



**In re Estate of Francis Muhiga Ndori (Deceased) (Succession Cause  
164 of 1996) [2026] KEHC 1116 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1116 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 164 OF 1996  
RN NYAKUNDI, J  
FEBRUARY 5, 2026**

**IN THE MATTER OF THE LATE FRANCIS MUHIGA NDORI (DECEASED)**

**BETWEEN**

**FELIX CHUMBA MUHIGA ..... APPLICANT**

**AND**

**HELLEN MURANJE MUHIGA ..... 1<sup>ST</sup> RESPONDENT**

**RICHARD MUHIGA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This matter returns to court following my comprehensive ruling dated 8<sup>th</sup> July 2025. In that ruling, I revoked the Grant of Letters of Administration dated 20<sup>th</sup> September 2024 that had been irregularly issued to Felix Chumba Muhiga, confirmed Hellen Muranje Muhiga as the sole administrator, and directed both Felix Chumba Muhiga and Richard Muhiga to file affidavits within 21 days detailing their respective claims to the disputed house on plot Kakamega/Shamakhokho/XXX. The parties have now filed their affidavits in compliance, and additionally, Hillary Muhiga Ndori has brought a fresh application seeking revocation of the Certificate of Confirmation of Grant issued on 17<sup>th</sup> December 2024.
2. Before this court therefore are two distinct matters requiring determination. First, Hillary Muhiga Ndori's summons for revocation of the distribution grant dated 17<sup>th</sup> December 2024 and second, the resolution of the house ownership dispute between Felix Chumba Muhiga and Richard Muhiga based on the evidence now before the court.
3. In complying with this court's directions the parties filed their respective affidavits. First in, was Hellen Muranje Muhiga who swore an affidavit on 21<sup>st</sup> October, 2025 stating as follows:



- a. That pursuant to the ongoing administration of the estate, I wish to render this interim probate account to update the Honorable Court on the status of the estate property and its current management.
  - b. That the distribution of the estate properties was conducted in the presence of all family members, relatives in particular my late husband's family representatives, village and clan elders and the clergy and the beneficiaries, my children.
  - c. My first-born son Felix Chumba who lives in the United States was invited and asked to attend, but said that his brother Hillary will represent him. All were present and participated in the process as per the approved mode of distribution filed in court.
  - d. That the distribution was undertaken as attached herewith and as approved in the family meeting and filed in court in December, 2017. Every child knows their inheritance and has been given.
  - e. That over and above the distribution, Felix Chumba had been allocated an additional three (3) acres at Erusui area, which is about four (4) kilometers from my matrimonial home, as the first-born son.
  - f. That following the said distribution, no loan has been taken on any of the estate properties, save for one that had been taken earlier in 2021 by my son Hillary Ndori Muhiga.
  - g. That it was Hillary Ndori Muhiga having defaulted in repayment of the loan he took, prompted my daughters, Selere Ayuma, and Martina Muhiga and myself to make repayments as Ndori was unable to repay it.
  - h. That further, Hillary Ndori cut down and sold all the trees on the Erusui home property and also on Nandi/Koibarak/'B'/XXX property, and used all the proceeds solely without accounting to the rest of the family or beneficiaries. He currently is not in any gainful employment and often runs errands for his brother, Felix Chumba.
  - i. That all the title deeds for the distributed properties are in the process of being transferred to the beneficiaries. The Kitale property title is in the custody of Hillary Ndori Muhiga.
  - j. That the rental income from estate is currently being received by myself as the Administrator and mother to the beneficiaries, since I have no other source of income and continue to maintain and oversee the estate's affairs and it was agreed that this should be received for my sustenance.
  - k. That I undertake to render a comprehensive further account upon completion of title processing, settlement of the pending loan, and resolution of issues relating to Hillary Ndori's conduct with respect to estate property.
4. The 2<sup>nd</sup> Respondent equally swore an affidavit stating as follows:
- a. That I am the second born son and a beneficiary of the Estate of the Late Francis Muhiga Ndori (Deceased) in this matter, hence competent to swear this affidavit.
  - b. That together we are twelve siblings and I am the last born. Our first-Born Brother, who is engaged in a continuous fight with our aged mother lives in the United States and has been residing there for over twenty-five (25) years.



- c. That our first-born brother, and second born in the family Felix Chumba, also the applicant does not talk to our mother and has avoided mediation efforts as well as efforts to sit down as a family, neither does he pick mom's calls of calls from any of us, save for Hillary Ndori.
- d. That he ignores our elder sister and first-born sister Rosemary Muteshi Maina and only communicates with our brother Hillary Ndori Muhiga who runs errands for him and lives in a house within the matrimonial home.
- e. That Hillary Ndori has been given a property in Kitale as per the distribution and he similarly refuses to move out of home.
- f. That I swear this Affidavit pursuant to the ruling of this Honorable Court of 8<sup>th</sup> July, 2025.
- g. That in the presence of the Court both Counsel for the Respondent as well as Counsel for the Applicant identified the house I lived in a point of pressure, friction, conflict and continuous fights within the home.
- h. That this house is within the matrimonial home number Kakamega/Shamakhokho/148/149/XXX.XXX.
- i. The Matrimonial home was distributed as follows;
  - i. Kakamega /Shamakhokho/148 (0.9 Ha) our mother, Hellen Muhiga.
  - ii. Kakamega/Shamakjokho/149 (0.14 Ha) myself.
  - iii. Kakamega/Shamakhokho/150/0.14) my sister Selere Muhiga.
  - iv. Kakamega/Shamakhokho/151 (0.14) Phidelia Muhiga.
- j. The elders urged that I stay at the matrimonial home since I would be in a position to look after our mother, which I do.
- k. That this affidavit is made to introduce and produce documents in support relating the deceased's house in the matrimonial property which I reside in together with my wife.
- l. That the house has been claimed by the applicant as his, alleging that he spent Kenya Shillings Seven Million (Kshs. 7,000,000/-) towards its construction.
- m. That the house was meant to be our mother's house before that decision was changed and it was agreed that her home be renovated and the other be used by me.
- n. That I have caused valuation of the house situated on Plot No. Kakamega/Shamakhokho/XXX in Vihiga County to be conducted, and a valuation report has been duly prepared by a registered valuer.
- o. That during the construction of the said house on Plot No. Kakamega/Shamakhokho/XXX in Vihiga County, a joint effort of the siblings herein also played a key financial role in contributing to the purchase of construction materials used in erection of the house to its finality, therefore none is entitled to claim exclusive rights of ownership.
- p. That a family meeting comprising the relatives of the late Muhiga was duly convened on 15<sup>th</sup> August 2024 with the primary objective of deliberating upon and reaching a consensus regarding the mode of distribution of the deceased's estate. The resolutions arrived at in the said meeting reflected the collective agreement and goodwill of the family members in preserving harmony and avoiding future disputes over inheritance.



- q. That the schedule on the confirmed grant issued on 17<sup>th</sup> December 2024 provided that Plot No. Kakamega/Shamakhokho/XXX/XXX & XXX are owned jointly between myself and my sisters.
  - r. That my brother visited this year in the month of June/July and insisted on staying in the same house with his wife and attempted to get me and my wife out by among others locking us out. This conduct was very distressing and was aimed at embarrassing me as I am a leader in the community as a member of the county assembly representing my area.
  - s. That it is impractical for me to leave as I am there with my old and ailing mother.
  - t. That the documents produced are meant to guide this Honorable Court, as a family, we have agreed to repay Felix his contribution to the House for the sake of peace and seek this Honorable Court's assistance to repay him.
  - u. That Felix has additional land about four (4) Kilometers from our mother's home where he can put up his matrimonial home.
  - v. That it is important that we as a family resolve this issue and live in peace and remain united as our father would wish us to be.
  - w. That Hillary Ndori similarly is expected to leave the matrimonial home with his wife and move where he was allocated land but does not wish to do. He lives in a house where boys would sleep in the home as constructed by our father.
  - x. That as a family we are willing to support him even if he moves to Kitale as per the distribution. He already has a place of aboard in Kitale. The continued stay in the matrimonial home is causing our mother unnecessary strain.
  - y. That it is in the interest of justice and fairness that this matter is determined with finality so that there are no more fights within the family.
5. In the summons for revocation dated 23<sup>rd</sup> September 2025, Hillary Muhiga Ndori seeks the following orders:
- a. That there be a stay of implementation/execution of the orders confirming the grant and distribution issued on 17<sup>th</sup> December 2024 with respect to dealing in Land Parcels Kakamega Shamakhokho/1XX,1XX, 1XX & 1XX, Tiriki/Shamakhokho/XXX, Nandi/Koibarak "B"/XXX and Trans Nzoia pending the hearing of this Summons for revocation of the Grant.
  - b. That all titles registered in the name of Hellen Muranje Muhiga be restituted to the estate for fresh division;
  - c. That the Certificate of Confirmation of Grant issued on 17<sup>th</sup> December 2024 be revoked with fresh directions given for a new confirmation hearing.
  - d. That the costs of the application be provided for.
6. The grounds advanced by Hillary in support of his application are multifaceted. He contends that the grant and distribution of 17<sup>th</sup> December 2024 was made in his absence; that his consent to the distribution was not obtained; that the first administrator misled the court into believing consent was fully signed by all beneficiaries when in fact Hillary and the second respondent did not append their signatures; that the first respondent did not comply with court directions for calling family meetings;



and that the confirmation of grant and distribution was not in line with the court's directions issued on 18<sup>th</sup> July 2024.

7. In response to Hillary's application, Hellen Muranje Muhiga swore a replying affidavit dated 17<sup>th</sup> November 2025 in which she robustly contests the summons. She avers that as the duly appointed and confirmed administrator of the estate, she is competent to oppose the application, which she characterizes as misconceived, lacking merit, and brought in bad faith. Centrally, she contends that the summons amounts to an abuse of the court process intended to frustrate the lawful and concluded administration of the estate, and that it impermissibly re-litigates issues already litigated and determined by this court in two previous summons filed by Felix Chumba with respect to revocation of grant dated 22<sup>nd</sup> March 2023 and 14<sup>th</sup> February 2025. She emphasizes that litigation must come to an end and that those who seek to abuse the court process should be stopped in their tracks.
8. On the substantive allegations, Hellen deposes that the distribution of properties in the estate was conducted transparently and inclusively in the presence of all relatives of her late husband on 15<sup>th</sup> August 2024, a process which is well-documented in family meeting minutes filed with the court. She asserts that Hillary's allegation that he did not sign the consent to confirmation of grant is misleading, as Hillary was fully aware of and participated in the distribution process but withheld consent purely based on his decision to frustrate the process rather than on any justifiable lawful issue. She observes that Hillary's current denial comes only after this court narrowed down issues as per Felix Chumba's submissions concerning the disputed house, and that this application coming almost a year after the grant was confirmed is clearly meant to derail the finalization of the matter.
9. Hellen further deposes that her second born child and son Felix Chumba Muhiga, who resides in the United States, was consulted and explicitly stated that Hillary would represent his interests, which Hillary did. She avers that Hillary is a proxy to Felix and together they have made concerted effort to frustrate the progress of the distribution of the estate of her late husband. She characterizes Hillary's allegation on failure to hold family meetings as blatantly false, noting that a comprehensive family meeting was convened on 15<sup>th</sup> August 2024 and attended by over thirty relatives, where the mode of distribution was discussed and unanimously agreed upon.
10. In a significant portion of her affidavit, Hellen addresses what she terms Hillary's approach to the court with unclean hands and without good faith. She deposes that Hillary took a loan against an estate property in 2021 and subsequently defaulted, forcing herself and her daughters to repay it to protect the estate's assets. More seriously, she avers that Hillary unlawfully cut down and sold all the trees from the Erusui property and from the Nandi/Koibarak 'B'/XXX property, misappropriating the proceeds for his own benefit without any accountability to the family or the estate.
11. Contrary to Hillary's claims, Hellen deposes that she has been administering the estate diligently and that title deeds for the distributed properties are in the process of being transferred to the respective beneficiaries. She states that the only impediment to the final transfer is the incessant and frivolous litigation instigated by Hillary and his brother Felix Chumba Muhiga. She notes that as per Hillary's own admission in court, he has been away from the court process and even participated, has already taken over land given to him under the distribution, and his family has put up a house for him on that land, yet he now seeks to challenge the very distribution from which he has benefited.
12. Hellen also addresses what she characterizes as Hillary's disrespectful attempt to raise questions about her competence based on her age. She deposes that she is not a minor nor mentally incapacitated, and that her advanced age should not be used to bar her from being an administrator. She asserts that if anything, her age is an asset as it brings deep personal understanding of her late husband's wishes and



the needs of her children, and that she has administered the estate faithfully and with the clear support of the majority of the family, as evidenced by the filed affidavits and meeting minutes.

13. Hellen further fully associates herself with the contents of the affidavit sworn by Richard Shugh Muhiga on 21<sup>st</sup> October 2025, particularly his evidence regarding the family's agreement on distribution, the collective financial contribution towards the construction of the house occupied by Richard, and the distress caused by Hillary's conduct. She emphasizes that the distribution was not unilateral but rather a collective family decision reached after proper consultation.
14. In conclusion, Hellen characterizes the summons for revocation of grant as an impermissible attempt to re-litigate issues that have already been deliberated upon and resolved by the family and this court. She urges that granting the orders sought would only serve to perpetuate conflict, cause further unwarranted delay, and unjustly punish the beneficiaries who have abided by the family's agreement. She prays that in the interest of justice, fairness, and family harmony, the court dismiss the summons with costs.

### **Analysis and determination**

15. The legal framework for revocation of a grant is well established under Section 76 of the [Law of Succession Act](#), which I have had occasion to consider in my earlier rulings in this very matter. The grounds upon which a Grant may be revoked are set out in Section 76 of the [Law of Succession Act](#) Cap 160, laws of Kenya which 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 an 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 allegations 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.”

16. In the case of *Re Estate of Prisca Ong'aya Nande (Deceased)* 2020 eKLR the court held as follows: -

“A grant of letters of Administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstance, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore becomes unqualified to hold any office of trust”.

17. On 18<sup>th</sup> July 2024, I gave comprehensive directions following mediation, specifically directing completion of distribution of remaining properties. Those directions were complied with, culminating in the Certificate of Confirmation of Grant dated 17<sup>th</sup> December 2024. Hillary, who was represented throughout by legal counsel, now seeks to unravel that very distribution nine months after its confirmation.
18. The principle of finality in litigation is fundamental to the orderly administration of justice. A party cannot be permitted to participate in proceedings through counsel, remain silent when objections could be raised, benefit from the resulting orders, and then seek to overturn those orders simply because the outcome proves unsatisfactory. To allow otherwise would render judicial determinations mere provisional suggestions subject to indefinite revision at the whim of disappointed parties.
19. Examining the substance of Hillary's grounds, I find them falling short of the required threshold. His central complaint that he was absent from the distribution process and did not sign consent documents misapprehends the nature of legal representation. A party who instructs advocates and is represented by them in court proceedings cannot disown those proceedings by asserting absence. Hillary's counsel attended proceedings, received notice of hearings, and had full opportunity to object to the distribution scheme. The silence of counsel at the material time cannot now be remedied by seeking wholesale revocation.
20. As to allegations of fraud or concealment under Section 76(b), the evidence demonstrates the contrary. The Certificate of Confirmation itself reveals a comprehensive distribution schedule identifying all twelve beneficiaries and allocating specific properties to each. Hillary received 4.1 hectares at Kakamega/Nzoia/10XX and joint shares in multiple other properties. All beneficiaries were identified.



All properties were listed. The court had full knowledge of the estate's composition. Nothing to this end was identified as a concealment and as such the allegation is not supported.

21. What emerges clearly from examining the Certificate of Confirmation is that Hillary's true grievance is not procedural irregularity or fraud, but dissatisfaction with his substantive allocation. The matrimonial property comprising plots 1X8, 1X9, 1X0, and 1X1 was allocated to the mother and some siblings. Hillary received no share in these plots. Instead, he was allocated substantial acreage at Nzoia. His application, when stripped of procedural allegations, amounts to a complaint that he would have preferred a different allocation. This is not a ground for revocation under Section 76.
15. I must also consider the prejudice that would flow from granting this application. The distribution of 17<sup>th</sup> December 2024 affects twelve beneficiaries. Of these, only Hillary objects. Ten beneficiaries have accepted their allocations. Title transfer processes are underway. To revoke this distribution would be to unravel an entire structure affecting eleven persons, none of whom complain, for the benefit of one dissatisfied party. Such an outcome would be manifestly unjust and contrary to the interests of the estate and its beneficiaries. I think I have said enough on the question of revocation. For these reasons, I find that Hillary Muhiga Ndori has failed to establish any ground under Section 76 of the [Law of Succession Act](#) for revocation of the Certificate of Confirmation of Grant dated 17<sup>th</sup> December 2024. The application is therefore declined in its entirety.
22. I turn now to the question of the residential house situated on plot Kakamega/Shamakhokho/XXX. In my ruling of 8<sup>th</sup> July 2025, I directed Felix Chumba Muhiga and Richard Muhiga to file affidavits detailing their respective claims with supporting documentary evidence. Both have now done so. The evidence reveals competing assertions: Felix claims substantial financial contribution to construction, while Richard asserts joint family effort and has produced valuation reports and receipts.
23. However, upon reflection on the proper scope of this court's jurisdiction in succession matters, I must observe that this dispute, while genuine, goes beyond the core judicial function in estate administration. The Certificate of Confirmation dated 17<sup>th</sup> December 2024 has allocated plot Kakamega/Shamakhokho/XXX to specific beneficiaries: Richard Muhiga jointly with his mother and sisters. That allocation settles the question of land ownership as a matter of estate distribution.
24. The house is an improvement or development upon that land. Questions regarding financial contributions toward improvements on estate property during administration, and what accounting or compensation should flow from such contributions, are fundamentally administrative matters falling within the province of the administrator's statutory duties under Sections 82 and 83 of the [Law of Succession Act](#), not matters for judicial determination at this stage.
25. The duties and responsibilities of administrators are found in Section 83 of the [Law of Succession Act](#). More specifically, section 83(d-i) which provide that:
  - “(d) to ascertain and pay, out of the estate of the deceased, all his debts;
  - (e) within six months from the date of the grant, to produce to the court 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;
  - (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;



- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;
- (h) 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;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”

26. Section 82(d) empowers personal representatives to appropriate assets and ascertain their value with assistance of valuers where necessary. Section 83(g) requires administrators to complete administration and produce full and accurate accounts. These provisions make clear that administrators have both the power and the duty to resolve internal accounting matters relating to contributions toward estate assets during the course of administration.
27. The role of this court is to confirm grants, identify estate assets and beneficiaries, oversee that distribution is carried out according to law, and ensure administrators fulfill their statutory duties. Courts do not typically involve themselves in the granular accounting of who contributed what sums toward improvements on estate property during administration. Such matters are for administrators to resolve in discharging their duty to render full accounts under Section 83(g).
28. In the present case, the land has been allocated. The house sits on that land. Any claims by Felix Chumba Muhiga regarding construction contributions are matters to be addressed by the administrator in the final probate account. If Felix believes he is entitled to reimbursement for expenditure on estate property, he should present his claim with supporting documentation to the administrator, who must then account for it. If Hillary has similar claims regarding other properties, the same principle applies.
29. Should the administrator's resolution of such claims prove unsatisfactory to any party, recourse lies in objecting to the probate account when filed, not in seeking judicial determination of construction contribution disputes at this interlocutory stage. The court's supervisory jurisdiction may be invoked if the administrator fails to address such matters properly or renders an account that is demonstrably unfair.
30. Accordingly, the following do abide:
  - a. The Summons for Revocation of Grant dated 23<sup>rd</sup> September 2025 filed by Hillary Muhiga Ndori is dismissed.
  - b. The Certificate of Confirmation of Grant dated 17<sup>th</sup> December 2024 remains valid and subsisting.
  - c. The dispute regarding contributions to construction of improvements on estate properties, including the house on plot Kakamega/Shamakhokho/XXX, shall be resolved administratively. Any beneficiary claiming reimbursement for expenditure on estate properties



shall present such claims to the administrator Hellen Muranje Muhiga within thirty (30) days, supported by documentary evidence.

- d. The administrator shall address all such claims and account for them in the final probate account required under Section 83(g) of the *Law of Succession Act*, which shall be filed within sixty (60) days.
- e. Felix Chumba Muhiga and any persons claiming through him shall not interfere with the occupation and enjoyment of properties allocated to other beneficiaries under the distribution schedule.
- f. The administrator shall proceed diligently with processing of title transfers to all beneficiaries in accordance with the confirmed distribution.
- g. Each party shall bear their own costs.

31. Orders accordingly.

**DATED AND SIGNED AT ELDORET THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2026**

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**R. NYAKUNDI**

**JUDGE**

