



REPUBLIC OF KENYA



KENYA LAW
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**Nyakanga v Momanyi (Civil Appeal E051 of 2025)
[2026] KEHC 752 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 752 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E051 OF 2025
TW CHERERE, J
JANUARY 29, 2026**

BETWEEN

THOMAS GISAIRO NYAKANGA APPELLANT

AND

JOSEPH MICHIEKA MOMANYI RESPONDENT

*(Being an appeal from the Ruling in Keroka MCSUCC E019
of 2023 by Hon. Ombija A. O. (SRM) on 13th August 2025)*

JUDGMENT

Introduction

1. By a ruling dated 13th August 2025 in Keroka MCSUCC E019 of 2023, the learned Magistrate allowed an application for revocation and annulment of a confirmed grant, cancelled titles issued pursuant to the grant, and issued consequential and preservative orders in respect of the estate.
2. Aggrieved by that decision, the Appellant lodged the present appeal vide a Memorandum of Appeal dated 28th August 2025.
3. It is also relevant background that, prior to the hearing of this appeal, this Court determined HCCCMISC E015 of 2025, Thomas Gisairo Nyakanga v Joseph Michieka Momanyi (unreported) by a ruling delivered on 01st November 2025.
4. The said Miscellaneous Application involved the same parties, arose from the same succession cause (Keroka MCSUCC E019 of 2023), and determined the same jurisdictional questions that underpin the present appeal, namely: whether the Magistrate's Court became functus officio upon confirmation of the grant; whether it retained power to revoke a grant after confirmation; and whether it could issue consequential orders affecting titles.



5. In that ruling, Okwany J definitively held that the Magistrate's Court had jurisdiction under the [Law of Succession Act](#) and declined to interfere with the proceedings before the Keroka court.
6. Once those findings were made, the jurisdictional foundation of the present appeal fell away, leaving for consideration arguments that were, in substance, a re-packaging of matters already rejected.
7. However, lest I be wrong in that conclusion, and in order to put the matter beyond peradventure, I shall nonetheless proceed to consider and determine the appeal on its merits, based on the record, the grounds of appeal, the submissions of the parties, and the applicable law.
8. The Memorandum of Appeal dated 20th August 2025 raises the following grounds:
 1. The learned Senior Resident Magistrate erred in law by sitting as a judge of the High Court and cancelling title deeds and setting aside a confirmed grant, thereby rendering the court functus officio.
 2. The learned Magistrate erred in law by re-opening the succession cause and issuing orders amounting to review or setting aside of completed proceedings and issued titles.
 3. The learned Magistrate erred in law by cancelling titles emanating from succession proceedings, a jurisdiction allegedly reserved for the Environment and Land Court.
 4. The learned Magistrate erred in law by failing to appreciate that the objection was incompetent as the grant had already been confirmed and titles issued after Land Control Board processes.
 5. The learned Magistrate's ruling was oppressive to the Appellant and aided an objector who failed to participate in earlier proceedings.
 6. The ruling was against the weight of the evidence and the law.
9. The appeal was disposed off by way of submissions which both parties dutifully filed.
10. The Appellant filed written submissions dated 16th January 2026. Counsel submitted that upon confirmation of the grant on 27th November 2024 and issuance of titles on 04th April 2024, the Magistrate's Court became functus officio and lacked jurisdiction to revisit the matter.
11. It was further contended that cancellation of titles lies exclusively within the jurisdiction of the Environment and Land Court. Reliance was placed, inter alia, on *Re Estate of Julius Mimano (Deceased)* [2019] eKLR.
12. The Appellant urged the Court to allow the appeal, set aside the ruling of 13th August 2025, and reinstate the confirmed grant and titles.
13. The Respondent filed written submissions dated 15th December 2025. Counsel submitted that the Respondent had been excluded from the succession proceedings and that the grant was obtained through concealment of material facts. It was also argued that section 76 of the [Law of Succession Act](#) empowers the issuing court to revoke a grant at any time, whether confirmed or not.
14. The Respondent relied on *In re Estate of Gachau Kiarie (Deceased)* [2016] eKLR, *In re Estate of Mwangi Gachau (Deceased)* [2019] eKLR, and *In re Estate of G.K.K (Deceased)* [2017] eKLR, and urged dismissal of the appeal.



Issues for determination

15. Having considered the Memorandum of Appeal, the record, and the submissions, the Court identifies the following issues for determination:
 1. Whether the Magistrate’s Court became functus officio upon confirmation of the grant.
 2. Whether the Magistrate’s Court had jurisdiction to entertain and determine revocation proceedings after confirmation of the grant.
 3. Whether the Magistrate’s Court had power to issue orders affecting titles already issued pursuant to a confirmed grant.
 4. Whether the ruling delivered on 13th August 2025 warrants appellate interference.

Analysis and Determination

Functus officio

16. The Appellant contends that confirmation of the grant divested the Magistrate’s Court of jurisdiction. Section 76 of the *Law of Succession Act*, however, expressly provides that a grant may be revoked or annulled “whether or not confirmed.”
17. In *In re Estate of Gachau Kiarie (Deceased)* (supra), the Court held that confirmation of a grant does not render a succession court functus officio. A similar position was taken in *In re Estate of Mwangi Gachau (Deceased)* (supra), where the Court emphasised the special statutory nature of succession jurisdiction.
18. This Court adopted and affirmed the same reasoning in High Court Miscellaneous Application No. E015 of 2025, and I find no principled basis upon which to depart from it. Accordingly, I find that the Magistrate’s Court did not become functus officio upon confirmation of the grant.

Jurisdiction to revoke a confirmed grant

19. Jurisdiction of Magistrates’ Courts in succession matters is conferred by section 48 of the *Law of Succession Act*. Where a court has jurisdiction to issue and confirm a grant, it equally has jurisdiction to revoke it under section 76.
20. In *re Estate of Ndolo Muthoka (Deceased)* (supra), the Court held that jurisdiction to grant necessarily carries with it jurisdiction to revoke. The revocation proceedings were therefore properly before the trial court.

Orders affecting titles

21. Section 80(1) of the *Law of Succession Act* provides that a revoked grant is deemed never to have had effect.
22. In *re Estate of G.K.K (Deceased)* (supra), the Court held that revocation nullifies all transactions founded on the grant. Orders affecting titles issued pursuant to a revoked grant are therefore consequential to succession jurisdiction and do not fall within the exclusive remit of the Environment and Land Court.
23. This position accords with the findings in Miscellaneous Application No. E015 of 2025, which I adopt.



Appellate interference

24. An appellate court will only interfere with a lower court's decision where there is misdirection in law or fact, or where the decision is plainly wrong.
25. The learned Magistrate found that the grant had been obtained without disclosure of all beneficiaries, a matter falling within section 76(a) and (b) of the Act. No error of principle or misapprehension of evidence has been demonstrated.
26. I therefore find no basis for appellate interference.

Disposition

27. For the foregoing reasons, the Court hereby orders as follows:
 1. The appeal is found to be devoid of merit and is hereby dismissed.
 2. The Ruling delivered on 13th August 2025 Keroka MCSUCC E019 of 2023, is hereby affirmed.
 3. Costs of the appeal shall be borne by the Appellant.

DELIVERED AT NYAMIRA THIS 29TH DAY OF JANUARY 2026

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Terer

For Appellant - Mr. Sagwe for S.M.Sagwe & Co. Advocates

For Respondent - Mr. Ogari for B.N.Ogari & Co. Advocates

