



REPUBLIC OF KENYA



**In re Estate of Moita (Deceased) (Succession Cause 25 of 1995)
[2026] KEHC 4225 (KLR) (1 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4225 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 25 OF 1995**

RN NYAKUNDI, J

APRIL 1, 2026

**IN THE MATTER OF THE ESTATE OF THE LATE KIPKOSGEI
ARAP MOITA ALIAS KIPKOSGEI S/O MOITA (DECEASED)**

IN THE MATTER OF

TECLA JEBOTIP KOLIL 1ST APPLICANT

HENRY KOLIL 2ND APPLICANT

RULING

1. What is pending before this Honourable Court for determination is Summons for Revocation or Annulment of Grant dated 18th September 2025 premised under section 76 of the *Law of Succession Act* and Rule 44 of the Probate and Administration Rules where the Applicants are seeking the following orders;
 - a. Spent
 - b. That the Grant of Letters of Administration issued to Cornelius Bungei Kiroryo and Monica Ruto on an unspecified/unknown date and confirmed as amended on 22nd November 2023 be revoked or annulled.
 - c. The costs be provided for.
2. The Summons is based on the following grounds on the face of it among others: -
 - 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, which is that the Applicants, being grandchildren of the deceased, through their mother Cheptalam Kolil were beneficiaries of the subject estate.



- c. That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant.
 - d. That the grant as issued and subsequently confirmed as amended was based on a consent made pursuant to a meeting in which the Applicants were neither invited nor were present and which consent was filed and adopted as an order of the Court on 21st November 2023.
 - e. That the tenor of the proceedings right from inception has been to completely exclude the Applicants from the estate and yet they are beneficiaries by dint of being the children of Cheptalam Kolil, a daughter of the deceased, who herself is also deceased.
 - f. That the said Cheptalam Kolil was the daughter of one Martha Moek, who was the 1st wife of Kipkosgei Arap Moita and as such, her children are entitled as beneficiaries in the said estate. No reference has been made to Cheptalam Kolil in terms of the inheritance due to her offspring, in this case, the Applicants.
 - g. That surprisingly, the daughters in the 2nd, 3rd and 4th houses have been provided for whether they are alive or deceased. In the latter case, their shares of the estate have gone to their children i.e. grandchildren of the late Kipkosgei Arap Moita. In the essence, the house of Cheptalam Kolil has been deliberately left out in a manner that reeks of discrimination.
 - h. That the Applicants were long chased from the land that they used to occupy as children of the late Cheptlam Kolil and have been reduced to a life of penury.
 - i. That the Administrators are cutting up and selling the lands comprising of the estate without any consideration for the interest of the Applicants.
 - j. That the Applicants have been completely left out of the estate of their late grandfather and yet other grandchildren have been provided for.
3. The summons is supported by the annexed affidavit sworn by Tecla Jebotip Kolil who deponed as follows: -
- a. That I am granddaughter of the late Kipkosgei Arap Moita Alias Kipkosgei Moita who died on 11th June 1992.
 - b. That my grandfather had 5 wives, namely Martha Moek, Chelamai Moek Alias Bot Kirorio, Tapkigen Moek, Elizabeth Sambai, Chebor Chelel Moek who he married in that order.
 - c. That his first wife, the above-mentioned Martha Moek bore my mother, one Cheptalam Kolil who was the second born of that house. As such I am a granddaughter of the 1st House.
 - d. That my co-applicant herein, is my brother, also borne of Cheptalam Kolil.
 - e. That our mother died in 1986, hence predeceased our grandfather.
 - f. That I have now learnt that my uncle, one Cornelius Bungei Kiroryo and my aunt, Monica Ruto have taken out letters of administration and have had the same confirmed.
 - g. That interestingly, the said Cornelius Bungei Kiroryo is a real brother to my mother, being the 6th born of the late Martha Moek, my grandmother.
 - h. That Monica Ruto is the 3rd born in the 3rd house, that of Tapkigen Moek.



- i. That I am advised by my advocate on record, that the said grant was confirmed as amended on 23rd November 2023 and issued on the same day.
- j. That I am further informed by my advocate on record that the Amended Certificate of Confirmation of Grant was made pursuant to a consent that was filed in this court on 21st November 2023 signed by the Advocates representing the parties then involved in the matter.
- k. That I have been taken through the documents in court by my advocate and I have noticed that my mother is not mentioned anywhere as a beneficiary of the estate of her late father and that in fact, the consent that led to the grant only mentions Cornelius Bungei Kiroryo, Luka Koskei And Julius Kirarei as the only beneficiaries of from the house of Martha Moek and yet there were other children of the said house, being Cheptalam Kolil, my mother and my aunts called Halima Chepkeshio and Kolil Sinyei.
- l. That this is curious because the same Cornelius Bungei, in the Petition for Grant of Letters of Administration filed on 18th March 2022 lists my mother as the 3rd child in the 1st House as if he was not aware of my mother's entitlement, even though she was deceased as at the date of the Petition.
- m. That we have failed to understand and the basis upon which my mother's name was left out completely given that other daughters of the late Kipkosgei Arap Moita were provided for, whether alive or deceased. For example, Mary Moek, a deceased daughter of Chebor Chelel Moek, the 5th wife/house has been provided for, with the result that, her children (who are grandchildren in the same status as we the Applicants) benefitted through their mother's estate.
- n. That I am further advised by my advocates on record, that from a review of the pleadings, it is clear that all daughters in the 1st House were left out of the estate, even if they had left children behind upon their death. Contrarily, provision was made for deceased male children, meaning that their own children also got to inherit from the estate. In other words, a deceased male heir was given recognition that a deceased female heir was not-an act that is clearly discriminatory.
- o. That as further proof of discrimination, all the children in the 3rd House, were provided for, including daughters. In the 3rd House, Monica Ruto And Christine Kogo have been allocated 34.5 Acres each in that parcel known as Tulwet/Kesses Block 5 (Cheptiret)11. The same is true with the 4th and 5th houses, where all children, daughters included have been provided for.
- p. That it is only with respect to the 1st House, where my mother was born, that clear discrepancies are seen.
- q. That by excluding my mother from the list of beneficiaries, the Administrators have ensured that we, as her children do not benefit from what was due to her, yet her siblings, even those who are deceased, were provided for.
- r. That my brother and I live a life of penury and we cannot make ends meet despite the fact that there is land that we can make economic use of.
- s. That I have now seen minutes of meetings that were organized by Administrators and other aunts and uncles, as well as our cousins. We were never part of these proceedings as were never invited, nor invited, nor informed of the deliberations.
- t. That it is only recently that I noticed that there was a move to begin subdividing some of the land that I sought legal advice on what to do. It is only when I obtained copies of pleadings that I have now understood what the administrators have done in this matter.



4. A look at the court's record and the Case Tracking System (CTS) indicate that the Administrators have not yet responded to the Summons for Revocation at hand. I will however determine the Application based on its merits.

Analysis and Determination.

5. I have carefully considered the Summons for Revocation or Annulment of Grant dated 18th September 2025, the grounds upon which it is premised and the supporting affidavit sworn by the Applicant. I have also taken into account the fact that despite service, the Administrators have not filed any response to the application. Nonetheless, this Court is duty-bound to determine the application on its merits and in accordance with the law. The application is brought under Section 76 of the [Law of Succession Act](#) which provide for revocation or annulment of a grant where, inter alia, the proceedings to obtain the grant were defective in substance, the grant was obtained fraudulently by concealment of material facts, or where the grant was obtained by means of untrue allegations of essential facts. In particular, section 76 of the [Law of Succession Act](#) 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.
6. In the case of *Matheka & Another Vs Matheka* [2005] KLR, the Court of Appeal set out the guiding principles for revocation of a Grant as follows; -

“From the foregoing, it is clear that a grant may be revoked either by application by an interested party or on the Court's own motion. But even when revocation is by the Court upon its 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 a false statement or by concealment of something material to the case, or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person



named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate. The grant may also be revoked if it can be shown to the Court that the person to whom the grant has been issued has failed to produce to the Court such inventory or account of administration as may be required.”

7. In the case of *Jamleck Maina Njoroge Vs Mary Wanjiru Mwangi* [2015] eKLR the court set out the circumstances under which a grant may be revoked 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 a false statement or by 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.”

8. The Applicants’ case is principally anchored on the contention that they, as grandchildren of the deceased through their late mother, Cheptalam Kolil, were excluded from the succession proceedings and that such exclusion amounts to concealment of material facts and discrimination. There is no dispute from the record that Cheptalam Kolil, the Applicants’ mother, was a daughter of the deceased and that she predeceased him. It is also evident from the Petition for Grant that her name was indeed disclosed as one of the children of the deceased. The gravamen of the Applicants’ application is that despite such disclosure, her line of inheritance was not considered at the stage of confirmation of the grant and that the consent which culminated in the confirmed grant did not make provision for her or her children.
9. The question that arises is whether such omission, in the circumstances of this case, rises to the threshold contemplated under Section 76 so as to warrant the drastic remedy of revocation. Revocation of a grant is a draconian and discretionary remedy and it is well settled that it ought to be resorted to only in clear and deserving cases. It is not intended to be invoked as a matter of course, particularly where the defects complained of can be addressed through less drastic and more proportionate remedies within the framework of succession law.
10. In the case of *Albert Imbuga Kisigwa Vs Recho Kawai Kisigwa* [2016] KEHC 1528 (KLR), Mwita J. as then he was made pertinent remarks on principles for the revocation of a grant as follows: -
- “(13) Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”
11. In the present case, while the Applicants have demonstrated that there may have been an omission or exclusion in the distribution of the estate, the Court is not persuaded that the same was of such a fundamental nature as to render the entire proceedings defective or fraudulent within the meaning of Section 76 of the *Law of Succession Act*. Notably, the existence of Cheptalam Kolil as a beneficiary was disclosed in the initial petition, which militates against a finding of outright concealment of material facts.



12. Further, the Applicants have not placed before this Court new and compelling evidence demonstrating that the grant was obtained through deliberate fraud or that the proceedings were so fundamentally defective as to invalidate the grant in its entirety. The dispute herein appears to revolve more around distribution and inclusion of beneficiaries, rather than the validity of the grant itself.
13. This Honourable Court is of the considered view that revocation should be treated as a remedy of last resort, to be invoked only where there is no alternative avenue available to address the grievance. Where issues pertain to distribution, omission or inequitable allocation of shares, the Court retains wide powers to intervene through other appropriate mechanisms without necessarily nullifying the entire grant.
14. However, this does not mean that the concerns raised by the Applicants can be ignored. On the contrary, the record raises a serious and legitimate question as to why the share due to the late Cheptalam Kolil, a daughter of the deceased from the first house, was not reflected in the consent dated 22nd November 2023, which formed the basis of the Certificate of Confirmation of Grant issued on the same date and subsequently amended on 25th September 2025.
15. The Court notes with concern the apparent inconsistency whereby other daughters, including those deceased, were provided for either directly or through their children, while the house of Cheptalam Kolil appears to have been excluded. Such omission, if unexplained, may raise issues of fairness and equity in the distribution of the estate, particularly in light of the constitutional principles against discrimination.
16. In the circumstances, while the threshold for revocation has not been met, the ends of justice demand that the matter be interrogated further. Accordingly, this Court declines to revoke or annul the grant at this stage. Instead, the Administrators, namely Cornelius Bungei Kiroryo And Monica Ruto, are hereby directed to show cause why the share of the late Cheptalam Kolil was not included in the consent dated 22nd November 2023, which gave rise to the Certificate of Confirmation of Grant dated 22nd November 2023 and subsequently amended on 25th September 2025. There shall be a Status Conference before this Court on 9th April 2026. There shall be no order as to costs at this stage. It is so ordered.

DATED SIGNED AND DELIVERED VIA CTS & EMAIL AT ELDORET, THIS 1ST DAY OF APRIL 2026

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R. NYAKUNDI

JUDGE

