



REPUBLIC OF KENYA



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**In re Estate of Luvembe (Deceased) (Succession Cause 14 of 2022)
[2026] KEHC 2358 (KLR) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2358 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
SUCCESSION CAUSE 14 OF 2022**

JN KAMAU, J

FEBRUARY 26, 2026

IN THE MATTER OF THE ESTATE OF ALFRED GWEDEYA LUVEMBE (DECEASED)

BETWEEN

**GIDEON GWEDEYA LUVEMBE 1ST ADMINISTRATOR
MARY MWIKALI 2ND ADMINISTRATOR**

AND

**JOASH SENERWA MAGAMU 1ST OBJECTOR
FRANCIS ONZERE LUVEMBE 2ND OBJECTOR
GRACE KAGONYA 3RD OBJECTOR
EZINAFI KAVAIRA 4TH OBJECTOR**

RULING

1. In their Summons for Revocation of Grant and/or rectification of Grant dated 4th April 2022 and filed on 13th April 2022, the Objectors herein sought for orders that the Grant of Letters of Administration and the Certificate of Confirmation of Grant issued to Mary Mwikali Luvembe and Moses Gwedeya Luvembe in this Succession Cause and/or the order given on 14th July 2014 and/or any subsequent order confirming the Grant be revoked, reviewed and/or be rectified to include the Objectors herein as beneficiaries of the estate of the deceased. They also sought that they be given their share of the estate as beneficiaries.
2. The 1st Objector swore an Affidavit in support of the said Summons for Revocation on his own behalf and on behalf of the 2nd, 3rd and 4th Objectors. He further swore a Supplementary Affidavit on 19th January 2022. The same was filed on 22nd March 2023. They averred that they were children of Johnstone Magamu Luvembe and Esinasi Alividza. They stated that their deceased father and the deceased herein were cousins.



3. They contended that their father died in the year 1951 leaving behind a widow, Esinasi Alividza Luvembe (Deceased). They added that at the time, the 2nd Objector was about six (6) years old while the 1st Objector was about two (2) years old. They pointed out that when their father died, Esinasi Alividza Luvembe was still young as she was only about twenty-eight (28) years of age.
4. They asserted that owing to the fact that their mother was young and owing to the Luhya traditions, their clan known as Vasaniaga held a meeting in which it was decided that the deceased herein was the perfect person to “inherit” their mother Esinasi Alividza and at the same time adopt them as his children for the continuity of their deceased father’s family.
5. They further averred that in the year 1956, the deceased herein inherited and/or remarried their mother, Esinasi Alividza. They pointed out that the deceased herein together with their mother were blessed with six (6) children, namely, Esther Musimbi Luvembe and Joyce Garata (Deceased) who were twins born in 1956, the 1st Administrator herein born in 1958, Beatrice Kiganda Luvembe (Deceased) born in 1960, Catherine Mugisia (Deceased) born in 1962 and Rose Kageha Luvembe born in 1965.
6. They were categorical that before the deceased herein inherited their mother and father lived on parcel No Kakamega/Bugina/456. They asserted that their biological father, Johnstone Magamu died in 1951 in an accident at his place of work, Rift Valley Cereals farm, Eldoret. They pointed out that the deceased Alfred Gwedeya Luvembe was born Alfred Likodio Gwedeya and that when the Riftvalley cereals farm wanted to compensate their mother, they demanded that among the people going to collect the compensation, there must be one family member who was educated and who was in a position to understand what was going on as well as to explain the same to the family.
7. They stated that since there was no one close enough in the family who was then educated, the family chose the deceased herein to represent the family. They added that their late mother had acquired several parcels of land which title deeds were issued in the name of the deceased herein. They pointed out that they entrusted the 1st Administrator to file this succession and that he lied to them that he would include them as beneficiaries.
8. They asserted that later in the year 2020 or thereabouts, they realised that the 1st Administrator had started constructing on some of the parcels and when they inquired from him what was going on, he became very evasive. They were emphatic that they were entitled to inherit from the deceased as his stepchildren and that they were least entitled to the properties their mother purchased.
9. On 13th October 2022, the 1st Administrator filed Grounds of Opposition dated 5th October 2022 in response to the Objectors’ Summons for Revocation. He contended that the Grant of Letters of Administration having been confirmed and the application by the Objectors being a dependency application, it was barred by Section 30 of the *Law of Succession Act*. He was categorical that the Objectors were neither dependants nor beneficiaries of the deceased’s estate.
10. On 30th September 2022, he further filed a Replying Affidavit sworn on 2nd August 2022. He averred that he was an Administrator herein of the estate of the deceased who died on 3rd July 1995. He stated that he knew the 1st Objector and that he was neither a dependant, a beneficiary nor a creditor of the deceased’s estate and, therefore, he could not have been included as a person having any interest in the deceased’s estate.
11. He asserted that the 2nd, 3rd and 4th Objectors were children of one Johnstone Magamu Luvember and not of the deceased herein and that they were never adopted by the deceased. He added that at the time the deceased died, the Objectors were old men and women running their own families independently. He denied the averments of the Objectors’ Supporting Affidavit and asserted that at the time of his



death, the deceased was the registered owner of Land Parcel Numbers Kakamega/Bugina/319 and Kakamega/Bugina/444 and that the Objectors had no right, title or interest in them known in law.

12. The Objectors' Written Submissions were dated 14th August 2023 and filed on 16th August 2023 while those of the Administrators were dated and filed on 26th May 2025. The Ruling herein is based on the said Written Submissions which both parties relied upon in their entirety.

LEGAL ANALYSIS

13. The Objectors reiterated the fact that by virtue of their mother having been remarried to the deceased, they survived the deceased as his step-children. They placed reliance on the case of Gilbert Otieno Okute vs Moses Odero Oditi[2013]eKLR where it was held that the definition of a child as used in both sub-section 3(2) and 3(3) of the *Law of Succession Act* includes a stepson.
14. They were emphatic that they did fall under the definition of a child for succession purposes and that, as was provided by the law of succession as children of a deceased person are regarded as direct beneficiaries of the estate. They also invoked Section 29(1)(a) and (b) of the Law of Succession Amendment Act, 2021 and argued that they were dependents as per the said section.
15. They were emphatic that the deceased maintained them upon inheriting their late mother, as they were still young to take care of themselves. They argued that the law prohibits discrimination of every form and anyone under Article 27(1) of *the Constitution* of Kenya, 2010. They further invoked Section 76 of the *Law of Succession Act* and placed reliance on the cases of Re Estate of Prisca Ong'ayo Nande (Deceased)[2020]eKLR where it was held that a court may revoke a grant on its own motion or on application of a party and Albert Imbuga Kisigwa vs Recho Kawai Kisigwa Succession Cause No 158 of 2000 (eKLR citation not given) where it was held that the power to revoke a grant was a discretionary power that must be exercised judiciously and only on sound grounds.
16. They asserted that Section 29 of the Law of Succession clearly sets out an account of the definition and hierarchy of dependents of the deceased who are bound to benefit from the estate, subsisting at the time of his or her demise. They added that Sections 35, 37, 38 and 39 of the said Act fundamentally set out the order of priority of the persons entitled to inherit the deceased estate.
17. They blamed the Administrators herein for initiating the proceedings herein without notice to other beneficiaries or obtaining their respective consents. They added that the Administrators only listed themselves as the only survivors, evidence of non-disclosure of material facts. They pointed out that they were also left out in the Chief's Letter dated 1st October 2006. They argued that as their late mother was a Co-wife to the 2nd Administrator herein, it was clear that she was not the only one with superior rights as was provided under Section 66 of the *Law of Succession Act*.
18. They cited Rule 63 of the Probate and Administration Rules which imports Order 45 of the Civil Procedure Rules in probate matters and placed reliance on the case of Muyodi vs Industrial and Commercial Development Corporation & Another (2006) 1 EA 243 where it was held that where an error on a substantial point of law stares one in the face and there could reasonably be no two (2) opinions, a clear case of error apparent on the face of the record would be made. They argued that the failure to involve them in the proceedings was an error apparent on the face of record, thus, orders confirming the grant were subject of review.
19. On their part, the Administrators submitted that the Objectors were time-barred in making their application herein under Section 30 of the *Law of Succession Act*. They argued that the deceased in this matter died in 1995 aged sixty (60) years and that the 1st Objector, born in 1951 was then aged forty



four (44) years, the 2nd Objector was forty nine (49) years, the 3rd Objector was fifty-two (52) years and the 4th Objector was forty seven (47) years.

20. He asserted that under dependency, these were persons who could not possibly qualify as dependents in accordance with Section 29 of the Act. He argued that the Objectors were old people and there was no averment in the Affidavit to show that they were being maintained by the deceased immediately prior to his death, and therefore, they could not have been dependents.
21. He further asserted that the claim by the Objectors would appear to be that they were children of the deceased, having been adopted by the deceased under Customary Law. He added that their affidavit evidence was a long story spanning over a period of over seventy (70) years based on hearsay evidence. He argued that the Objectors referred to dead people who did and said things in the 1950's from which he wanted to be the basis of their claim to the deceased's estate.
22. He contended that the use of Customary Law as the basis of a claim to a right was provided for under Section 3 of the *Judicature Act* Cap 8 (Laws of Kenya). He argued that there was no evidence of the customary law being claimed in the case herein. He was emphatic that he who sought to rely on customary law had to prove the existence of that custom as a fact in order to claim a right under it as was held in the case of *Joyce Atieno vs May Ipali Imukaro* CA No 274 of 2001 and the case of *Ernest Kinyanjui Kimani vs Muiru Gikanga & Another*. He urged the court to dismiss the Objectors' Summons for Revocation.
23. Section 76 of the *Law of Succession Act* Cap 160 (Laws of Kenya) 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
 - iv. that the grant has become useless and inoperative through subsequent circumstances.”



24. An order for revocation of the grant could only thus be given if the aforesaid grounds for revocation had been satisfied. A similar finding was arrived at *Re: Estate of L A K – (Deceased)* [2014] eKLR.
25. Notably, the Objectors argued that they were step children of the deceased as he inherited their mother under Luhya customary law. They were categorical that they shared a biological mother with the 1st Objector and that the deceased took them in with their mother while young and lived with them.
26. By virtue of the *Judicature Act*, customary law must be measured on the constitutional yard stick. Any custom before being upheld by the court must not be repugnant to *the Constitution*, natural justice and morality.
27. Article 159(3)(c) of *the Constitution* of Kenya, 2010 provides:-
- “Traditional dispute resolution mechanisms shall not be used in a way that:-
- a. contravenes the Bill of Rights;
 - b. is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or
 - c. is inconsistent with this Constitution or any written law.”
28. Further, Article 2(4) of *the Constitution* of Kenya provides:-
- “Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.”
29. In dealing with a situation similar to the one before this court, it was imperative that such a case be dealt with and be determined on its own facts, as there was no case that was similar to another.
30. This court noted that the 1st Administrator admitted that indeed the Objectors were children of Johnstone Magamu Luembe as alleged but denied that they were children of the deceased and/or that the deceased maintained them prior to his death.
31. The question as to whether the Objectors the deceased’s stepchildren of the deceased and whether or not he maintained them before his demise were pertinent and were difficult to determine based on the affidavit evidence as it appeared scanty for a reasoned conclusion.
32. This court noted that in their Summons for Revocation, the Objectors herein had sought that the matter be heard by viva voce. However, this matter proceeded by way of affidavit evidence. There was a need to obtain oral evidence that was subjected to cross-examination of the status of the Objectors within the deceased’s family and if they were considered to be the deceased’s children, to ascertain what pertained in the Luhya Customary laws to establish how children whose mother was inherited by a person fitted in that person’s inheritance system.
33. This court was apprehensive that it could do an injustice to both parties by determining the issues that had been raised herein on the basis of affidavit evidence. It was prudent that the Summons for Revocation of Grant and/or rectification of Grant dated 4th April 2022 and filed on 13th April 2022, be set down for hearing to enable this court determine the same on its merits.



Disposition

34. For the foregoing reasons, the upshot of this decision was that the decision in respect of the Objectors' Summons for Revocation of Grant and/or rectification of Grant dated 4th April 2022 and filed on 13th April 2022 herein be and is hereby deferred so that the matter can proceed by way of viva voce evidence herein.
35. It is hereby directed that the matter be mentioned on 27th April 2026 for further orders and/or directions.
36. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 26TH DAY OF FEBRUARY 2026

J. KAMAU

JUDGE

