



In re Estate of Nelson Atieno Owuor (Deceased) (Succession Cause E008 of 2021) [2026] KEHC 766 (KLR) (30 January 2026) (Ruling)

Neutral citation: [2026] KEHC 766 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
SUCCESSION CAUSE E008 OF 2021**

OA SEWE, J

JANUARY 30, 2026

IN THE MATTER OF THE ESTATE OF NELSON ATIENO OWUOR (DECEASED)

BETWEEN

ROSE ADHIAMBO OWUOR 1ST PETITIONER

GEORGE KABAKA OWUOR 2ND PETITIONER

AND

LINDA ACHIENG OWUOR APPLICANT

RULING

1. This ruling is in respect of the summons dated 4th April 2025. The application was brought under Section 76 of the *Law of Succession Act*, Cap 160 of the Laws of Kenya, Rule 44 of the Probate and Administration Rules and Order 45 Rule 1 of the Civil Procedure Rules, 2010, for orders that:
 - (a) Spent
 - (b) Pending the hearing of the application for the cancellation of the Grant of the Letters of administration, this Honorable Court be pleased to direct the administrator to disburse a monthly stipend of Kenya Shillings One Hundred Thousand (Kshs. 100,000) from the estate account to the applicant for subsistence/reasonable provision effective April 2025 until the grant is cancelled and a new grant issued and/or distribution done.
 - (c) THAT the orders of the Court issued in respect of the application dated 15th October 2024 filed by George Kabaka Owuor (the respondent), be reviewed, varied or set aside.
 - (d) That the Grant of Letters of Administration intestate issued to George Kabaka Owuor on 26th November 2024 in respect of the estate of Nelson Atieno Owuor (deceased) be revoked and/or annulled.



- (e) That this Honorable Court be pleased to appoint the applicant as an administrator of the Estate of Nelson Atieno Owuor alongside Brenda Owuor Akinyi.
 - (f) That the Honourable Court be pleased to make such other or further orders as may be just and expedient in the circumstances.
 - (g) That the costs of this application be provided for.
2. The application was premised on the grounds that the respondent has grossly failed to administer the estate in a lawful, transparent, and equitable manner, thereby frustrating the very essence of justice and succession laws. The applicant further contended that, subsequent to the issuance of the of the Certificate of Confirmation of Grant dated 16th November 2023, the respondent developed hostility and indifference towards her and her siblings, thereby prompting her to seek legal redress vide Nairobi High Court Commercial E340 of 2024 but were directed to adjudicate their dispute in the Succession Court since the immovable assets were yet to be transferred to CHUMATECH Company as contemplated in the Certificate of Confirmation of Grant dated 16th November 2023.
 3. It was further the contention of the applicant that, despite the clear directive of this Honourable Court as encapsulated in the Certificate of Confirmation of Grant dated 30th March 2022, the administrator has blatantly disregarded the ordered mode of distribution, thereby rendering the grant ineffective and meaningless. She added that, rather than executing his fiduciary duties with diligence and impartiality, the respondent has cunningly maneuvered to benefit himself from the deceased's estate to the total exclusion of the applicant and her other siblings. She therefore prayed that reasonable provision be made for her under Section 26 pending the hearing and determination of the application for revocation of Grant.
 4. The application was supported by the averments set out in the applicant's affidavit sworn on 4th April 2025 to which she attached several documents including copies of the Grant of Letters of Administration Intestate issued on 30th March 2022, the Certificate of Confirmation of Grant and the Ruling delivered in Milimani High Court Civil Case No. E340 of 2024: Linda Achieng Atieno Owuor v Achach Estates Ltd & others. In essence, the applicant reiterated and expounded on the grounds of her application as set out herein above and prayed that the application be allowed and that the costs of thereof be provided for.
 5. The respondent opposed the application vide his Replying Affidavit sworn on 24th April 2025. He confirmed that he is a son of the deceased and that they are siblings with the applicant. The respondent further stated that, initially a Grant of Letters of Administration Intestate dated 30th March 2022 was issued to him and his sister Rose Adhiambo Owuor, who is now deceased; and that upon confirmation of the said Grant on 13th December 2023, they commenced the process of collecting and consolidating the assets of the deceased to be put under one trustee company known as Achach Limited for proper management.
 6. The respondent further averred that Achach Limited was registered on 27th July 2022 under the [Companies Act](#), 2015; and that its five directors are the siblings and beneficiaries of the estate of the deceased; namely:
 - (a) Linda Achieng Owuor – daughter (the applicant)
 - (b) George Kabaka Owuor – son (the respondent)
 - (c) Juliet Awino Owuor – daughter
 - (d) Brenda Akinyi Owuor – daughter



- (e) Rose Adhiambo Owuor – daughter
7. The respondent explained that, upon the death of Rose Adhiambo Owuor, he moved the Court on 15th October 2024 for orders that the Grant of Letters of Administration issued on 30th March 2022 and the Certificate of Confirmation be revoked and or set aside and a fresh Grant issued in his sole name. The application was allowed and an Amended Grant of Letters of Administration and Certificate of Confirmation were issued to him on 26th November 2024. He pointed out that the Amended Grant and Certificate of Confirmation recognized that all the assets comprising the estate of the deceased were to be transferred to Achach Limited with the surviving four beneficiaries as the directors.
8. It was therefore the contention of the respondent that the instant application for reasonable provision from the estate is premature as the applicant is not facing any financial distress. He also denied the allegations that he has mismanaged the estate and averred that, due to the toxic nature of the applicant he has had to support her through their sister, Brenda Owuor. The respondent annexed several documents to his affidavit in support of his averments, including the Amended Grant and Certificate of Confirmation as well as M-Pesa Payment Schedules to prove the financial support rendered to the applicant over time. He consequently prayed for the dismissal of the application.
9. With the leave of the Court, the applicant filed a Further Affidavit sworn by her on 7th May 2025. She refuted the assertion by the respondent that he started the process of collection of the assets of the deceased after the issuance of the Amended Certificate of Confirmation and pointed out that it was over 5 years since the death of the deceased. She further averred that although she is named as one of the directors of Achach Estates Limited, the operations of the company have been marred with secrecy; and that it was such secrecy that prompted her to file Nairobi HCCOMM Case No. E340 of 2024 through which she got to learn that the assets were yet to be transferred to the company. The applicant reiterated her stance that the respondent has mismanaged the estate of the deceased and neglected the needs of the beneficiaries to the extent that she is no longer interested in having the estate assets transferred to the trust company.
10. The application was canvassed by way of written submissions, pursuant to the directions given herein on the 23rd April 2025. In her written submissions dated 8th May 2025, the applicant proposed three issues for determination, namely:
- (a) Whether the applicant should receive a reasonable provision of Kshs. 100,000/= pending the hearing and determination of the application;
 - (b) Whether the application merits the threshold for revocation and annulment of the Grant of Letters of Administration issued on the 26th November 2024; and,
 - (c) Whether the applicant and her sister Brenda Achieng Owuor should be appointed as the new administrators upon revocation of the Grant of Letters of Administration issued on 26th November 2024.
11. From the manner in which Prayer [a] is crafted, it would seem that it has been overtaken by events if the application envisaged thereby is the one the subject of this ruling. But even assuming that the applicant had in mind the substantive Petition, it is significant that she hinged her application on Section 26. She submitted that under Section 26 of the *Law of Succession Act* it is permissible for reasonable provision to be made to any of the beneficiaries from the estate where the interests of justice so demand. She contended that the respondent has neglected her and used the estate assets for his personal gain; and



- therefore sufficient cause has been made in support of the prayer for reasonable provision for her from the estate.
12. It was also the contention of the applicant that the Amended Grant was stealthily obtained by the respondent without notice to the other beneficiaries and therefore is null and void. She relied on *Re Estate of Moses Wachira Kimotho (Deceased) Succession Cause No. 122 of 2002 [2009] eKLR* and *In the Matter of the Estate of Ngari Gatumbi alias James Ngari Gatumbi (Deceased) Nairobi High Court Succession Cause No. 783 of 1993 (UR)* and urged the Court to revoke the Grant issued to the respondent on 26th November 2024.
 13. Further to the foregoing, the applicant urged the Court to find that the firm of M/s Nyamolo & Company Advocates is not properly on record since no leave was obtained beforehand for the said firm to come on record in place of the respondent's previous Advocates. She accordingly argued that the process leading to the revocation of the previous Grant to date is tainted with irregularity and ought to be set aside. In support of this submission, the applicant relied on Order 9 Rule 9 of the Civil Procedure Rules, her contention being that the change of advocates occurred after judgment had been entered in the matter.
 14. Lastly, the applicant submitted that, upon revocation of Grant, it would only be fair and just that she and her sister Brenda Owuor, be appointed the administrators of the estate of their deceased father. She therefore prayed that her application be allowed and the orders sought granted.
 15. On his part, the respondent proposed the following issues for determination in his written submissions dated 20th May 2025:
 - (a) Whether the application under Section 26 of the *Law of Succession Act* is merited;
 - (b) Whether the administrator has failed in his statutory duties under Section 83 and 94 of the *Law of Succession Act*;
 - (c) Whether the applicant is approbating and reprobating.
 16. In the submission of the respondent Section 26 applies in circumstances whether the applicant is either left out at the time of distribution or is not reasonably provided for. He therefore contended that since the applicant is a registered shareholder of Achach Estates Limited which holds the entire estate in trust, she enjoys equal ownership, rights and entitlement to the estate property and income as the respondent and their other siblings. He therefore contended that the said provision is inapplicable. In addition, the respondent relied on Section 30 of the Act and the decision made in *Estate of Julius Mimano (Deceased) Succession Cause No. 417 of 2005* to support his argument that the application has been overtaken by events, having been brought after confirmation of Grant.
 17. On whether he has failed as an administrator in discharging his statutory duties under Sections 83 and 94 of the Act, the respondent submitted that, so far, he has taken deliberate steps to register a corporate trustee and included all the heirs including the applicant as co-equal shareholders. He further submitted that to avoid dissipation of the assets he applied for Amendment of Grant following the death of his co-administrator. He therefore urged the Court to find that no tangible evidence, by way of bank statements, transaction records or audits, has been adduced by the applicant to show any form of mismanagement of the estate of the deceased.
 18. Lastly, the respondent submitted that, as a director of Achach Estates Limited, the applicant has previously received monies from the company; and therefore she cannot now deny the existence of the company and the purpose for which it was formed. The respondent relied on *Re Estate of the late Joseph Muhika Irungu (Deceased) Succession Cause 441 of 2011 [2024] KEHC 2316 (KLR)* (1



March 2024) Par 38 and Re Estate of Mary Mumbi Gitiriba (Deceased) (Succession Cause 003 of 2022) [2023] KEHC 17760 (KLR) (18 May 2023) (Ruling) for the proposition that a party cannot approbate and reprobate as the applicant purports to do. He therefore urged the Court to dismiss the application with costs.

19. I have given careful consideration to the application as well as the submissions made by learned counsel on behalf of the parties. Starting with the technical point raised by the applicant as to whether the firm of M/s Nyamolo & Co. Advocates is properly on record, a perusal of the Court record shows that initially the respondent was acting in person. Thereafter, from 17th September 2024, he appointed the firm of M/s Luseno & Otieno Advocates to act for him. The said firm was replaced by the current advocates, M/s Nyamolo & Company Advocates and a Notice of Change to that effect dated 24th April 2025 was duly filed herein to formalize that change.
20. The applicant now contends that since that change was made after judgment, leave of the Court was a prerequisite; and since no leave was applied for or granted, the application and its consequential proceedings are null and void. The applicant relied on Order 9 Rule 9 of the Civil Procedure Rules, which states:
- “When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—
- (a) upon an application with notice to all the parties; or
- (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”
21. I have no hesitation in rejecting the applicant’s argument for the simple reason that succession proceedings are not as straightforward as proceedings in an ordinary civil suit; and therefore it cannot be said that in this matter a final “judgment” so to speak, has been rendered. The Grant of Letters of Administration Intestate as initially issued and confirmed has since been set aside and another one issued dated 26th November 2024 thereby opening up the proceedings afresh. The administrator is yet to render account and therefore for all intents and purposes, the matter is still pending.
22. More importantly, the application was anchored on the provisions of the Civil Procedure Rules, yet Rule 63 of the Probate and Administration Rules is explicit that only specific provisions of the Civil Procedure Rules can be imported to such proceedings. It states:
- “(1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Order 5, rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45 and 50 (Cap. 21, Sub. Leg.), ... shall apply so far as relevant to proceedings under these Rules.
23. It is therefore plain from the above provision that Parliament did not intend that proceedings under the *Law of Succession Act* be attended with procedural technicalities, particularly the detailed procedural rules provided for in the *Civil Procedure Act* and the Rules thereunder. Indeed, in *Josephine Wambui v Margaret Wanjiru Kamau & Another* [2013] eKLR the Court of Appeal held that:
- “...the *Law of Succession Act* is a self-sufficient Act of Parliament with its own substantive law and Rules of procedure. In the few instances where the need to supplement the same



has been identified some specific rules have been directly imported to the Act through Rule 63(1).”

24. Consequently, I reiterate the expressions of Hon. Mativo, J. in *Josiah Mwangi Mutero & Another v Rachael Wagithi Mutero* [2016] eKLR, that:

“The High Court has in numerous pronouncements severally stated that the other provisions of the *Civil Procedure Act*[25] and Civil Procedure Rules, that is those not mentioned in rule 63 ... are of no application at all in proceedings under the *Law of Succession Act*. [26] For example, Khamoni J in the matter of the estate of Joseph Mwinga Mwagana-deceased[27] said in an application brought under Order XL1 Rule 4 of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act*,[28] that the said provisions did not apply as probate proceedings are governed by their own rules of procedure and added that the *Civil Procedure Act*[29] and Rules only apply where allowed by rule 63 of the Probate and Administration Rules...” (emphasis added)

25. It is, consequently my finding that the applicant’s objection to the coming on record of the firm of M/s Nyamolo & Co. Advocates lacks merit and is for dismissal.

26. That said, the parties are in agreement that as siblings they have equal rights to the estate of their deceased father; and that the respondent and Rose Owuor (now deceased) were by consent appointed as the administrators of the deceased’s estate. There is no dispute that upon the demise of Rose Owuor, an application was filed herein on behalf of the respondent and the other beneficiaries for a new Grant to be issued in the name of the respondent. The court record shows that the application was allowed and orders granted as prayed on 26th November 2024. A fresh Grant was accordingly issued to the respondent which the applicant wishes to have revoked. The applicant contends that it was stealthily obtained by the respondent without notice to the other beneficiaries. Therefore, in view of the prayers in the application dated 4th April 2025, the issues for consideration are:

- (a) Whether reasonable provision ought to be made for the applicant as prayed:
- (b) Whether sufficient cause has been shown for revocation of the Grant of Letters of Administration Intestate issued herein on 26th November 2024.
- (c) What consequential orders ought to issue.

A. On the making of reasonable provision for the applicant:

27. Section 26 of the *Law of Succession Act* provides that:

“Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased’s estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased’s net estate.”

28. It is plain then that such reasonable provision can only be in respect of those dependants who are excluded or for whom reasonable provision is not made, in this case, upon distribution of the estate of the deceased by operation of the law relating to intestacy. In this instance, the applicant has been included right from the beginning as a dependant of the deceased in pari passu with the respondent.



She was in agreement with the assets being transferred to a trust company long before the Grant of 26th November 2024 was issued to the respondent. It is clear from the Certificate of Confirmation in respect of the first grant that the parties were in agreement as to the formation of the trust company. That must be why she, at some point, filed a suit before the Commercial Court against the said company.

29. Moreover, the circumstances that ought to be taken into account in respect of such applications, as set out in Section 28 of the Act, have not been demonstrated. In making provision for a dependant the Court is under obligation to take into account, not only the overall nature and amount of the estate but also the interest of the other dependants, among other considerations. It provides that:

“In considering whether any order should be made under this Part, and if so what order, the court shall have regard to—

- (a) the nature and amount of the deceased's property;
- (b) any past, present or future capital or income from any source of the dependant;
- (c) the existing and future means and needs of the dependant;
- (d) whether the deceased had made any advancement or other gift to the dependant during his lifetime;
- (e) the conduct of the dependant in relation to the deceased;
- (f) the situation and circumstances of the deceased's other dependants and the beneficiaries under any will;
- (g) the general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant.”

30. No attempt was made by the applicant to justify the amount of Kshs. 100,000/= vis a vis the income accruing from the estate, or the situation and circumstances of the other beneficiaries. More importantly, Section 30 of the *Law of Succession Act* is explicit that:

“No application under this Part shall be brought after a grant of representation in respect of the estate to which the application refers has been confirmed as provided by section 71.”

31. I am in agreement with the position taken in Estate of Julius Mimano that:

“...such an application can only be made before the grant was confirmed. The grant was confirmed in 2006, the prayers for reasonable provision were therefore overtaken by events. The applicant has not demonstrated that there is room for extension of the period for filing such an application after grant has been confirmed.

32. In the premises, it is my finding that the prayer for reasonable provision is not only unfounded but has also been overtaken by events.



B. Whether the applicant has made out a good case for revocation of the Grant of Letters of Administration Intestate issued on 26th November 2024:

33 The summons for revocation of grant was filed under Section 76 of the *Law of Succession Act*. That provision states:

“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.

34 It was the contention of the applicant that the Amended Grant was stealthily obtained by the respondent without notice to the other beneficiaries and therefore is null and void. She relied on *Re Estate of Moses Wachira Kimotho (Deceased) Succession Cause No. 122 of 2002 [2009] eKLR* and *In the Matter of the Estate of Ngari Gatumbi alias James Ngari Gatumbi (Deceased) Nairobi High Court Succession Cause No. 783 of 1993 (UR)* in which it was held that a grant will be revoked where a person who is entitled is not notified by the petitioner of their intention to apply and that person’s consent to the petitioner’s application is not sought.

35 In this instance, the consent of the applicant and the other beneficiaries was obtained for issuance of Grant to the respondent as joint administrators with Rose Owuor. The record also confirms that the parties had agreed well before the death of Rose Owuor that the assets comprising the estate transferred to Achach Estates Ltd, a trust company incorporated on the 27th July 2022. All the five beneficiaries, including Rose Owuor and the applicant were listed as directors and shareholders of the company.



The Certificate of Confirmation of the first Grant indicated that all the assets would be transferred to Achach Estates Limited.

- 36 In the circumstances, the respondent did not have to apply for revocation or the issuance of a fresh Grant. This is because Section 81 of the *Law of Succession Act* vests powers in the surviving administrator to proceed with the administration of the estate. It provides as follows:

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them...”

- 37 The respondent, as the surviving administrator is perfectly entitled to proceed with the administration of the estate of the deceased to conclusion; and although mismanagement was alleged by the applicant, no proof thereof was availed to warrant the intervention of the Court by way of revocation of Grant. In particular, the applicant failed to demonstrate that the Amended Grant was obtained fraudulently, or that it was obtained by means of an untrue allegation of a fact essential in point of law. Indeed, from the date of the Amended Grant, it cannot be said that the applicant had failed to act within the ambit of Section 76(d) of the *Law of Succession Act*.

C. What orders ought to issue:

- 38 It is nevertheless significant that, at the time of confirmation of Grant, an order was made by the Court for the income accruing to the estate to be shared equally amongst the beneficiaries in the form of dividends. Since the applicant alleges that she has been left out of such proceeds, the solution, in the circumstances, is not revocation of Grant but accounts. Rule 83(h) of the Probate and Administration Rules provides that the Court, of its own motion, can require an administrator to furnish accounts before distribution. It states that one of the duties of an administrator is:

“...to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.”

- 39 In the premises, while I find no merit in the application for revocation of Grant, it is imperative that an account be presented by the respondent of all the proceeds received from the estate from 30th March 2022 to date for further directions. Accordingly, it is hereby ordered that:

- (a) The application dated 4th April 2025 be and is hereby dismissed with no order as to costs.
- (b) An account be rendered by the respondent of the proceeds accruing to the estate from 30th March 2022 to date.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT HOMA BAY THIS THIS 30TH DAY OF JANUARY 2026

OLGA SEWE

JUDGE

