all beneficiaries may further entrench disputes rather than resolve them.
58. In the circumstances, this court finds that the application for removal of the 3rd administrator is not merited. However, the court equally finds that the current mode of administration is untenable without firm judicial oversight. It is therefore necessary to retain the 3rd Administrator but subject the administration of the estate to strict supervisory directions to ensure compliance with the law, protection of the estate, and expeditious conclusion of the succession cause.
59. The upshot is that;
- a. Both Applications; that is Application dated 30th June 2025 and Application dated 10th July 2025 are dismissed.
 - b. All administrators shall henceforth act jointly in all matters relating to the estate. No administrator shall unilaterally deal with, dispose of, use, lease, transfer, charge, or otherwise benefit from any asset of the estate without the concurrence of the other administrators or leave of the court.
 - c. Within fourteen (14) days, the administrators shall jointly appoint a licensed and independent motor vehicle valuer to value Motor Vehicle Registration No. KAT XXXG and upon valuation, to sell the motor vehicle and distribute the proceeds in accordance with the partial confirmed grant.
 - d. Within fourteen (14) days, the administrators shall jointly proceed to have the funds in Post Bank accounts in the name of the deceased shared equally among all the beneficiaries as per the partial confirmed grant.
 - e. Within fourteen (14) days, the administrators shall jointly proceed to have the funds in Absa Bank accounts in the name of the deceased administered as per the partial confirmed grant save for the funds in Absa Bank Account No. 2038584378.
 - f. Any dispute relating to advocates' fees shall be resolved through taxation under the Advocates Remuneration Order.
 - g. The administrators shall file a joint status report within sixty (60) days on the above.

Each party to bear their own costs of the application.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 14TH DAY OF JANUARY, 2026

RHODA RUTTO

JUDGE

In the presence of;



.....for 1st Administrator
.....for 2nd Administrator
.....for 3rd Administrator
Selina Court Assistant

