



**Deya & 4 others v Deya & another (Succession Cause
441 of 2001) [2026] KEHC 5283 (KLR) (24 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5283 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 441 OF 2001**

A MABEYA, J

APRIL 24, 2026

BETWEEN

**FREDRICK OCHIENG DEYA 1ST APPLICANT
ERICK OMONDI DEYA 2ND APPLICANT
MERCY ADHIAMBO DEYA 3RD APPLICANT
NANCY SHILL ATIENO 4TH APPLICANT
DELORAS JANE SERAH 5TH APPLICANT**

AND

**ERICK ODHIAMBO DEYA 1ST RESPONDENT
BOAZ OKUMU 2ND RESPONDENT**

RULING

1. Ishmael Deya Mbote (the deceased), passed away on the 20/7/1992. On the 11/3/2002, Grant of Letters of Administration Intestate were issued to Erick Odhiambo Deya.
2. The Administrator moved court vide Summons dated 5/8/2025 seeking confirmation of the Grant and set out a mode of distribution that included the applicants herein.
3. Vide an application dated 25/9/2025, the respondents sought to have the Grant of Letters of Administration Intestate issued to the 1st respondent revoked and the Summons for Confirmation of Grant dated 5/8/2025 dismissed.
4. The Summons for Revocation was anchored on the grounds set out in the body thereof as well as the Affidavit in Support sworn on the 25/9/2025 by the 1st applicant. The Summons were further supported by the Affidavit of Nancy Shill Atieno, the 4th applicant sworn on the 24/10/2025.



5. It was contended that the applicants were grandchildren of the deceased whose parents had passed away. That the Administrator concealed material facts to the Court at the time of petitioning for the Grant specifically that at the time of his death, the deceased was survived by 8 children 4 of whom were still alive.
6. That the Administrator instituted the proceedings without involving any of the family members and further misled the Court that he was the only surviving son of the deceased; that he needed the deceased's titles in his name to bail out his daughter who was at Langata Women's Prison whereas he does not have a daughter; that the Administrator sought to have the entire estate of the deceased distributed to him entirely and that he illegally sold L.P. No. South Nyakach/Kajimbo/386 to the 2nd respondent without any consent of other family members.
7. The Administrator opposed the Summons for revocation vide a replying affidavit sworn on the 14/10/2025 in which he contended that the applicants were grandchildren of the deceased whereas he was the deceased's son. That the 2nd respondent was a grandson of the deceased's half-brother and that he never bought any land.
8. That he served the 1st applicant, who resides in the USA, with the requisite documents and the 1st applicant acknowledged receipt of the same. That the deceased had 9 children but at the time of his death, was survived by only 3 being himself, Janet Josephine Auma Deya and Millicent Akinyi Deya alias Sipi.
9. That prior to his death, the deceased gave his sons Martin Ochola Deya & Frank Koren Otieno Deya land parcel number South Nyakach/Kajimbo/367 & 366. That the deceased did not give any land to Godfrey Odiwuor Deya because he was mentally unstable. That the deceased further bought land parcel No. Kisumu/Kajimo/169 and a portion of Kisumu/Kajimbo/166 which had not been transferred in his name because the applicants hid the parcel numbers.
10. That Margaret Awuor Owuor, wife to his brother, Humphrey Zachary Omedo alias Dan, carried out succession to part of L.R. No. South Nyakach/Kajimbo/387.
11. That the deceased's grandchildren came home in May 2024 and he showed them their portion of land and they were satisfied with the 2nd applicant putting up a house on his father's portion of land.
12. That he informed the grandchildren of his intention to carry out succession on the rest of the deceased's estate and thus the applicants' cannot deny him the portion given to him by the deceased. That consequently the instant application was frivolous and without merit and ought to be dismissed.
13. I have considered the oral submissions made by counsel for the applicants and the Administrator in court on the 10/11/2025. The primary order sought by the applicants is revocation of grant issued to the administrator on the 11/3/2002.
14. The Law of Succession Act ("the Act") provides for revocation of grants under section 76, 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;
- (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.”

15. In this regard, under the above provision, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on an application by a party. A grant of letters of administration may be revoked on three general grounds.
16. The first is where the process of obtaining the grant was marred by several irregularities. Where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation were not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of material facts, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons.
17. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required.
18. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.
19. In the present case, the applicants’ claim was based on the allegation that the administrator obtained the grant by concealing material facts to the Court at the time of petitioning for the Grant of Letters of Administration that he was the only surviving son of the deceased and without involving any of the family members.
20. Indeed, the record reveals that in his application for Grant of Letters Intestate, the administrator in P&A 5 listed himself as the deceased’s only surviving heir despite the fact that in his own pleadings, he acknowledged that at the time of his death, the deceased was survived by 2 other children, his sisters, Janet Josephine Auma Deya and Millicent Akinyi Deya alias Sipi.



21. Further, the Administrator only listed Bank savings as the only deceased's assets whereas the record reveals that he seemed to be aware that the deceased owned several parcels of land. This amounts to material non-disclosure or concealment of material facts as provided under section 76 of the *Law of Succession Act*.
22. In similar circumstances, in *In Re Estate of Moses Wachira Kimotho (Deceased)* [2009] KEHC 3958 (KLR), the court pointed out the importance of disclosing all material facts before a court of Law while seeking letters of administration and confirmation thereof, in the following terms: -

“I am certain that had the applicants been made aware of the application for the confirmation of grant by being served they would have brought to the fore their aforesaid interest in the estate of the deceased and the resultant grant would have taken care of those interests. Further had the respondent been forthright and candid and included the applicants as beneficiaries of a portion of the estate of the deceased as purchasers for value, the court in confirming the grant would have taken into account their interest in the estate of the deceased. As it is therefore the grant was obtained fraudulently by making of a false statement and or concealment from court of something material to the cause. The respondent knew of the applicants' interest in the estate of the deceased yet she chose to ignore them completely in her petition of letters of administration intestate. She also ignored them completely when she applied for the confirmation of the grant.” (see also *In re Estate of Magangi Obuki (Deceased)* [2020] KEHC 348 (KLR))
23. From the foregoing, there can be no doubt that the grant herein was obtained and issued on the basis of material non-disclosures. In this case, the non-disclosure is fraudulent because the administrator was fully aware that the deceased was survived by other children yet indicated himself as the only survivor. The applicant further did not list the deceased's assets which he clearly knew about.
24. Accordingly, there is sufficient justification for the grant to be revoked and the certificate of confirmation of grant to be set aside. The said grant is hereby revoked and/or set aside. The parties are at liberty to approach court afresh for appointment of administrators.
25. This being a family matter, no order is made as to costs.

It is hereby so ordered.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF APRIL, 2026.

A. MABEYA, FCI Arb

JUDGE

