



**In re Estate of Bii (Deceased) (Succession Cause 133 of 2013)
[2026] KEHC 4316 (KLR) (31 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4316 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 133 OF 2013**

JK SERGON, J

MARCH 31, 2026

IN THE MATTER OF THE ESTATE OF KOMINGOI ARAP BII (DECEASED)

BETWEEN

SIMON KIPROTICH A BII APPLICANT

AND

JONES KIPYEGON CHERUIYOT 1ST RESPONDENT

ALEXANDER KIPNGETICH KOMINGOI 2ND RESPONDENT

CATHERINE BII 3RD RESPONDENT

JOSEPH KOMINGOI 4TH RESPONDENT

RULING

1. Before this court is a Summons for Revocation of Grant dated 31st May 2024 filed by the Applicant, Simon Kiprotich A Bii. It is expressly brought under section 68 & 76 (a), (b) and (c) of the *Law of Succession Act* Cap 160 Laws of Kenya and part VIII 44(i) of *Succession Act*. The Summons seeks the following orders:
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That the Grant of Letters of Administration issued to the Respondents herein and confirmed on the 13th November, 2020 be revoked.
 - e. That the costs of this application be borne by the Respondents.



2. The Summons is supported by the Applicant's affidavit sworn on 31st May 2024, the grounds set out on the face thereof, and the Applicant's Written Submissions dated 9th October 2025. The Applicant contends that he is a grandson of the deceased, being the son of the late Taplelei Chebokaptich Koech, a daughter of the deceased. He claims that the Respondents fraudulently and deliberately omitted him and his siblings from the succession proceedings and distribution of the estate, thereby disinheriting them of their mother's rightful share.
3. The Summons is opposed by the Respondents. The 1st and 2nd Respondents filed a Replying Affidavit and Written Submissions dated 4th November 2024 through the firm of Bore, Malanga & Co. Advocates. The 3rd and 4th Respondents, through the firm of Akinyi & Co. Advocates, filed a Replying Affidavit sworn by the 3rd Respondent on 25th July 2024 and Written Submissions filed thereafter.
4. The application was canvassed by way of written submissions. This court has carefully considered the Summons, the affidavits, the annexures, the submissions filed by all parties, the authorities cited, and the applicable law.
5. The deceased, Komingoi Arap Bii, died intestate. The Respondents herein petitioned for letters of administration intestate, which were duly issued to them. The grant was subsequently confirmed on 13th November 2020 and later rectified on 5th March 2024.
6. The Applicant claims that he is the son of the late Taplelei Chebokaptich Koech, who was a daughter of the deceased. He contends that his mother was a beneficiary of the deceased's estate and that upon her death, her share ought to have devolved to her children (the Applicant and his siblings). However, the Respondents allegedly distributed the entire estate among themselves, excluding the house of the late Taplelei Chebokaptich Koech.
7. The Applicant states that he only became aware of the confirmation of the grant by sheer luck and that he subsequently learned of an intended survey and subdivision of two parcels of land, namely Kericho/Kapkelei/176 and Kericho/Kapkelei/222. He seeks revocation of the grant.
8. The 1st and 2nd Respondents, through the Replying Affidavit of Alexander Kipngetich Komingoi sworn on 4th November 2024 and their Written Submissions, opposed the application on the following grounds;
 - (a) They stated that prior to the filing of the application, they were not aware of the Applicant's existence as a potential beneficiary. Their late sister, Taplelei Chebokaptich Koech, died many years ago, and they did not interact closely with her children.
 - (b) They argued that the Applicant must tender evidence to substantiate his claim that he is a child of the late Taplelei Chebokaptich Koech. They contended that such a claim can only be substantiated through oral evidence and stringent cross-examination.
 - (c) They denied the allegations of fraud and deceit in the issuance of the grant, maintaining that since they were unaware of the Applicant's existence, there was no intentional concealment.
 - (d) They stated that they do not oppose the suggestion that the grant may be rectified to include the estate of the Applicant's mother, subject to the Applicant providing sufficient proof of his relationship to the deceased.
 - (e) They prayed that the Applicant's application be dismissed with costs, unless the Applicant can prove his entitlement through oral evidence or otherwise.



9. In their Written Submissions, the 1st and 2nd Respondents further submitted that; Under Section 29(a) and (b) of the *Law of Succession Act*, grandchildren such as the Applicant can only inherit if they were dependants of the deceased or if their parent predeceased the deceased. While the Applicant's mother predeceased the deceased, this must be proved. Revocation is a discretionary power that must be exercised judiciously, and there must be evidence of wrongdoing for the court to invoke Section 76. They reiterated that they do not oppose rectification if the Applicant provides sufficient proof of his relationship to the deceased.
10. The 3rd and 4th Respondents, through the Replying Affidavit of Catherine Bii sworn on 25th July 2024 and their Written Submissions, vehemently opposed the application on the following grounds;
- (a) Procedural Defect. They raised an objection that the Summons for Revocation is not signed by either the Applicant or his advocate, contravening Order 2 Rule 16 and Order 51 Rule 13(1) of the *Civil Procedure Rules*. They argued that this omission is fatal and that no valid application is before the court.
 - (b) They claimed that the application was not served on them personally or on their advocates, and that they only became aware of it on 15th July 2024 when the matter came up for mention.
 - (c) They stated that the survey of the suit properties has already been conducted in compliance with court orders, and a certified copy of the surveyor's report was annexed as Exhibit "CB-1". They noted that during the subdivision exercise, all parties, including the Applicant, were present, and no complaint was raised.
 - (d) They argued that the Applicant had not attached authorization letters or affidavits from his siblings, nor had he indicated their names. They contended that the chief's letter is insufficient proof of relationship, as the chief should have provided more details such as whether he knows the Applicant and his parents, when the mother died, and where she was interred. They also noted that the Applicant should have attached a death certificate or letters of administration for his late mother.
 - (e) They stated that the grant was confirmed on 13th November 2020 and rectified on 5th March 2024 to reflect the court's judgment that the estate be subdivided equally between the two houses. They argued that no individual has been given a share; the distribution is by houses. If the Applicant can prove his mother was from the 1st house, he should seek his share from there.
 - (f) They stated that they never knew the Applicant, his mother, or her children, and therefore cannot be accused of non-disclosure of something they did not know.
 - (g) They stated that if the Applicant can prove his relationship to the deceased, they will not object to rectification of the grant to include him in the 1st house's share.
 - (h) They prayed that the application be dismissed with costs, arguing that the matter has been in court for over twelve years and revocation would not be wise at this stage.
11. In their Written Submissions, the 3rd and 4th Respondents further submitted that; The application was not signed, which is a fatal defect. The application did not indicate to whom it was to be served, and was never served on them. The survey has already been completed, and the surveyor's report is filed in court. The matter has been in court for more than thirteen years, and the court should order the parties to expedite the mutation processes.
12. In his Written Submissions dated 9th October 2025, the Applicant responded to the Respondents' cases as follows;



- (a) On the issue of signature, the Applicant submitted that the Supporting Affidavit is properly signed, and the absence of a signature on the Summons is a procedural irregularity that does not vitiate the application. He relied on *Mutiso v. Mutiso* for the proposition that non-compliance with procedural rules is not always fatal.
 - (b) On the issue of proof of relationship, the Applicant submitted that the chief's letter (Annexure "S.K.1") is sufficient prima facie evidence, and that the Respondents' own affidavits do not deny that Taplelei Chebokaptich Koech was a daughter of the deceased.
 - (c) On the issue of fraud, the Applicant submitted that the omission of the entire house of Taplelei Chebokaptich Koech from the succession proceedings constitutes material non-disclosure, whether intentional or inadvertent.
 - (d) On the issue of survey, the Applicant submitted that the alleged subdivision was done in execution of an irregular grant and does not cure the underlying procedural defect.
 - (e) On the issue of the appropriate remedy, the Applicant submitted that revocation is warranted under Section 76, but in the alternative, he prayed for rectification to include his mother's house.
13. The following issues arise for determination:
- (a) Whether the Summons for Revocation dated 31st May 2024 is fatally defective for want of signature, and whether there is a valid application before the court.
 - (b) Whether the Applicant has made out a case for revocation of the grant under Section 76 of the *Law of Succession Act*, or whether variation of the confirmed grant would be the more appropriate remedy.
 - (c) What orders should be made as to costs.
14. The 3rd and 4th Respondents raised a procedural objection to the effect that the Summons for Revocation dated 31st May 2024 is not signed by either the Applicant or his advocate. They relied on Order 2 Rule 16 and Order 51 Rule 13(1) of the *Civil Procedure Rules*, which provide:
- Order 2 Rule 16: "Every pleading shall be signed by an advocate, or recognized agent (as defined by order 9 rule 2) or by the party if he sues or defends in person."
- Order 51 Rule 13(1): "An application taken out in any proceedings need only be signed by the advocate representing the applicant, or the applicant himself if acting in person, and need not be signed by or on behalf of the court."
15. Upon perusal of the original Summons as filed, this court confirms that indeed the Summons lacks a signature. However, the Supporting Affidavit sworn on 31st May 2024 is properly signed by the Applicant and commissioned by a Commissioner for Oaths. The Summons itself clearly sets out the orders sought and the grounds relied upon. The Applicant has also filed a List of Authorities and Written Submissions in support of the Summons.
16. The Court of Appeal in *Mutiso v. Mutiso* (Civil Appeal 95 of 2019) [2022] KECA 1359 (KLR) held that while procedural rules are meant to facilitate the administration of justice, non-compliance is not always fatal. The court emphasized that Article 159(2)(d) of *the Constitution* requires courts to administer justice without undue regard to procedural technicalities.



17. In the present case, all Respondents have been served and have had an opportunity to respond substantively. The 1st and 2nd Respondents filed their response and submissions without raising this objection. The 3rd and 4th Respondents also filed a detailed Replying Affidavit and Submissions addressing the merits. No prejudice has been suffered by any party as a result of the absence of a signature on the Summons.
18. In the circumstances, the court finds that the lack of signature on the Summons is a procedural irregularity that does not vitiate the application. To strike out the application on this technical ground would elevate form over substance and defeat the constitutional imperative to administer substantive justice. The objection raised by the 3rd and 4th Respondents is accordingly overruled.
19. The Applicant seeks revocation of the grant under Section 76(a), (b), and (c) of the [Law of Succession Act](#) (Cap 160), which 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—
- (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...
20. The law on revocation of grants is well settled. In [Albert Imbuga Kisigwa v. Recho Kawai Kisigwa](#) (Succession Cause No. 158 of 2000), the court held;
- “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 wrongdoing for the court to invoke section 76 and order to revoke or annul a grant.”
21. [In Re Estate of the Late Kipkoech Arap Tallam \(Deceased\)](#) (Succession Cause 9 of 2020) [2022] KEHC 11848 (KLR), the court emphasized that revocation is a drastic remedy and should only be granted where the grant is fundamentally flawed.
22. In the present case, the evidence before the court shows that the deceased was survived by two households. The Certificate of Confirmation of Grant (rectified) dated 5th March 2024 (Annexure “S.K.2”) shows that the estate was distributed exclusively among the two households, with no provision made for the estate of the late Taplelei Chebokaptich Koech.
23. The omission of the entire estate of Taplelei Chebokaptich Koech from the succession proceedings constitutes a material non-disclosure that renders the proceedings defective in substance. Whether this omission was intentional or inadvertent, it is a valid ground for this court to intervene. The 1st and 2nd Respondents have conceded that they were not aware of the Applicant’s existence, but this does not cure the substantive defect in the proceedings. The 3rd Respondent’s affidavit, while denying knowledge of the Applicant, does not dispute that Taplelei Chebokaptich Koech was a daughter of the deceased.



24. The Applicant has cited several authorities in support of his position, including:-
- *Matheka & Another v Matheka* [2005] eKLR, where the court held that a grant obtained without full disclosure of material facts and without the involvement of all beneficiaries is fatal and cannot stand.
 - *In re Estate of Julius Ndubi Javan (Deceased)* [2018] eKLR, where the court held that a grant obtained without disclosing all dependants or beneficiaries is obtained through concealment of material facts and is liable to revocation under Section 76.
 - *In re Estate of Muratbe Mwaria (Deceased)* [2016] eKLR, where the court observed that where a grant has been obtained without the participation of all beneficiaries, it is a nullity and ought to be revoked, whether or not distribution has taken place.
25. These authorities support the proposition that the omission of a beneficiary from succession proceedings is a fundamental defect that warrants the court's intervention.
26. However, revocation of a confirmed grant is not the only remedy available to the court. The court has inherent powers under Rule 73 of the *Probate and Administration Rules* to make such orders as may be necessary for the ends of justice. This power is wide enough to allow the court to vary a confirmed grant where justice demands it, particularly where the parties do not oppose inclusion or where the defect can be cured without nullifying the entire grant.
26. The 1st and 2nd Respondents, in their submissions and Replying Affidavit, stated that they do not oppose the inclusion of the Applicant's household, provided the Applicant proves his relationship to the deceased. The 3rd Respondent, in paragraph 18 of her Replying Affidavit, also stated;
- “In the event that it is proved that the applicant is entitled to a share of the deceased estate I will not object if the Grant is rectified to include them in 1st house's share.”
27. The court notes that the 3rd Respondent has raised concerns about the sufficiency of the Applicant's evidence, specifically the chief's letter. However, the chief's letter (Annexure “S.K.1”) is prima facie evidence of the relationship. If further proof is required, the Applicant can provide it during the amendment process. The Respondents' conditional acceptance of inclusion is sufficient for the court to proceed with variation rather than revocation.
28. In the circumstances, the court finds that the appropriate remedy is not revocation of the grant, which would be a drastic remedy that would unnecessarily delay the finalization of this estate, now pending for over twelve years. Instead, the court will invoke its inherent powers under Rule 73 of the *Probate and Administration Rules* to vary the confirmed grant to include the Applicant and his siblings as beneficiaries entitled to the share of their late mother, Taplelei Chebokaptich Koech. This approach;
- Preserves the progress made in the administration of the estate over the past twelve years.
 - Respects the Respondents' stated position that they do not oppose inclusion if the Applicant proves his entitlement.
 - Allows the Applicant to present further evidence of his relationship during the amendment process.
 - Achieves substantive justice without the delay and expense of full revocation and fresh proceedings.
29. Accordingly, prayer (d) of the Summons for Revocation is declined. Instead, the court orders variation of the confirmed grant.
30. The Applicant prays that the costs of this application be borne by the Respondents.



31. The general rule under Section 27 of the *Civil Procedure Act* is that costs follow the event. However, costs are discretionary, and the court may depart from the general rule where there are compelling reasons to do so.
32. In this case, the court has declined to grant revocation but has instead ordered variation of the confirmed grant, which is a remedy that accommodates the Applicant's substantive claim. The Respondents, particularly the 1st and 2nd Respondents, did not oppose inclusion in principle. The 3rd and 4th Respondents, while opposing the application, also indicated a willingness to accept inclusion if the Applicant proves his entitlement.
33. Given that the Applicant's substantive grievance has been addressed through the variation ordered herein, and considering that the matter has been in court for over twelve years, the court finds that the just and equitable order on costs is that each party bear their own costs of this application. This will allow the parties to focus on the amendment process without the added burden of a costs award.
34. For the reasons set out above, this court makes the following orders;
 - a) The Application for Revocation of Grant dated 31/5/2024 is dismissed.
 - b) The Respondents should within 30 days from the date hereof file the appropriate application to accommodate the Applicant and his siblings in the distribution of the Estate. In default, the Applicant is at liberty to file such an Application.
 - c) Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 31ST DAY OF MARCH, 2026

.....

J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

No Appearance

