

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO. 344 OF 1988
IN THE MATTER OF THE ESTATE OF PETRO MUMELA SINYA
(DECEASED)

ERASTUS LUJOMBA MUMELA.....

.....PETITIONER

VERSUS

DISHON S.

MUMELA.....OBJECTOR/DEFENDANT

AND

NERBERT ANJENCHE MUHANDE.....INTERESTED

PARTY

MARK MULELA.....BENEFICIARY

MARGARET MMELA & 8 OTHERS.....

.....OBJECTORS

JUDGMENT

1. This matter concerns the estate of the late Petro Mumela Sinya (herein after “the deceased”), who died intestate on 24th June 1987. The estate comprises Land Parcel No. South Kabras/Shamberere/1094.
2. The deceased was polygamous and was survived by two houses consisting of both sons and daughters. A grant of letters of administration intestate was issued to the Petitioner, Erastus Lujomba Mumela, and confirmed on 21st May 1990. The estate was distributed exclusively among the sons, to the exclusion of daughters.

3. The present application seeks revocation of the confirmed grant under Section 76 of the Law of Succession Act on the ground that the exclusion of daughters was unlawful, discriminatory, and unconstitutional.

ISSUES FOR DETERMINATION

4. The issues for determination are:
 - a. Whether sufficient grounds exist for revocation under Section 76 of the Law of Succession Act;
 - b. Whether delay defeats the present claim;
 - c. Whether constitutional provisions on equality and non-discrimination apply;
 - d. Whether the distribution should be reopened.

ANALYSIS AND DETERMINATION

I. Whether revocation is warranted under Section 76

5. Section 76 of the Law of Succession Act empowers this Court to revoke a grant where it was obtained through concealment of material facts or by defective proceedings.
6. The exclusion of daughters from the list of beneficiaries amounts to concealment of material facts. It denied the Court the opportunity to consider all rightful heirs.

7. **In Rono v Rono & Another**, the Court of Appeal unequivocally held that:

“The Law of Succession Act does not discriminate between male and female children.”

8. Likewise, in **Re Estate of Lerionka Ole Ntutu**, the Court rejected cultural practices that exclude daughters from inheritance.

9. This Court therefore finds that the proceedings leading to confirmation of the grant were fundamentally defective.

II. Whether delay is fatal

10. The application has been brought after a considerable period. However, delay cannot override the need to remedy injustice.

11. In **Mwangi & Another v Mwangi**, the Court held that: ***“Delay cannot be invoked to sustain an illegality.”***

12. The Court further notes that many women historically faced systemic barriers in asserting inheritance rights. Such delay must be viewed within that socio-legal context.

III. Application of the Constitution of Kenya, 2010

13. The Constitution is the supreme law of the land and binds all persons and state organs under Article 2(1).

14. Article 2(4) provides that any law, including customary law, that is inconsistent with the Constitution is void to the extent of the inconsistency.
15. Article 10 enshrines national values and principles of governance, including:
 - Human dignity
 - Equity
 - Social justice
 - Equality
 - Non-discrimination
16. Article 27(1) guarantees equality before the law and equal protection and benefit of the law.
17. Article 27(3) expressly provides that:

“Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.”
18. Article 27(4) prohibits discrimination on the basis of sex, gender, marital status, or culture.
19. Article 27(5) extends this prohibition to private persons, including family arrangements such as succession.
20. Article 40(1) protects the right to property, but this right must be lawfully acquired and cannot be used to shield unconstitutional conduct.

21. Article 60(1)(f) provides that land in Kenya shall be held, used, and managed in a manner that eliminates gender discrimination in law, customs, and practices related to land.

22. The Court is guided by Re Estate of M’Ngarithi M’Miriti, where it was held that:

“The Constitution has elevated equality in inheritance to a fundamental right.”

23. Further, in *In re Estate of Ntutu (Deceased)*, the Court emphasized that:

“Courts must interpret succession laws in a manner that gives full effect to constitutional guarantees of equality.”

24. The exclusion of daughters in this case is therefore not only unlawful under statute but also unconstitutional.

IV. Whether the estate distribution should be reopened

25. The Court acknowledges that the estate was distributed decades ago and that third-party interests may have arisen.

26. However, the Court must balance:

- The finality of litigation, and
- The need to remedy constitutional violations.

27. Where a process is fundamentally flawed and unconstitutional, the Court cannot uphold it merely because time has passed.
28. The Court adopts a restorative and pragmatic approach, rather than a disruptive one.
29. Instead of nullifying all past transactions, the Court finds it just to reopen the distribution process and allow parties to arrive at an equitable settlement.

CONCLUSION

30. The Court finds that:
 - The grant was obtained through concealment of material facts;
 - The exclusion of daughters was discriminatory and unconstitutional;
 - The delay in bringing the application is not fatal;
 - The Constitution mandates equal treatment of all beneficiaries regardless of gender.

ORDERS

31. Accordingly, the Court makes the following orders:

32. The grant of letters of administration intestate issued to the Petitioner and confirmed on 21st May 1990 is hereby revoked pursuant to Section 76 of the Law of Succession Act;
33. The Court declares that all children of the deceased, whether male or female, are entitled to equal inheritance in accordance with:
- Article 27 (Equality and Freedom from Discrimination);
 - Article 60(1)(f) (Elimination of gender discrimination in land matters);
 - Article 10 (National values and principles of governance);
34. The parties are directed to convene a family meeting within 90 days, under the supervision of the Deputy Registrar or a Court-appointed mediator, to agree on a fresh mode of distribution that complies with the Constitution;
35. In default of agreement, the Court shall determine the distribution;
36. The Court shall issue further directions regarding third-party interests to ensure a balance between constitutional justice and property rights under Article 40;
37. Each party shall bear their own costs.
38. It is so ordered.
39. Mention 9.7.2026.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 24TH DAY OF
APRIL, 2026**

S.N MBUNGI

JUDGE

In the presence of:-

CA: Velma