



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Muvu (Deceased) (Succession Cause 606 of 2012)
[2026] KEHC 2911 (KLR) (3 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 2911 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 606 OF 2012**

NIO ADAGI, J

MARCH 3, 2026

IN THE MATTER OF THE ESTATE OF JOHN MUINDI MUVU (DECEASED)

BETWEEN

EMMA NZISA MUNDI 1ST ADMINISTRATOR

FRANCIS MAWEU MUINDI 2ND ADMINISTRATOR

AND

SAMMY KAMIA NDUNGU 1ST INTERESTED PARTY

NELSON MOREMA NTABO 2ND INTERESTED PARTY

NICHOLUS KIOKO KILONZO 3RD INTERESTED PARTY

ROBERT MULI MUSILI 4TH INTERESTED PARTY

JOSEPH MWANZIA 5TH INTERESTED PARTY

MAGDALENA MUTINI 6TH INTERESTED PARTY

MUTUKU MWEMA 7TH INTERESTED PARTY

AGNES NDUNGE NDIVE 8TH INTERESTED PARTY

KING'OO NDUVA 9TH INTERESTED PARTY

MICHAEL MUTUA 10TH INTERESTED PARTY

RUTH MUTHEU MALITI 11TH INTERESTED PARTY

PAUL NTHENGE NDONYE 12TH INTERESTED PARTY



RULING

1. This ruling is on the Interested Parties/Applicants' Summons for revocation or annulment of grant dated 28th September 2021. The Applicants seek for orders THAT:
 - a. The Grant of Letters of Administration Intestate issued to Emma Nzisa Muindi and Francis Muindi, and a Certificate of Confirmation thereof issued on 31st July 2018 be revoked, annulled and or rectified to include the Applicants herein as Purchasers and/or Liabilities in the deceased's estate.
 - b. This honourable court do grant temporary a temporary injunction against the Administrators/Respondents herein, their agents, servants, employees, relatives and/or any person acting on their behalf from alienating, disposing transferring or in any way dealing with parcel of land Donyo Sabuk/Komorock Block 1/9292 and/or any of its subsequent divisions of Donyo Sabuk/Komorock Block 1/18109 to 18127 which forms part of the deceased's estate pending the hearing and determination of the application.
 - c. This honourable court to grant a temporary injunction against the Administrators/Respondents herein, their agents, servants, employees, relatives and/or any person acting on their behalf from alienating, disposing transferring or in any way dealing with parcel of land Donyo Sabuk/Komorock Block 1/9292 and/or any of its subsequent divisions of Donyo Sabuk/Komorock Block 1/18109 to 18127 which forms part of the deceased's estate pending the hearing and determination of the Summons for Revocation of Grant herein.
 - d. The cost of the proceedings be provided for.
2. The application is based on the grounds on the face of the application majorly that the Applicants have a purchaser interest and /or are liabilities in the deceased's estate in specific Donyo Sabuk/Komorock Block 1/9292 and/or any of its subsequent divisions of Donyo Sabuk/Komorock Block 1/18109 to 18127 the same having been sold to them by the deceased herein JOHN MUINDI MUVU before his death.
3. The Summons are opposed through the Replying Affidavit sworn on 26th April 2022 by FRANCIS MAWEU MUINDI, the 2nd Administrator/Respondent.

Applicants/Interested Parties Case

4. The Applicants case is that before his demise, the deceased herein who was the sole registered title holder of land parcel No. Donyo Sabuk/Komorock Block 1/9292, had sold several portions of land on his aforesaid land to the Applicants and had further through a surveyor, subdivided his subject land, prepared mutations and issued the Applicants with provisional numbers in readiness to process and transfer the same to them. That owing to the foregoing, it is evident that the deceased owner of the subject land had always been ready and willing to transfer the same to them. When the deceased passed on, the Administrators herein proceeded to carry out the succession process, but without recognizing the Applicants as purchasers, liabilities and/or interested parties in their petition documents despite the Respondents' full knowledge of the existence of the Applicants' interest in the estate. That the Administrators/Respondents after obtaining the Grant of Letters of Administration went ahead and subdivided the Title for land parcel Donyo Sabuk/Komorock Block 1/9292 into Donyo Sabuk/Komorock Block 1/18109 to 18127 in total disregard of the Applicants purchaser and/or beneficial interest therein.



5. The Applicants contend that the subdivision of land parcel Donyo Sabuk/Komorock Block 1/9292 into Donyo Sabuk/Komorock Block 1/18109 to 18127 by the Respondents without notifying the Applicants had malicious intention and/or ill motive of depriving the Applicants of their purchasers' interest in the said property. The Applicants aver that they started staying on their respective portions of land since the year 2003, a period of over 18 years, a fact which the Respondents were well aware of and had never raised any complaint thereof. The Applicants further aver that they have carried out massive developments and even buried their relatives thereon and the Respondents have never raised any issue. That the Applicants are genuine purchasers of the respective portions of the subdivided subject land which the Respondents are well aware of but have totally concealed it from the court.
6. The Applicants maintain that they have no interest whatsoever in disinherit any of the beneficiaries under the deceased's estate, but are only claiming their rightful shares in the deceased's estate. That the Applicants have come to this court as their last resort after their efforts to have the dispute resolved amicably through the Office of the Chief Komarock Location and the Assistant County Commissioner Matungulu Division failed due to the Administrators' lack of cooperation. The Appellants argue that it is in the interest of justice that the orders sought be granted otherwise, they will suffer irreparable loss/damage as they would lose all their interests in the estate.

The Respondents/Administrators' Case

7. The Respondents/Administrators on the other hand aver that the Applicants' case (as formulated in their written submissions dated 28th July 2025) is that the Administrators failed to disclose their liability to the Applicants (i.e., that the deceased had sold them land), and that by omitting to include the Applicants' interests in the grant application/confirmation the Administrators procured the grant by concealment and thereby engaged the statutory mischief of section 76(b). It is the Administrators' case that the Applicants have not met their evidential burden for the following reasons:
 - a. The Applicants have not produced the sale agreements or coherent and sufficient proof of payment; they have repeatedly refused to supply copies despite direct requests and an express offer by the Administrators to effect transfers once documentary proof was shown. The failure to produce the fundamental documents that underpin their alleged status as liabilities of the estate fatally weakens the Applicants' claim of concealment. An allegation that an Administrator knew of a purchaser and deliberately concealed that purchaser is not the same as proof. The Applicants' pleadings must be tested by cross-examination or documentary proof; that has not occurred to the requisite degree here.
 - b. In the present matter, the Administrators' affidavit evidence is that they told the Applicants of their intention to apply (the Administrators' position is that they were transparent), that they were willing to transfer Donyo Sabuk/Komarock NO.1/9292 (subdivided into Donyo Sabuk/Komarock 1/18109 to 18127) once the Applicants proved payment and produced sale agreements, and that the Applicants declined to produce these documents. If the Applicants had the documents and had they been genuine purchasers for value who had paid in full, they could and should have produced those documents when the grant process was underway or promptly thereafter - their failure to do so is inconsistent with the assertion that they were omitted by deliberate concealment. Further, the practical effect of their refusal to exhibit documents to the Administrators has been that the Administrators could not lawfully transfer; Administrators cannot simply transfer registered estate interests without supporting title documents and sufficient evidence of payment. The Applicants' silence on these crucial facts weakens any inference of fraud.
 - c. The Court should also note that the Administrators conducted themselves proactively; they petitioned for grant and have sought to administer the estate. There is no evidence that they suppressed claims so



as to enrich themselves; on the contrary, they repeatedly indicated willingness to transfer upon proof. A mere failure to list persons as beneficiaries in a certificate of confirmation, particularly where the so-called beneficiary is in truth a purchaser with an independent potential remedy is not ipso facto concealment of a material fact. The Applicants' evidence therefore fails at the critical first hurdle of proof.

8. The Respondents also submit that the Applicants' persistent refusal to produce sale agreements and proof of payment (despite repeated requests) is fatal to their claim. Put simply: if a party alleges that it bought estate land from the deceased and fully paid, it is elementary that the party should produce the sale agreement and payment receipts to substantiate the claim. The failure to produce those documents gives rise to the following legal consequences:
 - a. It undermines the Applicants' locus and the evidential basis for alleging concealment. Without documentary proof, the allegation that the Administrators concealed a material fact is merely an assertion and does not shift the burden to the Administrators to disprove. The Applicants must demonstrate concealment by evidence not speculation.
 - b. It engages the equitable doctrines of laches and clean hands. Equity abhors delay and misconduct. The maxim "he who comes to equity must come with clean hands" is engaged where an applicant asks the Court to unsettle completed administration yet has withheld essential evidence that would have facilitated voluntary regularisation (transfer) by the Administrators. Similarly, "equity aids the vigilant and not those who sleep on their rights" - if the Applicants had the requested documents and were serious purchasers they would have produced them earlier or sought to be joined in the succession cause when the grant was being applied for or when it was to be confirmed. Their present conduct shows neither diligence nor clean hands. The Respondents call upon the Court to weigh these equitable maxims in the exercise of its discretion.
9. The Respondent aver that the Court ordered a County Surveyor to inspect and measure the parcels on 20th September 2024. The Administrators do not contend that a court appointed surveyor's report is inadmissible - far from it. However, the weight of such a report depends on the circumstances in which the data were collected and on the possibility of error; where the survey exercise is shown to have been undertaken under sub-optimal conditions (for instance in darkness, as is admitted here) and the report returns implausible acreage numbers (e.g., 3.9 acres recorded for a parcel independently known to measure 3.0 acres), the Court should treat the report carefully, consider the methodology used, and (if necessary) direct a fresh survey under proper conditions or allow the Respondents to produce counter-expert evidence.
10. That in the present matter the Administrators state that:
 - (a) the survey was conducted at night and the County Surveyor could not obtain reliable ground marks for certain parcels;
 - (b) one parcel returned (allegedly for one Michael Mutua is not part of the list of parcels created from the subdivision of the mother title 9292 and such he cannot appear to have 3.95 acres) a measurement of 3.95 acres when previously the parcel and registry metrics have consistently recorded 3.0 acres (this is an unexplained variance that ought to be tested by re-survey under daylight conditions); and
 - (c) the Applicants withheld sale agreements which would have assisted the surveyor to identify boundaries agreed between the parties. On these facts, the Administrators submit that the



County Surveyor's report is not a conclusive answer and should not be treated as a trump card to be used to revoke a grant absent more.

11. For the foregoing reasons the Respondents respectfully plead with the Court to find that:-
 - a. That the Applicants have not proved any of the statutory grounds under section 76 of the [Law of Succession Act](#) to justify revocation or annulment of the grant; the summons should therefore be dismissed.
 - b. Alternatively, if the Court is not prepared at this juncture to dismiss the summons outright, the Administrators ask the Court to exercise its case-management discretion to require the Applicants to produce in Court (and to the Administrators) the original sale agreements and proof of payment. Further the Court should direct that any survey anomalies be resolved by a fresh neutral survey in daylight and that the costs of re-survey be apportioned as the Court deems fit. Such directions would be proportionate, just and in the interests of all concerned.
 - c. That in the event the Court finds that any revocation is necessary (which the Respondents deny), the Court should make such ancillary orders as preserve the rights of bona fide purchasers (Section 93) and of beneficiaries and should refrain from making any order that operates to cancel title of third parties who were not joined or who have statutory protection unless such third parties have been given a hearing.
 - d. That the Applicants should pay the costs of the Respondents of and incidental to this summons.
12. In light of the conclusion captured above, the Respondents pray that this Honourable Court does dismiss the Applicants' summons for revocation/annulment of the grant in its entirety with costs to the Respondents; Direct that the county surveyor's report dated 20th September 2024 not to be admitted and that a re-survey be ordered to take place in daylight (under the supervision of the Court/Registrar) or conducted by another Surveyor whom is appointed by the Administrator with costs of the re-survey to be assessed and apportioned by the Court; and make any further or other orders that this Honourable Court deems fit and just in the circumstances, including an order for costs.

Analysis and determination

13. I have considered the Summons for revocation or Annulment of Grant dated 28th September 2018, the Replying Affidavit sworn on 26th April 2022 by FRANCIS MAWEU MUINDI, 2nd Administrator/Respondent, the Government Surveyor's Report dated 27th November 2024 and the parties' rival submissions. The only pertinent issue for determination is whether the Grant of Letters of Administration Intestate issued to Emma Nzisa Muindi and Francis Muindi, and a Certificate of Confirmation thereof issued on 31st July 2018 should be revoked, annulled and or rectified to include the Applicants herein as Purchasers and/or Liabilities in the deceased's estate
14. The law governing revocation of grants is well-settled in Kenya. Section 76 of the [Law of Succession Act](#) CAP 160 of the Laws of Kenya is the statutory compass: it gives the Court power to revoke a grant where the grant was procured by defective proceedings, fraud; material concealment or other failures specified in the Section. However, it is a discretionary power to be exercised judicially and only upon cogent evidence of the impugned grounds. The Court's discretion must be exercised having regard to the interests of all beneficiaries, the finality of administration, the protection of bona fide purchasers and the need to avoid needless disruption of administration. That approach is reflected repeatedly in High Court decisions and the Court of Appeal authorities: the Applicant bears the onus of proof and must adduce satisfactory cogent evidence that one or more of the statutory grounds are made out.



15. In Re: Prisca Ong'ayo Nande [2020] eKLR, Musyoka J, in his wisdom, stated that, to wit;

“Revocation of a grant is not automatic. An applicant must place before the court material that demonstrates fraud, concealment or other grounds in section 76. Allegations without substantiation are insufficient.”
16. The Court dealt comprehensively with the statutory scheme and emphasized that under Section 76 the Court may revoke a grant where the processes were defective in substance, were attended by fraud/ concealment or there has been subsequent failure to administer the estate diligently; importantly, the learned judge also observed that a certificate of confirmation is not itself a grant within the meaning of the statute and that the proper mechanism to challenge confirmation orders is to vacate the confirmation orders rather than merely attacking an extracted certificate.
17. In *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] KEHC 1528 the court held that the power to revoke is discretionary and that the discretion must be exercised judiciously and only upon sound grounds; the Court emphasized there must be evidence of wrongdoing and that the Court must take into account the interests of all beneficiaries before ordering revocation. Revocation is not a whim but a serious step which should be avoided where rectification or other less drastic remedies suffice.
18. The Court of Appeal in *Matheka & Another v Matheka* [2005] 2 KLR 455 construe Section 76 as imposing an evidential burden on any party seeking revocation and emphasis that even where revocation is contemplated on the court's own motion, there must still be evidence to satisfy the statutory grounds. This case has been cited frequently for the proposition that revocation requires proof of one or more of the section 76 grounds and must not be lightly exercised.
19. I have cautiously considered the grounds upon which the Applicants seek to have the Grant herein revoked the major one being that when the deceased passed on, the Administrators/ Respondents herein proceeded to carry out the succession process, but without recognizing the Applicants as purchasers, liabilities and/or interested parties in their petition documents despite the Respondents' full knowledge of the existence of the Applicants' interest in the estate. That the Administrators/ Respondents after obtaining the Grant of Letters of Administration went ahead and subdivided the Title for land parcel Donyo Sabuk/Komorock Block 1/9292 into Donyo Sabuk/Komorock Block 1/18109 to 18127 in total disregard of the Applicants purchaser and/or beneficial interest therein.
20. The Applicants at the same time aver that the deceased had further through a surveyor, subdivided his subject land, prepared mutations and issued the Applicants with provisional numbers in readiness to process and transfer the same to them.
21. This Court is struggling to pick out which of the two positions is correct. Is it the Administrators who went ahead and subdivided the Title for land parcel Donyo Sabuk/Komorock Block 1/9292 into Donyo Sabuk/Komorock Block 1/18109 to 18127 in total disregard of the Applicants purchaser and/or beneficial interest therein OR is it the Deceased before his demise that subdivided the Title for land parcel Donyo Sabuk/Komorock Block 1/9292 into Donyo Sabuk/Komorock Block 1/18109 to 18127 further through a surveyor, subdivided his subject land, prepared mutations and issued the Applicants with provisional numbers in readiness to process and transfer the same to them.
22. On the above, this Court finds that the Applicants have failed to satisfy any of the statutory grounds set out under Section 76 of the *Law of Succession Act*. Therefore, there is no basis upon which the Grant of Letters of Administration Intestate issued to Emma Nzisa Muindi and Francis Muindi, and a Certificate of Confirmation thereof issued on 31st July 2018 can be revoked or annulled. The Summons for revocation or annulment of grant dated 28th September 2021 is without merit.



23. The Administrators have asserted; that the survey herein was conducted at night and the County Surveyor could not obtain reliable ground marks for certain parcels; that one parcel returned (allegedly for one Michael Mutua is not part of the list of parcels created from the subdivision of the mother title 9292 and such he cannot appear to have 3.95 acres) a measurement of 3.95 acres when previously the parcel and registry metrics have consistently recorded 3.0 acres (this is an unexplained variance that ought to be tested by re-survey under daylight conditions); and lastly that the Applicants withheld sale agreements which would have assisted the surveyor to identify boundaries agreed between the parties. On these facts, the Administrators submit that the County Surveyor's report is not a conclusive answer and should not be treated as a trump card to be used to revoke a grant absent more.
24. This Court has had the chance to scrutinize the Surveyor's Report Dated 27th November 2024. The Report does not indicate the time the survey was conducted and also shows the parcel of Michael Mutua as No. 18127 and not 9292 as asserted by the Administrators. It is unfortunate that when the Report was presented in court and all the parties confirmed to have received a copy of the same, none of the parties formally raised any discrepancies on the report so as to bring the same to the attention of the court or seek to have the Surveyor attend the court to clarify any discrepancy and be cross-examined on the report.
25. Parties are therefore barred from raising any issues on the surveyor's report through submissions and expecting the Court to consider such submissions. See the case of Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & Another [2014] eKLR:
- “Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' “marketing language”, each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented.”
26. On evidence and expert/surveyor reports, appellate and trial courts have accepted court appointed Surveyor Reports as admissible and often persuasive, but their weight depends on circumstances. Where the survey procedure was flawed (incomplete attendance, failure to measure under fair conditions), the opposing party may call its own expert or challenge the methodology. The Court will weigh competing expert evidence. In Wambui v Gathari [2023] ELC 16620 where the Court analysed competing surveys and explained the proper approach to the land registrar/district surveyor's reports and private surveyor reports: the court must examine the circumstances of survey and permits challenge to the weight to be attached to such reports where there are shown to be palpable defects.
27. The Applicants are at liberty to appropriately move court to pursue their purported interest in the deceased estate if any and may call or engage the Surveyor to shade some light on the Survey Report Dated 27th November 2024.
28. The upshot is that the Summons for revocation or annulment of grant dated 28th September 2021 is hereby dismissed with costs to the Administrators/Respondents assessed at Kshs.30,000/=.

It is hereby so ordered.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 3RD MARCH 2026

NOEL I. ADAGI

JUDGE

