



In re Estate of Elijah Ongoro Mogaka (Deceased) (Succession Cause 525 of 2010) [2026] KEHC 694 (KLR) (16 January 2026) (Ruling)

Neutral citation: [2026] KEHC 694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION CAUSE 525 OF 2010
TA ODERA, J
JANUARY 16, 2026
IN THE ESTATE OF ELIJAH ONGORO MOGAKA (DECEASED)**

BETWEEN

RICHARD LUKE NYAMBATI APPLICANT

AND

CHRISTINE OBIRI NYAMBATI 1ST RESPONDENT

SUSAN NYAMBATI 2ND RESPONDENT

RULING

1. By a Summons for Revocation of Grant filed under a Certificate of Urgency and dated 31st August 2023, filed through the firm of Linet Miencha & Co. Advocates, brought under Sections 47 and 76 of the Law of Succession Act, Cap 160 of the Laws of Kenya, and Rules 26(1) and 44(1) of the Probate and Administration Rules, 1980, Section 68(1) of the Land Registration Act, the Applicant herein seeks the following orders: -
 1. That the Court be pleased to issue summons for revocation and/or annulment of grant issued to the Respondents.
 2. That the grant made to Christine Nyambati And Susan Nyambati on this 10th day of February 2012, be revoked on the Grounds that:
 - a. That the proceedings to obtain the Grant were defective in substance;
 - b. That the Grant was obtained fraudulently by making of false statements and/or by concealing of material facts from Court on something material to this case.
 - c. That the grant was obtained by means of an untrue allegation (sic) of a fact essential in point of law to justify the grant.



- d. That the Grant was issued without notice to the legitimate beneficiaries.
 - e. That the Grant was obtained by means of untrue allegations and misrepresentation of facts particularly that the Respondents alienated the primary and sole dependants being the Applicant's family and claimed a spousal interest;
 - f. That the grant was obtained by means of untrue allegations and misrepresentations of facts particularly that the Respondents are total strangers to the estate of the deceased and to the Applicant's family.
3. That this Honourable Court be pleased to issue orders of eviction and/or permanent injunction to the Respondent either by herself, her agents, servants, personal representative, assigns or such other person under instructions from entering upon, developing, erecting or in whatever manner trespassing on to land registration Title Deed No. Nyansiongo/Scheme/522 the same having been sub-divided fraudulently in the year 2004 and/or illegally issuing of the purported Title Deeds No. Nyansiongo/Settlement/Scheme/991, 992 and 1012 even before succession process was initiated.
 4. THAT costs of the Application be provided for.
2. The Application was supported by an Affidavit sworn by Richard Luke Nyambati, the Applicant herein. He deponed that he is one of the heirs, dependents and/or beneficiaries of the Estate of Elijah Ongoro Mogaka (Deceased) with authority to swear the Affidavit on his own and on behalf of Francis Mogaka, Everlyne Nyambati and Lucy Nyambati, the Applicants' siblings. He deponed that the Respondents concealed material facts and obtained the grant by means of untrue allegations. He deponed that the Land Parcel No. Nyansiongo/ Settlement/ Scheme/ 522 was unlawfully and/or illegitimately sub-divided in 2004 without any succession proceedings and the said sub-division gave rise to Land Parcel Nos. Nyansiongo/ Settlement/ Scheme/ 991, 992 and 1012. The Deceased passed away on 9th April 2003. He further deponed that their late father, Kennedy Nyambati Ongoro, passed away on 9th January 1998 and was the only surviving son of the Late Elijah Ongoro Mogaka, the Deceased herein. He deponed that their late father had one wife, Margaret Barongo, who passed away on 15th August 2010. The Late Elijah Ongoro Mogaka had 2 wives, the 1st wife died whilst the 2nd wife, NAOMI NYABOKE MOGAKA, is still alive. He further deponed that the Deceased, Elijah Ongoro Mogaka, was the registered owner of Land Parcel No. Nyansiongo. Settlement/ Scheme/522 and other parcels of land. After his death, his Estate was intermeddled with and his land was illegally subdivided and allocated to the intermeddlers. The Title Nos. Nyansiongo/ Settlement/ Scheme/ 991, 992 and 1012 were closed on 11th June 2003. However, the Respondents and Joseph Mokaya Migiro registered themselves as the proprietors: Nyansiongo/ Settlement/ Scheme/ 991 was registered in the name of Joseph Migiro Mokaya and a title issued on 12th March 2004; Nyansiongo/ Settlement/ Scheme/ 992 and 1012 titles were issued on 6th June 2004 and 9th August 2012 respectively.
 3. He deponed that their grandmother, and wife of the Late Elijah Ongoro Mogaka, Naomi Nyaboke Mogaka, petitioned for a grant over the Deceased's Estate vide High Court Kisii Succession Cause No. 124'B' 2012 Estate of Elijah Ongoro Mogaka (Dcd) which she did not follow up on, on account of her age and intimidation and threats from known and unknown people. He deponed that Naomi Nyaboke Mogaka wrote to various offices on account of the illegal subdivision and alienation of her late husband's land. He alleged that the Respondents and the Joseph Migiro Mokaya fraudulently, and without their consent, knowledge or notice from the beneficiaries of the Estate, subdivided the suit properties without following the procedures under the [Law of Succession Act](#).



4. He deponed that he raised a complaint on 20th January 2020 with the Area Chief who then wrote to the County Land Registrar of Nyamira and requested for an investigation into the matter. The then Land Registrar summoned the relevant Parties to appear before him with their relevant documentation but the Respondents and Joseph Migiro Mokaya declined to surrender their documents. He deponed that he also instituted a succession suit over the Deceased's Estate vide Keroka PMSUCC No. E041 of 2022 Estate of Elijah Ongoro Mogaka, and became the Administrator of the Estate of the Deceased herein.
5. He deponed that he filed a suit against Joseph Migiro Mokaya, in Keroka PMELCC No. E016 of 2021. The 1st Respondent filed an application in Keroka PMELCC No. E016 of 2021 seeking to be joined as an interested party, which application was, however, dismissed. The 1st Respondent subsequently filed a new matter Keroka PMELCC No. E009 of 2023 wherein she sued the Applicant herein for trespass in Land Parcel No. Nyansiongo/ Settlement/ Scheme/ 1012 which she claimed belonged to her. Keroka ELC No. E016 of 2021 was put into abeyance pending the determination of Keroka PMELCC No. E009 of 2023. Subsequently, Keroka ELCC No. E009 of 2023 was dismissed. He deponed that the 1st Respondent produced a copy of the Grant of the Letters Intestate for the Estate of Elijah Ongoro Mogaka naming her as one of the Administrators and consequently, Keroka ELCC No. E016 of 2021 was again put in abeyance pending the revocation or otherwise of the 1st Respondent's Grant in the instant succession proceedings.
6. He deponed that the 1st Respondent only included her children as the beneficiaries of the Estate of the Late Elijah Ongoro Mogaka. At the time of filing the succession proceedings, the Applicant's mother was alive but was not included in the succession proceedings. He deponed that the Respondents intentionally failed to include all the Deceased's dependents and thereby fraudulently obtained a grant. He deponed that his father, the Late Kennedy Nyambati Mogaka, only had one wife, Margaret Barongo, who died in 2010. He deponed that the 1st Respondent was therefore not a legitimate wife of the Late Kennedy Nyambati Mogaka and there was no proof towards that assertion. He deponed that the Late Elijah Ongoro Mogaka did not have 4 surviving dependents. He deponed that the 4 listed dependents Christine Nyambati, Susan Nyambati, Jackline Nyarangi Nyambati And Clinton Mogaka NYAMBATI were unknown to them. Further, the Late Kennedy Nyambati Mogaka died in 1998, but Clinton Mogaka Nyambati was 7 years old in 2012 and could therefore not be his child. He further deponed that Susan Nyambati, Jackline Nyarangi Nyambati and Clinton Mogaka Nyambati were not their siblings neither were they their stepsisters and stepbrother respectively.
7. He deponed that the 1st Respondent was registered as the proprietor of Title No. Nyansiongo/ Settlement/ Scheme/ 992 on 6th December 2004 whilst the succession proceedings were filed on the year 2010 and confirmed on 10th February 2012. He deponed that the 1st Respondent was also in possession of a Title Deed for Land Parcel No. Nyansiongo/ Settlement/ Scheme/ 1012 issued on 9th August 2012 in her name only. However, the Applicant deponed that vide a Green Card dated 15th May 2023, Land Parcel No. Nyansiongo/ Settlement/ Scheme/ 1012 was initially registered in the names of 3 people meaning that the said land parcel had 2 different Title Deeds.
8. He deponed that the Chief's letter dated 26th April 2010, produced by the Respondents when filing the succession proceedings in Kisii HCSUCC No. 525 of 2010 Estate of Elijah Ongoro Mogaka, was drawn by masquerader. He accused respondents the Respondents intermeddled with the Deceased's Estate and effectively disinherited the Applicant and his siblings. He prayed that his application be allowed as prayed.
9. The 1st Respondent filed a replying affidavit dated 8.12.23 in which she denied that the grant was obtained fraudulently as alleged by the petitioner. He described herself as the wife to Kennedy Nyambati Mogaka (deceased) who was the only son to Elijah Ongoro Mogaka the deceased herein.



She said that Kennedy predeceased Elijah leaving her with 3 children i.e Susan Nyaboke Nyambati, Jackline Nyarangi Nyambati and Bill Clinton Nyambati as per the Birth certificates “CN1” Also that deceased had two houses and Kennedy was from the first house. She told this court that deceased subdivided his land in two portions before his death and gave land parcel no. Nyansiongo Settlement scheme / 521 for the 1st house and Nyansiongo Settlement scheme / 522 for the 2nd house. Also, that on or before 3.6.1994 before her husband died, deceased instructed him to sell a portion of land i.e 3.25 acres belonging to the 1st house to one Joseph Mokaya Migiro as per the sale agreement “CN2”. Also, that in the year 1996 the deceased intended to subdivide the property of the 1st house i.e Land parcel no. Nyansiongo Settlement scheme/ 522 into 3 portions with the intention of transferring the same to the purchaser, Kennedy and himself. He obtained consent dated 5.3.1996 for the intended subdivision (CN3). Subdivision was finalized on or about 6.2.2003 and title numbers Nyansiongo Settlement scheme/ 991, 992 and 1012 were born. Also, that registration fees for mutation was paid and the form was received in land registry on 6.2.23 and the delay in registration of the titles was caused by the lands registry. She further deponed that deceased died on 9th April 2003 before registration of parcel numbers 991, 992 were distributed and that only land parcel 1012 was available for distribution by then. She said that she took out letters of administration herein as a matter of right since deceased had distributed property for the 2nd house during his life time. Also, that the chief’s letter issued in this cause was proper as it was issued by the Assistant chief who was holding fort for the senior chief who was on leave. Also, that the objector misleads the court in Keroka succession cause no E041 of 2021 and obtained letters of administration claiming that he was a dependent/beneficiary of the estate of Elijah knowing so well that this cause existed and that he was not a beneficiary. (“CN 6”). Also, that the chief properly introduced her vide the letter dated 26.4. 2010 (“CN 5”) introducing her and her children as the dependants of the deceased. Further that this cause was gazzetted as per gazette notice “CN 7” and there was no objection and hence letter of administration were issued and later confirmed. Further that the applicant has not provided proof of paternity.

10. The Objector file a response to reply by the 1st respondent denying the allegations in the replying affidavit and reiterating that the grant was fraudulently obtained and is for revocation.
11. The objector called 8 witnesses to support his case. he testified as PW1 and told this court that he is a son is Kennedy Nyambati and Margaret Bironga (Both deceased) and that Elijah Ongoro Mogaka the deceased herein is his grandfather. He termed respondents as strangers to him and that they obtained the letters of administration herein fraudulently. On cross examination he said that he, his siblings and their mother was chased away the home of their father by his grandmother Naomi who brough in the respondents upon the demise of his father. He admitted that under Gusii customary law a married woman is usually buried in her matrimonial home even if she has left the home. He said that his parents and grandfather sold land to about 6 pe4ople including joseph Migiro. PW2 Everlyne Moraa Nyambati also said she is a daughter to Kennedy and a blood sister to Pw1. She supported the evidence of PW1 in all material aspects. On cross examination she said that she was born in 1989 and PW1 also said he was born in 1989. She denied being a twin to Pw1. She denied that the years of birth were fraudulent. PW3 Donald Musongo Mageka. He said he knows Richard Luke as he bought land from his father in 1994. Pw4 Francis Nyambati Mogaka isa brother to PW1 and PW2. He said he is a son to Kennedy. He also supported the evidence of PW1 and PW2. On cross examination he said he was born in March 1998 but his national identity card indicates he was born in the year 2001. Also that his father died in January 1998. He said his mother was living with his maternal grandmother when he was born. Robina Nyakerario (PW5) Abisai Okara Osiemo (Pw6), Mary Mwambu (Pw7) Robina Kwamboka (Pw8) all supported the evidence of PW1 that he was a son to Kennedy and they were being chased from his home by the 1st respondent who is his 2nd wife.



12. Christine Obiri Nyambati the 1st respondent herein testified as Dw1, she denied that the grant was obtained fraudulently. She stated that she is the only widow to Kennedy Nyambati and herself and her 3 children are his legal heirs. She said that Elijah Ongoro Mogaka the deceased herein had two houses, that is the house of the mother to her husband and the 2nd house of Naomi. She said that the grant herein was obtained procedurally and that deceased has shared out land to both his first and 2nd houses during his life time and the first house got land no 522 while the 2nd house got 521. Also, that 522 was subdivided into 3 portions 991, 992 and 1012 also transferred the same to Joseph Migiro a purchaser and herself as a representative of the 1st house and land no. 1012 which remained in the name of Elijah. She said the mutation was lodged in the life time of deceased but blamed the lands office for delay in registration. On cross examination she said she had 3 children with deceased i.e Susan Nyaboke, Nyambati, Jackline Nyarangi Nyambati and Bill Clinton. she said that in the year 2019 that Luka PW1 invaded land parcel no 1012 while alleging that Kennedy was his father. She said there are also trespassers on land parcel no 992 and that she has now been rendered homeless. On cross examination she stated that she said that Bill Clinton was born in the year 2006 after the death of the deceased. She said deceased obtained a consent to transfer the land to himself and that deceased also took her to the land board. Dw2 Hudson Mogaka is a cousin to Christine the 1st respondent herein. He supported the evidence of Dw1 that she is the only wife to Kennedy and that he was close to him but he never mentioned that he had a second wife or children out of wedlock. Dw3 Isaac Ombega is an uncle to Kennedy and a brother to the deceased herein. He supported the evidence of Dw1 and Dw2 that Dw1 was the only wife of deceased and that this was not challenged during the funeral. Dw4 Musa Nyandusi is a brother to Dw1, he supported the evidence that Dw1 is the only widow of Kennedy.
13. Both parties filed submissions to support their respective cases

Determination

14. I have considered the objection, the response, the reply to response and the able submissions by both parties. The issues for determination are as follows;
- a. Whether the objector and his siblings were dependants Elijah Ongoro Mogaka the deceased herein and or whether the 1st respondent and her children were dependants of the deceased herein.
 - b. Whether the objector had locus standi to file the instant objection and Keroka Succession cause no. E041 of 2021.
 - g. Whether there is sufficient evidence to warrant revocation of grant herein under Section 76 of the *law of Succession Act*.
 - i. What is the fate of the grant in Kisii High court succession cause no 124 B of 2012 filed by Naomi Nyaboke Mogaka an alleged to the deceased herein?
15. The law on revocation of grants is anchored on Section 76 of the *law of Succession Act* 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.”
15. Under section 76 of the *law of Succession Act*, a court may revoke a grant so long as any of the grounds listed (a)-(e) are disclosed, either on its own motion or on application by a party.
16. On whether the objector and his siblings were dependants of deceased Section 29 of the Act provides that;

A Dependant is -

The wife or wives and children of the deceased, regardless of whether they were maintained by the deceased immediately prior to their death.

The deceased's parents, step-parents, grandparents, grandchildren, step-children, children taken into the family as their own brothers, sisters, and half-brothers/half-sisters, provided they were being maintained by the deceased immediately before their death.

17. The Objector told this court that he and his siblings Francis Mogaka, Everlyne Nyambati and Lucy Nyambati are children of Kennedy Nyambati and their mother Margaret Barongo (Also deceased). He told this court that their father was a son to Elijah Ongoro Mogaka the deceased herein and thus they are entitled to inherit the estate of their said grandfather. This was denied by the 1st respondent who stated that she was the only wife to Kennedy. Objector denied that the 1st respondent was a wife to deceased and said she and his children are strangers to him and that Clinton was born in 2006 after the death of deceased. The objector admitted on cross examination that his mother is deceased and was buried at her parents' home also that under Ekegusii customary law a married woman is usually buried in her matrimonial home. Pw2 Everline Moraa Nyambati admitted that she was born in the year 1989 (as per her birth certificate in the bundle RLN-2)which is the same year of birth as the objector as per his national identity card(as in RLN -2). Pw4 Francis Nyambati on his part also said he was born in the year 1998 as per his birth certificate but his national identity card showed that he was born in the year 2021. Pw2 and PW4 were at pains to explain the discrepancy in their dates of births. I have al.so seen the death certificate of Margaret Barongo the alleged mother of the objector and his siblings (RN6). The same indicates that she died on 15.8.2010 at the age of 27. This means she was born on or about the year 1983 and she gave birth to Richard Luke Nyambati the objector herein at the age of 6. Margaret was a child of tender years of 6 in 1983 going by her death certificate and was not of age to give birth to Pw1 and PW2 that year. In any event PW2 denied that she is a twin of PW1. It is thus clear that the birth certificate and identity cards produced by the objector were specifically made to suit



this case and are thus fraudulent documents. No iota of evidence was produced to show that Margaret was married to Kennedy Son of Elijah Ongoro Mogaka (deceased herein). It the evidence of PW1 was that his mother was married in her parents' home and the petitioner took issue with this. The place of burial of the Margaret does not matter herein as a person has a right to be buried where he wishes. The 1st respondent (Dw1) and her witnesses Dw2 -Dw4 denied that Margaret was married to Kennedy and that they were blessed with 4 children as alleged herein above. The witnesses of Dw1 acknowledged her as the only wife to Kennedy and that she had children with him her children to be those of her husband. i.e Susan Nyaboke Nyambati, Jackline Nyarangi Nyambati and Bill Clinton Nyambati. The answer to the inconsistencies in the evidence adduced by the objector is found un the evidence the evidence adduced by the respondent. The 1st respondent is the sole widow of Kennedy Nyambati son of Elijah Ongoro Mogaka the deceased herein. The 1st respondent and her children were thus dependants of deceased heirs and her children are Susan Nyaboke Nyambati and Jackline Nyarangi Nyambati were dependants of deceased.

18. On whether the objector had locus standi to file Keroka Succession cause no. E041 of 2021 and the objection herein, having found that the objector is a stranger to the estate of the deceased herein, it then follows that he had no locus standi to file Keroka Succession cause no. E041 of 2021 and the instant objection. I proceed to revoke the letters of administration issued in Keroka Succession cause no. E041 of 2021 and any consequential orders.
19. On whether there is sufficient evidence to warrant revocation of the grant herein under Section 76 of the *law of Succession Act*, considering t6he foregoing findings, I hold that the objector has not made a case to warrant revocation of the grant issued to the respondents herein on. I decline to revoke the grant.
20. On the fate of the grant in Kisii High Court succession cause no 124 B of 2012 filed by Naomi Nyaboke Mogaka an alleged widow of the deceased herein, it has emerged that the said Naomi and alleged widow of deceased filed the said cause relating to the estate of the deceased herein and had the grant confirmed on 11.2.2016 in the said grant she recognized the 1st respondent and provided for her. In essence this means there are now two grants relating to the estate of the deceased herein. It is trite law that there can only be one succession cause and one grant in respect of a deceased person. The said Naomi was not a party to the objection proceedings herein. I direct that Naomi be availed in court on 18. 2.26 for further directions on the two grants.
21. Each party will bear his own costs

T.A ODERA

JUDGE

16. 1.26

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF

Janira holding brief for Mr. Mogute for the 1st and 2nd Respondents.

Court Assistant Mr. Kipchirchir.

No Appearance for The Objector

