



In re Estate of Stephen Marete M'ikiunga (Deceased) (Succession Cause 25 of 1995) [2026] KEHC 1557 (KLR) (13 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1557 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 25 OF 1995
HM NYAGA, J
FEBRUARY 13, 2026**

IN THE MATTER OF THE ESTATE OF STEPHEN MARETE M'IKIUNGA (DECEASED)

BETWEEN

LENARD KOOME MARETE OBJECTOR

AND

REGINA KANANU MARETE 1ST APPLICANT

DORCAS MAKENA MARETE 2ND APPLICANT

AND

MARGARET W/O STEPHEN MARETE PETITIONER

RULING

1. This ruling is in respect of two inter related applications. The first is the Summons dated 16th September, 2024 brought under Sections 44 and 74 of Probate and Administration Rules, Sections 3(2) and 76 of the *Law of Succession Act*, Sections 3, 3A and 63(e) of the *Civil Procedure Act* and Article 159(2)(d) of *the Constitution* by the 1st Applicant, Lenard Koome Marete (hereinafter referred to as the 1st Application). The second one is dated 30th January, 2025 brought under Section 76 of the *Law of Succession Act* and Rule 44 of the Probate and Administration Rules filed by the 2nd and 3rd Applicants, Regina Kananu Marete & Dorcas Makena Marete (hereinafter referred to as the 2nd Application)
2. In the 1st Application, the Applicant is seeking the following orders: -
 - a. Spent
 - b. Spent
 - c. That the Court be pleased to revoke/annul the Grant of representation and confirmed on 10th May, 1999 to the Petitioner herein.



- d. That the court be pleased to issue orders revoking and cancelling any conveyance to third parties and all resultant subdivisions arising from the above-mentioned properties and the same revert to the name of the Deceased.
 - e. That the Court be pleased to direct the petitioner to render a true account of the Estate of the Deceased following the confirmation of grant on 10th May,1999.
 - f. That costs of this Application be provided for.
3. The Application is premised on the grounds on its face and supported by an Affidavit of Lenard Koome Marete sworn on 16th September,2024.
 4. It is the Applicant's case that the petitioner is his step-mother while the deceased was his father. He further stated that the deceased took care of him and he used to visit him as they lived within the same area.
 5. The applicant avers that the grant herein was secretly obtained and without the consent of all the beneficiaries. He asserted that the petitioner has disposed of the properties of the estate and has accessed the deceased's shares from various entities and as such it is just that she renders an account of the deceased's estate.
 6. The Respondent opposed the summons via her replying affidavit sworn on 19th December,2024. She asserted that the applicant was not a son of the deceased and denied that the deceased had introduced him as such during his lifetime. She therefore challenged the applicant to produce a birth certificate. She also prayed that the applicant be subjected to a DNA test with the known children of the deceased to establish paternity.
 7. She further averred that the chief's letter annexed to the applicant's application was obtained without the consultation of the deceased's family and therefore it should be disregarded and that the chief ought to be called for cross examination.
 8. She maintained that the Applicant is a stranger to the estate. That this case having been filed 30 years ago, the whole estate has already been distributed and there is nothing left for distribution.
 9. The applicant swore a further affidavit on 18th June,2025 in response to the said replying affidavit wherein he attached a letter dated 6th March,2025 from Deputy Registration Officer, Imenti North Sub County, indicating the deceased as his father.
 10. In the second Application, the Applicants are seeking the following orders;
 - a. Spent
 - b. The grant of representation made to the Petitioner/Respondent on 10/5/1999 be revoked.
 - c. Inhibition orders issued against the Land Parcel No. Ntima/Igoki/1213 be issued pending the hearing and determination of this Application.
 - d. Costs of this Application be provided for.
 11. The application is premised on grounds on its face and supported by affidavits of the 2nd and 3rd applicants herein, each sworn on even date.
 12. They averred that they are the deceased's daughters and the Respondent herein is their biological mother. They further deponed that despite the certificate of the confirmed grant spelling out their respective share out of the estate's property Land Parcel No. Nyaki/Kithoka/948, the respondent



- transferred the whole piece of land to their elder sister Mary Goretti Marete's husband, Joseph Mwangera Thurunira, leaving them with no share of their father's estate.
13. They asserted that unless the deceased's estate is redistributed afresh, they will forever remain disinherited.
 14. In opposition to the application, the respondent swore a replying affidavit on 7th October, 2025 wherein she averred that Land Parcel No. Ntima/Igoki/1213 was solely distributed to her as the deceased's widow and therefore could not comprehend why the applicants are seeking to inhibit it while their complaint is over L.R No. Nyaki/Kithoka/948.
 15. She asserted that the applicants and Mary Goretti, who is now deceased, sold the whole of L.R No. Nyaki/Kithoka/948 to Joseph Mwangera and shared the proceeds among themselves.
 16. She further deponed that L.R. No. Nyaki/Kithoka/948 was subdivided into land parcels L.R. No. Nyaki/Kithoka/3339-3344 and transferred to third parties who have not been joined in these proceedings.
 17. She further contended that the applicants cannot come to court after 27 years to reclaim what they sold and as such the inhibition order sought is unwarranted. She asserts that the summons was filed after her daughter asked her to sell the land parcel No. Ntima/Igoki/1213 and share the sale proceeds with them since she was getting old but she declined. She prayed the summons to be dismissed as it has been brought in bad faith.
 18. In response to the replying affidavit, the 3rd applicant, Dorcas Makena Marete, swore a supplementary affidavit on 4th December 2025, in which she averred that the respondent's affidavit was replete with falsehoods and was plainly misleading.
 19. She averred that L.R No. Nyaki/Kithoka/948 was not transferred to them and as such they could not have sold the same as alleged by the Respondent.
 20. It was also her contention that the respondent registered L.R No. Nyaki/Kithoka/948 in her name on 20th May, 1998 and subsequently transferred the same to Joseph Mwangera Thurunira on 11th April, 2022, who in turn subdivided it to form Land Parcels L.R No. Nyaki/Kithoka/3339 to 3344.
 21. She further contended that the application seeks revocation of the grant in its entirety on the ground that the deceased's estate was distributed unfairly, so as to enable a fresh distribution that makes equal provision for all the dependants of the deceased.
 22. The applicants explained that their delay in approaching the court was due to their expectation that the petitioner would distribute the estate fairly and equally and that they only moved the court after the petitioner recently commenced distributing the estate to their brothers.
 23. The two applications were canvassed via written submissions. The 1st Applicant's submissions are not on record.

2nd & 3rd Applicants' Submissions

24. The applicants mainly reiterated the contents of their affidavits. They submitted the respondent did not administer the estate in accordance with the law.
25. They further submitted that the grant of representation can be revoked at any time if proved that a dependant was not adequately provided for in the deceased's estate.



26. They argued that this court has powers under Section 26 of the *Law of Succession Act* to make orders for reasonable provisions for dependants from the deceased's net estate if the court deems the existing disposition insufficient.
27. The applicants therefore urged this court to revoke the grant and order fresh distribution of the estate of the deceased. In buttressing their submissions, they placed reliance on the cases of *In re Estate of M K K (Deceased)* [2016] KEHC 6474 (KLR) & *Nyaga Cottolengo Francis v Pius Mwaniki Karani* [2017] eKLR

Respondent's Submissions

28. On whether the 1st applicant had locus to institute the first application, the respondent submitted that the Chief's letter dated 22nd June 2020 and the letter from the State Department of Immigration and Citizen Services dated 6th March 2025, which purported to show that the Applicant was a son of the deceased, did not in any way refer to the deceased herein, Stephen Marete M'Ikunga, but instead referred to one Stephen Marete. It was argued that, notwithstanding the similarity of names, Stephen Marete could not be taken to be the deceased herein.
29. Further, the respondent argued that the 1st applicant failed to cogently establish that he was a son of the deceased, as he tendered no evidence in support of the claim and remained silent on her request that he be subjected to a DNA test with the known children of the deceased. She therefore urged the Court to find that the 1st Applicant lacked locus to challenge the confirmed grant.
30. On whether the 1st applicant has met the threshold for revocation of grant, the respondent argued that owing to the fact that no plausible reason has been tendered for delay in instituting his application, he should not be allowed to drag the deceased's beneficiaries on an endless trail of litigation. She urged this court to invoke the doctrines of laches and equity aids the vigilant and not the indolent.
31. Regarding the 2nd and 3rd applicants' prayer for revocation, the respondent equally prayed that the same should be disallowed for reasons that the applicants have not met the threshold for revocation of grant.
32. The respondent further argued that the applicants have never raised any concern on the mode of distribution since 1999 when the grant was confirmed; that green card for L.R No. Nyaki/Kithoka/948 show that Joseph Mwongera Thurania became the registered owner of this land yet the applicants failed to annex proceedings or judgement issued in Meru HC Civil Case No. 54 of 1998 to show how Joseph Mwongera Thurania became the registered owner thereof; that the said court order has never been appealed by the applicants; that the applicants have failed to join the resultant owners of the subdivisions of L.R No. Nyaki/Kithoka/948 in this cause for them to defend themselves.
33. The Respondent contended that the 2nd and 3rd Applicants are similarly guilty of laches since they have not demonstrated why they went to slumber since the year 2002 when the High Court in the aforementioned civil case gave the said land to Joseph Mwongera Thurania.
34. The Respondent argued that considering ownership of NYAKI/KITHOKA/948 was determined by a court of concurrent jurisdiction, this court is bereft of jurisdiction to interfere with the same.
35. Regarding the inhibition order sought, the Respondent submitted that there is no basis of issuing the same since the L.R No. Ntima/Igoki/1213 was given to her.
36. She therefore urged this court to dismiss the Applications.
37. In support of her submissions, the Respondent relied on the cases of *Rajesh Pranjivan Chudasama v Sailesh Pranjivan Chudasama* [2014] KECA 250 (KLR); *Julian Adoyo Ongunga & another v Francis*



Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased) [2016] KEHC 4186 (KLR); In re Estate of Thurania Twerandu (Deceased) (Succession Cause 219 of 2008) [2024] KEHC 9244 (KLR); Wilfred Koinange Gathiomi v Joyce Wambui Mutura & another [2016] KEHC 7005 (KLR); & Abigail Barmao v Mwangi Theuri [2014] KEELC 416 (KLR)

Analysis and Determination

38. Having considered the Applications, affidavits in support and in opposition together with the parties' submissions, I opine that the issues falling for determination are as follows: -

- i. Whether the objector was the son of the deceased.
- ii. Whether the grant dated 10.5.1999 should be revoked.
- iii. Whether the order of inhibition sought should be granted.
- iv. What orders should this Court issue in the circumstances of this case?

39. Both applications seek a revocation of the grant.

40. Revocation of grant is provided for under section 76 of the Act. This section provides as follows: -

“76. Revocation or annulment of grant.

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.”
41. The court, in the case of *Jamleck Maina Njoroge vs Mary Wanjiru Mwangi* (2015) eKLR at paragraph 11 of its ruling in revoking a grant reiterated the grounds upon which a grant can be revoked. It stated as follows:
- “ . The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”
42. It is trite that the legal burden of proof lies with the person who alleges. Section 107 (1) of the *Evidence Act*, Cap 80 Laws of Kenya provides that: -
- “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
43. In *Gatirau Peter Munya vs Dickson Mwenda Kithinji & 3 Others* (2014) eKLR the Supreme Court held inter alia:
- “The person who makes such allegations must lead evidence to prove the fact. She or he bears the initial legal burden of proof, which she or he must discharge. The legal burden in this regard is not just a notion behind which any party can hide. It is a vital requirement of the law. On the other hand, the evidential burden is a shifting one, and is a requisite response to an already discharged initial burden. The evidential burden is the obligation to show, if called upon to do so, that there is sufficient evidence to raise an issue as to the existence of a fact in issue. “
44. In the case of *Re Estate of George Musau Matheka (Deceased)* [2010] eKLR the court held that to prove dependency, the onus lies on the claimant to prove paternity of the deceased.
45. Regarding the definition of a “child” or “children” of a deceased person eligible to inherit from his estate, the *Law of Succession Act* in Section 3(2) & (3), contains the following explanations in its interpretation provision:“
- (2) References in this Act to “child” or “children” shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, any child born to her out of wedlock, and, in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility.
- (3) A child born to a female person out of wedlock, and a child as defined by subsection (2) as the child of a male person, shall have relationship to other persons through her or him as though the child had been born to her or him in wedlock.
46. Section 29(a) of the *Law of Succession Act* defines ‘dependant’ to include the children of the deceased.
47. The 1st Applicant annexed letters from the Chief and the Department of Immigration, dated 22nd June 2020 and 6th March 2025, respectively, indicating that the deceased was his father. The Respondent



- vehemently disputed that the Applicant was the deceased's son and even prayed that the Chief be availed for cross-examination and that the Applicant be subjected to a DNA test to establish paternity.
48. The court holding in *Cherutich v Chepyegon & another* [2025] KEHC 14083 (KLR) when addressing similar issue like the one herein stated as follows: -
- “The trial court placed significant emphasis on the absence of a DNA test and on the non-production of documentary records such as a birth certificate. I accept that documentary and scientific proof would have rendered the question incontrovertible, but the absence of such proof is not, in itself, fatal where credible oral evidence and circumstances point to paternity...”
49. Although the issue of the 1st applicant's paternity would have required oral evidence in addition to the affidavits, the court has to deal with what it has been given.
50. From the court record, it is clear that when the respondent moved the court with her petition for the grant, she filed a letter from the then Chief, Nyaki Location, as is required by the court. It provides that one “Kome Marete” was listed as son but was said to be “staying with his mother outside the deceased's home”.
51. Although the chief's letter is not provided for by the law, the courts have adopted its use in order to ascertain the true beneficiaries of a deceased person. It is taken that the local administration is in a more informed, and impartial position to provide the factual situation regarding any family under its jurisdiction. The local administration has at its disposal the necessary means to obtain information that the court would not have, hence the importance of the letter.
52. With that in mind I have noted that the respondent omitted the said Koome Marete and others from the list of beneficiaries when she applied for the grant. She does not say why this is so.
53. The name Koome Marete and the 1st applicant's name are similar and it is presumed that they refer to the same person.
54. In addition, the documents from the Registrar of Persons, which has not been challenged, shows that the 1st applicant's father is Stephen Marete. Although the respondent has deponed that the names have not been shown to belong to the deceased, there is really no other person who the name could be referring to, in the circumstances of the case.
55. I am thus of the view that the 1st applicant has established, on a balance of probability, that he is a son of the deceased.
56. Having been excluded from the succession cause, should the grant be revoked?
57. It is not in dispute that the grant herein was confirmed way back in 1999, approximately 25 years ago. Although the *Law of Succession Act* does not give a limitation as to when an application for revocation of a Grant can be filed, 25 years is in my view inordinate delay. A lot has gone on and evidently, there has been a change of ownership to the property comprising the estate, or a proportion thereof. It is noted that the new owners who may have rightly purchased the land after confirmation of the grant were not involved in the application. I am of the view that giving orders against them would amount to condemning them unheard.
58. There are also other rightful beneficiaries who will be adversely affected by the orders sought and they have not been heard.



59. It is also possible, as alleged by the respondent, that the entire estate has been distributed and there is nothing left in it. The court cannot begin to issue orders in vain.
60. Consequently, I hold that although the 1st Applicant has proved, on a balance of probabilities, that he was the deceased's son, he is guilty of laches, having known that his father died over 32 years ago and took no action to stake his claim.
61. Since the clock has turned several times over, the 1st applicant's recourse lies against the respondent personally for breach of her duty as a beneficiary, but not on revocation of the grant as sought.
62. For the foregoing reasons, I am of the view that it is too late to revoke the grant.
63. I will now deal with the second application.
64. The Applicants also seek revocation of the grant on the ground that the Respondent made no provision for them. In my opinion, such a claim does not fall within the circumstances under which a confirmed grant may be revoked.
65. The court record shows that the Applicants were duly listed as beneficiaries to the estate. They also executed the consent that was filed on the filing of the cause. In the summons for confirmation of the grant filed on 10th May 1999, they were allocated their shares in Land Parcel Nyaki/Kithoka/948, as reflected in the Certificate of Confirmation of Grant. If they never received their share, the solution lies in them laying a claim against the respondent as an administrator, and not revoking the entire grant itself.
66. The Applicants claim that Land Parcel Nyaki/Kithoka/948 was wholly transferred by the Respondent to Joseph Mwongera Thurania, while the Respondent asserts that the parcel was subdivided by the Applicants into LR Nos. Nyaki/Kithoka/3339–3344 and transferred to third parties who have not been joined in this matter. No party produced evidence to show who actually made the transfer. The green card annexed by the Applicants and marked as DMM2 shows that the land was registered in the name of Joseph Mwongera Thurania on 11th April 2022 pursuant to a Court order issued in High Court Civil Appeal No. 54 of 1998. With this uncertainty, I find that that it would be difficult to hold that it is the respondent who effected the transfer as alleged.
67. Consequently, I find that the threshold for revocation of the grant has not been met.
68. The 2nd and 3rd Applicants have sought Inhibition orders issued against the Land Parcel No. Ntima/Igoki/1213. Under Section 68(1) of the [Land Registration Act 2012](#), the court has power to issue an inhibition order restraining any registration of dealings on land where there is a sufficient basis to preserve the property pending the final determination of a suit.
69. The parcel in question was clearly allocated to the Respondent under the Certificate of Confirmation of Grant dated 10th May 1999 while the Applicants were allocated Land Parcel No. Nyaki/Kithoka/948 and their claim is therefore limited to their allocated parcel.
70. Additionally, the prayer for this order, which was sought pending the hearing of the application, is spent, as the application has now been determined. The court while dealing with similar issue herein In *Hiribae v Ahmed & Another* [2025] KEHC 1567 (KLR) while dealing with similar issue herein stated as follows: -

“I have considered the prayers sought by the applicant in her application. It is clear to me that prayers 1 and 2 of the said application are temporary in nature and were spent the moment this matter was heard inter partes. The prayer for a stay of proceedings is, in fact, expressed as



being for a stay of proceedings....pending the hearing and determination of this application inter partes. It is clear to me that once the court heard the application there was nothing more for it to do in regard to those two prayers. There is no prayer for stay pending appeal. That being the case, I am unable to grant the applicant what she didn't ask for. Parties are bound by their pleadings and or applications.”

71. In light of the foregoing, I find that the prayer for inhibition is without merit.
72. In the upshot, I find that all the applicants have not met the threshold for the revocation of the grant. They should pursue their remedy against the respondent who owes them a fiduciary duty as an administrator.
73. There shall be no orders as to costs.
74. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 13TH DAY OF FEBRUARY, 2026.

H. M. NYAGA,

JUDGE.

In the presence of;

Court assistant – Zack

Applicant – Mr. Akwalu advocate

Mr. Mwirigi for applicant (Mr. Otieno holding brief)

Respondent – Ms. Mugo

