

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**SUCCESSION CAUSE NO. 834 OF 2012**

**IN THE MATTER OF THE ESTATE OF CHAILO MUSUNGU SHISAVIRO**  
**(DECEASED)**

**MONICAH KHASIALA**  
**ZAKAYO.....OBJECTOR/APPLICANT**

**VERSUS**

**MUSA MUSUNGU**  
**JAIRO.....PETITIONER/RESPONDENT**

**RULING**

1. Before this Court is the Objector/Applicant's application dated 2nd September 2024 brought under a certificate of urgency. The Applicant seeks, inter alia:
  - I. Certification of the application as urgent;
  - II. Revocation and/or annulment of the Certificate of Confirmation of Grant issued in this cause;
  - III. An order directing the Land Registrar, Kakamega County, to cancel/nullify entries relating to Land Parcel No. S/KABRAS/SHAMBERERE/2769;
  - IV. Costs of the application.
  
2. The application is premised on the grounds set out therein and is supported by the affidavit of the Applicant, who describes herself as a daughter of the deceased and a beneficiary of the estate.

3. The Applicant contends that she is a lawful beneficiary of the estate of the deceased which comprises Land Parcel No. S/KABRAS/SHAMBERERE/2769 measuring approximately 4.40 hectares.
4. She further contends that the Petitioner failed to disclose all beneficiaries and excluded the Applicant and others, namely Mary Sawanga and Enock Anaswa.
5. The deceased had, during his lifetime, distributed the land on the ground among all beneficiaries. Despite such distribution, the confirmed grant does not reflect the actual beneficiaries on record. The estate is in the process of being finalized and unless the orders sought are granted, the excluded beneficiaries stand to suffer irreparable loss.

### **Issues for Determination**

6. The application raises the following issues:
  - a) Whether the grant and its confirmation were obtained through defective proceedings or concealment of material facts;
  - b) Whether the Applicant has met the legal threshold for revocation under Section 76 of the Law of Succession Act;
  - c) Whether the Court should issue consequential orders cancelling title entries;
  - d) Who should bear costs.

### **Analysis and determination.**

**a) Whether the Applicant has met the legal threshold for revocation under Section 76 of the Law of Succession Act;**

7. Section 76 of the Law of Succession Act grants the Court wide discretion to revoke a grant where, there is concealment of material facts; proceedings are defective in substance; and the grant was obtained fraudulently or through misrepresentation.

8. In **re Estate of Peterson Mwangi Njuguna (Deceased) [2024] KEHC 10004 (KLR)**, the High Court reaffirmed that:

***'the foundation of a valid grant lies in full disclosure of all beneficiaries and assets; omission of any renders the process fundamentally defective...succession proceedings are not adversarial in the strict sense but are trust based processes, where the petitioner acts as a fiduciary to all beneficiaries. Failure to disclose beneficiaries is therefore not a mere procedural lapse as it goes to the root of the grant.'***

9. In **Kipkemoi & another v Langat & 3 others [2024] KEHC 4101 (KLR)**, the High Court revoked a grant where certain beneficiaries had been excluded and ordered cancellation of titles already issued. The Court held that ***distribution done without involving all beneficiaries is nullifiable, any titles arising from such a process cannot stand in law and the proper remedy is revocation and commencement of a fresh, inclusive process.***

10. This authority is particularly instructive because it mirrors the present case where the Applicant alleges exclusion despite being a direct beneficiary.
11. Further **In re Estate of Muchelwa Sholosi (Deceased) [2025] KEHC 15815 (KLR)**, the Court dealt with a situation where both beneficiaries and assets were omitted. It held that:  
***A grant obtained through concealment of heirs or property cannot be salvaged through rectification; it must be revoked in entirety..revocation is not discretionary where concealment is provoked and the integrity of succession proceedings must be protected by ensuring complete transparency.'***
12. The applicant must demonstrate specific grounds under section 76 a mere dissatisfaction with distribution is insufficient, however the exclusion of lawful beneficiaries automatically satisfies the threshold.  
***This was emphasized In Kosgei v Cherono [2024] KEHC 1337 (KLR)***
13. The Applicant asserts that she, together with other beneficiaries, was excluded from the proceedings. This allegation goes to the core of Section 76 of the Law of Succession Act.
14. No evidence has been placed before this Court to demonstrate that all beneficiaries were disclosed and the consent of all beneficiaries was obtained prior to confirmation such omission constitutes material

concealment. This allegation has not been rebutted and directly raises the issue of concealment of material facts.

15. The law is settled that failure to disclose all beneficiaries in a succession cause amounts to concealment of material facts and renders the grant liable to revocation as was held in the case of **Re Estate of Gitau(Deceased){2002} eKLR**

16. The confirmation of grant appears to have proceeded without the inclusion of all beneficiaries and a proper reflection of the deceased's alleged lifetime distribution.

17. This renders the process substantively defective, not merely irregular.

**b) Whether the Court should issue consequential orders cancelling title entries**

The Court notes that the estate property has already been subjected to registration processes.

18. Following the reasoning in *Kipkemoi v Langat* (2024):

- Any titles arising from a defective grant are legally unsustainable;
- The Court must restore the estate to its original status.

19. The Applicant has demonstrated that unless the Court intervenes the applicant and some beneficiaries namely Mary Sawanga and Enock Anaswa will be permanently disinherited and the estate will be distributed contrary to both law and fairness.

### **Determination**

20. Having carefully considered the application the affidavit evidence and the applicable law this Court finds that:

- The grant was obtained through material non-disclosure of beneficiaries;
- The confirmation process was defective in substance;
- The Applicant has met the threshold under Section 76 of the Law of Succession Act.

### **Orders**

20. Accordingly, the Court makes the following orders:

1. The application dated 2nd September 2024 is hereby allowed;
2. The Certificate of Confirmation of Grant issued herein is hereby revoked/annulled;

3. All registrations, transfers, or dealings in respect of Land Parcel No. S/KABRAS/SHAMBERERE/2769 arising from the said grant are hereby cancelled/nullified;
4. The estate shall revert to its original status pending fresh confirmation proceedings involving all beneficiaries;
5. The parties are at liberty to file a fresh summons for confirmation in compliance with the law;
6. Each party shall bear their own costs.
7. Mention 10.6.2026 for further directions.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30<sup>TH</sup> DAY OF APRIL, 2026.**

**S.N MBUNGI**

**JUDGE**

**In the presence of:-**

**CA:** Angog'a/Velma

Parties absent though aware of the ruling date.

Court Assistant to upload the ruling in the CTS forthwith.