

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**SUCCESSION CAUSE NO 865 OF 2012**

IN THE MATTER OF THE ESTATE OF MABIA WITIRA, alias WITILA  
MABIA(DECEASED)

JOSEPH

SHIHEMI

WITIRA.....OBJECTOR/APPLICANT

VERSUS

MOSES

MUSALIMWA

WITIRA.....PETITIONER/RESPONDENT

**RULING**

1. The Applicant herein filled summons for revocation and/ or annulment of the grant dated 17<sup>th</sup> November 2023. In his summons, the Applicant seeks the following orders;

- a) *THAT the grant of letters of administration intestate issued herein and confirmed on 22<sup>nd</sup> February, 2022, to the petitioner herein be revoked or annulled*
- b) *THAT a fresh grant be issued to the objector/applicant herein*
- c) *That a fresh distribution of the estate of the deceased be undertaken*
- d) *That any action undertaken by the petitioner herein pursuant to the said grant be voided.*
- e) *That the costs of this application be provided for.*

2. The application was based on the grounds and supporting affidavit of the Applicant, where he states that the confirmed grant was issue on 22<sup>nd</sup> February 2022, where the entire estate was to be held by the petitioner in trust for all the other beneficiaries for distribution and over a year has passed and the petitioner has not proceeded diligently or at all to distribute the said estate.
3. He claimed that the estate was to distribute the estate equally; however, he had occupied the land parcel KAKAMEGA/MUGOMARI/1124 singlehandedly.
4. He claims that the petitioner has no intention to distribute the estate and intends to alienate it to 3<sup>rd</sup> parties.
5. He prays that he be allowed to administer the estate on behalf of the other beneficiaries, and the District Land Registrar/Surveyor to visit the site to ensure the parcels are well distributed.
6. The Respondent/ Petitioner, Moses Musalimwa Witira, filed a replying affidavit dated 7<sup>th</sup> October 2025, claiming that the application was malicious, oppressive and vexatious and filed in bad faith.
7. He claimed that the objector was present during the confirmation of the Grant and had consented when the land was wholly allocated to him.
8. He stated that the objector was his deceased step-mother Sulumena Ingabo's son and that they were allocated their own land in Mumias, where the deceased was buried, and his action was gluttonous for the objector to come back and request more land from the families.
9. He claimed that the objector signed the consent of distribution and that it is hypocritical for him to come later and demand a share years later,

and claims that the application was made in bad faith and should be dismissed with costs.

10. The application was canvassed by way of written submissions.

**Objector/Applicant's submissions**

11. The Applicant filed submission dated 5<sup>th</sup> December 2025, where he claims that he is a son of the deceased and equally rank in priority to the petitioner. He avers that the confirmed grant was issued to the petitioner on 22<sup>nd</sup> February 2022, where he was to hold the estate in trust for all the other beneficiaries and for purposes of distribution. He states that it has been over a year since the confirmation and the petitioner has not proceeded with his administrative duties, and that the beneficiaries were entitled to equal shares of the estate, but instead the petitioner exclusively occupied the entire estate, which is Kakamega/Mugomari/1124, as his own and not as a trustee.

12. He cited section 76 of the Law of Succession Act and further stated that the court can revoke the grant in court and referred the court to the case **Albert Imbuga Kisigwa vs Recho Kawai Kisigwa (2016) eKLR.**

13. He states that the only asset in the deceased estate was KAKMEGA/MUGOMARI/1124, and the allegation that the applicant and other beneficiaries were allotted land in Mumias after confirmation of the estate as its trustee was an attempt to disinherit his siblings and has not provided any evidence to back his allegations.

14. He prays that the court allow his application for revocation dated 17<sup>th</sup> November 2023.

15. At the time of writing this decision, the respondent had not filed his submissions.

**Analysis and determination.**

16. The court is called upon to determine the Summons for Revocation and/or Annulment of Grant dated 17<sup>th</sup> November 2023. The Applicant seeks revocation of the grant issued and confirmed on 22<sup>nd</sup> February 2022, issuance of a fresh grant to himself, fresh distribution of the estate, nullification of actions undertaken pursuant to the impugned grant, and costs.

17. His application is premised on Section 76 of the Law of Succession Act, Cap 160 Laws of Kenya. The main issue is that although the grant was confirmed with the Respondent holding the estate in trust for all beneficiaries, he has allegedly failed to distribute the estate and has instead occupied the sole asset, land parcel KAKAMEGA/MUGOMARI/1124, exclusively.

18. The Respondent opposes the application on the grounds that the Applicant had consented to the confirmation and distribution, that he is acting in bad faith, and that the Applicant's family had allegedly been allocated separate land in Mumias.

19. I have analysed the application, the responses, as well as the submission. The main issue for determination is whether the threshold for revocation or annulment of a grant under Section 76 of the Law of Succession Act has been met.

20. Section 76 of the Law of Succession Act provides that a grant may be revoked or annulled if:

- a) *The proceedings to obtain the grant were defective in substance;*
- b) *The grant was obtained fraudulently by making false statements or concealment of material facts;*
- c) *The grant was obtained by untrue allegations of essential facts;*
- d) *The person to whom the grant was made has failed, after due notice and without reasonable cause, to apply for confirmation or to proceed diligently with administration;*
- e) *The grant has become useless and inoperative.*

21. In **Albert Imbuga Kisigwa v Recho Kawai Kisigwa**, the High Court emphasised that revocation is a discretionary remedy exercised judiciously upon demonstration of any of the grounds in Section 76.

22. The deceased died on 30<sup>th</sup> July 1999, survived by one widow and nine children. His son, Moses Musalimwa Witira, applied for letters of administration intestate, which were issued on 12<sup>th</sup> June 2013. The petitioner filed a consent form, which included two assets: Kakamega /Mungomari/1124 and Kakamega/ Mungomari/1075. In the consent and mode of distribution, the petitioner allocated himself the whole of Kakamega/Mugomari/1124 measuring 2.2 Ha and Kakamega Mugomari/1075 measuring 0.8 Ha. The petitioner was to hold the two parcels of land in trust for the other beneficiaries according to the certificate of confirmation of grant dated 22<sup>nd</sup> February 2022.

23. I note that from the date of confirmation, the petitioner has not provided this court with any evidence that there was any distribution of the estate after the confirmation.

24. The Applicant's principal complaint is that although the Respondent held the estate in trust for all beneficiaries, he has failed to distribute the estate and has instead occupied the property exclusively.

25. Section 83 of the Law of Succession Act outlines the duties of personal representatives, including the duty to complete administration of the estate within six months from confirmation and to distribute the assets without unreasonable delay.

26. The Court reiterated that administrators are fiduciaries and must act in utmost good faith and in accordance with the confirmed grant.

27. A confirmed grant is not a mere formality; it crystallises proprietary interests of beneficiaries. The administrator becomes a trustee for the beneficiaries. Failure to effect transmission and distribution may amount to breach of the said fiduciary duty.

28. In the present matter, the grant was confirmed on 22<sup>nd</sup> February 2022. By the time this application was filed in November 2023, over one year had lapsed. The Respondent has not demonstrated steps taken toward subdivision, transmission, or distribution.

29. However, revocation under Section 76(d)(ii) requires proof that the administrator has failed, after due notice and without reasonable cause, to proceed diligently. There is no evidence on record that a formal notice was issued requiring the Respondent to complete administration. Revocation is a drastic remedy and should not be invoked where alternative supervisory remedies are available.

30. The complaint before the court appears more like an enforcement of the confirmed grant rather than an invalidation of it. The Applicant does not

challenge the mode of distribution per se, but the alleged non-implementation thereof.

31. The Respondent alleges that the Applicant's family had been allocated land in Mumias. No documentary evidence has been produced to substantiate that claim.

32. The Respondent cannot, under the guise of administrative discretion, alter the confirmed mode of distribution. Further, I find that revocation would be such a radical remedy as it would nullify the entire steps made in the succession process.

33. There was no evidence presented by the applicant to demonstrate that the grant was obtained fraudulently, through concealment, or through defective proceedings. However, this court cannot ignore the fact that the Respondent has failed in completing his fiduciary duty as the administrator to transmit and distribute the estate of the deceased as per the confirmed grant.

34. Accordingly, instead of revocation, I invoke the court's supervisory jurisdiction under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules to ensure compliance.

35. The Summons for Revocation dated 17th November 2023 is hereby declined.

36. The Respondent shall, within ninety (90) days from this date;

- i. Initiate and complete transmission of land parcel KAKAMEGA/MUGOMARI/1124 in accordance with the confirmed grant;
- ii. File in court a status report demonstrating compliance.

37. In default of compliance, the Applicant shall be at liberty to move the court for further appropriate orders, including possible revocation.

38. Each party shall bear their own costs, this being a family dispute.
39. Mention to confirm compliance is on 24.6.2026.
40. It is so ordered.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA 18<sup>th</sup>  
DAY OF MARCH, 2026**

**S.MBUNGI**

**JUDGE**

**In the presence of:-**

**CA:** Velma/Zilda

Parties present.