



**In re Estate of Daniel Makomere Mutende (Deceased) (Succession Cause 230 of 2005) [2026] KEHC 4877 (KLR) (13 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 4877 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 230 OF 2005**

**S MBUNGI, J**

**APRIL 13, 2026**

**IN THE MATTER OF THE ESTATE OF DANIEL MAKOMERE MUTENDE (DECEASED)**

**BETWEEN**

**HARRISON ANZAYA MAKOMERE ..... PETITIONER**

**AND**

**FRIDAH AWINJA ANEKEYA ..... OBJECTOR**

**JUDGMENT**

1. This matter concerns the administration of the estate of the late Daniel Makomere Mutende, who died intestate on 3rd August 1999.
2. The estate comprises of two assets, Marama/Shianda/563 and Marama/Shianda/487. Following the deceased's death, the initial steps for administration were taken. A chief's letter dated 27<sup>th</sup> April 2005 identified the deceased's beneficiaries as his three sons:
  - a. Rodgers Mutende Makomere,
  - b. Harrison Anzaya Makomere,
  - c. Francis Andayi Makomere.
3. The letters of administration were granted to Harrison Anzaya Makomere on 24th June 2005. Subsequently, a certificate of confirmation of grant was issued to him on 21st July 2010, formally confirming his authority to distribute the estate.
4. The administration immediately stalled. On 23<sup>rd</sup> November 2020, a chief's letter reported that the other two brothers had lodged complaints that Rodgers Mutende Makomere was illegally attempting to sell estate property without their consent, highlighting that the succession process was incomplete.



5. The chief's letter of 27<sup>th</sup> April 2005 and the petitioner's supporting affidavit had concealed the existence of other beneficiaries. The deceased was, in fact, survived by more children. This was revealed in an affidavit by the petitioner himself, sworn on 9<sup>th</sup> August 2023, where he listed the following additional dependents:
  - a. Getrude Akumu Oloo (daughter)
  - b. Rosemary Mukhwana Amboka (daughter)
6. Rodgers Mutende Makomere, a son to the deceased, died on 19<sup>th</sup> February 2023. He was survived by:
  - a. Everline Achieng Otindo (1<sup>st</sup> wife)
  - b. Johnstone Musamali Makomere (son)
  - c. Ruth Nyakoa Mutinde (daughter)
  - d. Friday Awinja Anekaya (2<sup>nd</sup> wife)
  - e. Margaret Nyangweso Mutende (daughter).
7. Following Rodgers Mutende Makomere's death, the family attempted an informal distribution, agreeing on a scheme that included the previously excluded daughters and Rodgers' widows and children. However, these arrangements were not sanctioned by the court.
8. The objector, Fridah Awinja Anekaya, as the widow of the deceased beneficiary Rodgers Mutende Makomere and guardian of his minor son, filed a summons for revocation of grant, seeking the following orders:
  - a. The grant of letters of administration issued to Harrison Anzaya Makomere and its certificate of confirmation be revoked and annulled.
  - b. A fresh grant be issued in her name.
  - c. All transactions based on the revoked grant be nullified, and the land registrar directed to cancel any consequent registrations.
9. The application was premised on grounds of failure to administer, concealment of beneficiaries, and obtaining the grant by means of an untrue allegation of fact.
10. The issues for determination are:
  - a. Whether the grant of letters of administration issued to Harrison Anzaya Makomere and the subsequent certificate of confirmation should be revoked.
  - b. The appropriate orders regarding the fresh administration of the deceased's estate

#### DIVISION - Analysis

11. The objector's prayers seek the revocation of the grant of letters administration intestate herein together with all consequential orders. Section 76 of the [Law of Succession Act](#) empowers the court to revoke or annul a grant of representation. On whether grounds for revocation have been established, section 76 of the [Law of Succession Act](#) provides:

“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:



- (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;”
12. The court has inherent jurisdiction under Rule 73 of the Probate and Administration Rules to make such orders as are necessary for the ends of justice.
- “Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
13. In addition, Section 76(a)(d) of the *Law of Succession Act* provides for the revocation of the grant:
- “(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;
  - (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”
14. The petitioner, in obtaining the grant, relied on a chief’s letter and swore an affidavit that listed only three beneficiaries. He has since admitted, nearly two decades later, that his father was also survived by two daughters. This was a deliberate concealment of material facts from the court. The initial proceedings were therefore fatally defective, as they excluded lawful dependents entitled to a share of the intestate estate under the *Law of Succession Act*. A grant procured on such a flawed foundation cannot stand. In *Kagau & another v Kagau & another* (Civil Appeal 477 of 2018) [2025] KECA 696 (KLR) (11 April 2025), it was held that:
- “Failure to disclose all legal heirs constitutes a valid ground for revocation of a grant. The High Court, on a preponderance of all the facts and evidence placed before it, found that the appellants had knowledge of the 1<sup>st</sup> respondent’s relationship with the deceased and the children’s dependency but omitted them from the list of beneficiaries, making the grant defective.”
15. The grant was confirmed on 21<sup>st</sup> July 2010. For over 15 years, the petitioner has failed to complete the administration and transmit the estate to the beneficiaries. His own affidavit of August 2023 admits that lack of resources and Rodgers being untraceable made completion impossible. These are not valid legal excuses for a 15 year delay. The law requires an administrator to act with reasonable diligence. This protracted failure has caused immense prejudice, most starkly illustrated by the fact that one of the original beneficiaries, Rodgers Mutende Makomere, died without ever receiving his entitlement. This constitutes a gross failure of the administrator’s fiduciary duty.
16. The petitioner’s actions, as alleged by the objector and corroborated by earlier chief’s letters, amount to intermeddling. Attempting to sell estate property before full administration and distribution is complete is unlawful. While the court notes the related burial dispute in Butere SPM CC Case No.



E008 of 2023, the pattern of conduct supports a finding of mismanagement. In re Estate of Fredrick Kagio Kinyua (Deceased) [2015] KEHC 436 (KLR), the court held that:

“The fact that the personal representative holds property on behalf of others and for their benefit makes his position a fiduciary one. He is accountable to the estate;”

17. This estate consists of what may be termed ancestral land. The concept of ancestral land does not override registered proprietorship or the statutory scheme of succession. The estate of Daniel Makomere Mutende must be distributed according to the *Law of Succession Act*, not merely by informal family agreements that may, overlook spousal and children's rights. The Court of Appeal in the case of Stephen Gitonga M'murithi v Faith Ngira Murithi [2015] eKLR observed as follows:

“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried.”

18. The entitlement of the late Rodgers Mutende Makomere, which has now devolved to his own household, namely his widows and children. They step into his shoes as beneficiaries of their father's share of the original estate.
19. The informal distribution proposed in the petitioner's 9<sup>th</sup> August 2023 affidavit, while an attempt at resolution, was undertaken without legal authority and after an inordinate delay. It cannot be adopted by this court without the proper consent of all adult beneficiaries and scrutiny for compliance with the law.

## Conclusion

20. In the case of Albert Imbuga Kisigwa v Recho Kawai Kisigwa, Succession Cause No.158 OF 2000, Mwita J. made remarks on the guiding principles for the revocation. He stated;

“Power to revoke 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.”

21. For the foregoing reasons, I find the application for revocation meritorious. The petitioner, Harrison Anzaya Makomere, obtained the grant by concealing the full complement of beneficiaries and has manifestly failed to administer the estate diligently for a period exceeding 15 years.

## Orders

22. The grant of letters of administration issued to Harrison Anzaya Makomere on 24<sup>th</sup> June 2005 and the certificate of confirmation of grant issued on 28<sup>th</sup> December 2009 are hereby revoked and annulled in their entirety.
23. Pursuant to the revocation, any and all transactions, transfers, charges, or any other dealings conducted on the strength of the said revoked grant and certificate concerning the parcels Marama/Shianda/563 and Marama/Shianda/487 are hereby declared null and void ab initio.



24. The land registrar, Kakamega County, is hereby directed and ordered to cancel, and/or remove from the register any entries, registrations, or titles derived from or founded upon the revoked grant and certificate.
25. The status of the said land parcels shall revert to that of assets forming part of the un-administered estate of Daniel Makomere Mutende.
26. A fresh grant of letters of administration intestate in respect of the estate of Daniel Makomere Mutende shall issue. Given the complexity, history of exclusion, and the presence of minors who are the children of the late Rodgers, the court shall appoint more than one administrator to ensure transparency and balance.
27. Fridah Awinja Anekaya and Francis Andayi Makomere are hereby appointed as joint administrators of the estate.
28. They shall, within 60 days, comply with all legal formalities for obtaining the fresh grant.
29. The newly appointed joint administrators shall, within 6 months of being issued the fresh grant, file a Summons for confirmation of grant accompanied by a proposed schedule of distribution that is agreed upon by all adult beneficiaries.
30. Each party shall bear its own costs of this application.
31. The parties are hereby informed of their right of appeal against this judgment within 30 days.
32. Mention 4.6.2026.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA 13<sup>th</sup> DAY OF APRIL, 2026.**

**S.MBUNGI**

**JUDGE**

In the presence of:-

CA:\*\* Angong'a

Mr. Nzomo for the Applicant present online.

Parties absent.

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