

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**SUCCESSION CAUSE NO 300 OF 2006**  
**IN THE MATTER OF THE ESTATE OF THE LATE JAPHETH SHIKANGA  
MULUNDA(DCD)**

SIMON F.B. SHIKANGA-----  
APPLICANT

VERSUS

JOHN SHIKANGA MULUNDA-----  
ADMINISTRATOR/RESPONDENT

**RULING**

1. The applicant vide summons for review/ setting aside a grant application dated 25<sup>th</sup> January 2024 seeks the following orders;
  - a) *That this application be certified urgent and be heard exparte in the first instance*
  - b) *That this Honorable Court be pleased to reinstate the matter, review, vary, and/or set aside the grant issued on 2<sup>nd</sup> October 2006.*
  - c) *That, as an alternative to (c) above, this Honorable court be pleased to revoke the grant issued herein on 2/10/2006.*
  - d) *That this Honorable court be pleased to annul and or invalidate all and or any transactions carried out in respect to Land Parcel No.S. KABRAS/SAMITISI/174 and S. KABRAS/SAMITISII/601 pursuant to a grant issued on 2/10/2006*

*e) That this Honorable Court be pleased to grant any other relief it deems expedient in the circumstances.*

*f) That the Costs of this application be in the cause.*

2. The said application is based on grounds and supporting affidavit by Simon F.B. Shikanga dated 25<sup>th</sup> January 2024, where he avers that he had been named as a child of the deceased in the chief's letter dated 19/6/2006, together with his mother, Recho Shikanga, together with his siblings, Dunson G.W. Shikanga, Enock Mwombe Shikanga, Levi Shikanga, and Everlyne J. Shikanga.
3. He stated that his siblings conspired against him by initiating the succession proceedings without his knowledge and procured their deceased father's death certificate and the title to his land parcels.
4. He claimed that his siblings, without his mother's knowledge and obtained a grant dated 2/10/2006, which had never been confirmed, and that they did not act on the grant for 4 years until a notice was issued to John Shikanga Mulunda on 25/7/2005, which he failed to respond.
5. According to the applicant, his siblings and beneficiaries subdivided the land parcel No.S. Kabras/Samitsi/174 and Land Parcel S. Kabras/Samitsi/601, which had been apportioned to 1433,1434,1435,1436,1437,1438, and 1439 to the detriment of himself and his mother.

6. He claimed that no mode of distribution was brought before the court and stated that his siblings had intermeddled in the estate.
7. He prays that in the interest of justice, this court intervenes and reinstate, review, vary, and or set aside the orders of confirmation made in the matter on 2/10/2006.
8. The respondent filed his replying affidavit dated 3<sup>rd</sup> April 2024, where he avers that he petitioned for grants of letters of administration and got the consent of all the heirs except the Applicant. He claimed that the court on 2/10/2006 issued a grant to the respondent since there was no objection after the gazettment on 26/6/2006.
9. He stated that after the letters of administration were issued, all the beneficiaries met and they agreed on the mode of distribution, which led him to apply for the confirmation of the grant on 18/1/2007, and that the beneficiaries agreed that they equally share the 6.8 hectares, although the Applicant failed to attend court.
10. The respondent avers that the beneficiaries paid the survey charges, land charges, and were issued with the title deeds, and the applicant, despite being aware, never raised any objection.
11. He admitted that upon conclusion of the succession, the applicant got a share of the estate and sold his share. He suggests that the applicant subdivided his portion of the land title and even transferred/sold his portion of the land.

12. The applicant claims that the court cannot review its orders and grant the review as per the applicant's wishes since the beneficiaries had already sold and subdivided, and transferred their portion.
13. He claimed that the applicant had 12 years to file an objection and or protest, which he failed and waited until the succession process was completed, and further that their mother, the widow of the deceased, had died.
14. The respondent claims that the application was an afterthought and a waste of the court's time since the administrator already conformed to the wishes of the deceased.

### **Submissions**

15. The application herein was canvassed by way of written submissions.
16. In his submissions, the applicants denied the allegation that he was aware of the distribution of the estate and that the administrator moved to stat the distribution of the estate before the grant had been confirmed, and as such, the subdivision and transfer of the estate by the administrator were null and void.
17. He raised two issues for determination by this court, being;
  - a) Whether the letters of administration of the grant were confirmed, and the available remedies for the applicant.

18. He denied the allegations that he was aware of the claim that the administrator had administered the estate and claimed that the administrator forged his and their mother's signature.
19. He denied the allegations that he signed the consent form, claiming that the signatures were forged and that he continued to distribute the deceased estate to the exclusion of the applicant.
20. He claimed that the beneficiaries had already started the subdivision of the estate despite his efforts for an alternative dispute resolution.
21. He now prays that the grant be revoked/ annulled as per Rule 44(1) and the estate be divided directly to the beneficiaries.
22. He quoted the case of **in the state of Julius Ndubi Javan (deceased) (2018) eKLR and Ibrahim Hassan & Charles Kimenyi Macharia, Interested party (2019) eKLR** in support of his submission.
23. In finality, he prays that the application be allowed in the interest of justice.

**Analysis and determination.**

24. The matter before this court refers to the estate of Japheth Shikanga Mulunda, who died intestate on 1<sup>st</sup> July 2000. As per the chief's letter dated 19/06/2006, the deceased estate comprised s/Kabras/Samitsi/174 measuring 36.0 Ha and S/Kabras/Samitsi/601 measuring 6.8 HA. At the time of his demise, the deceased had 6 beneficiaries being Recho N.

Shikanga (the widow), John Shikanga (eldest son), Dunson G.W. Shikanga(son), Simon F.B. Shikanga(son), Enock Mwombe Shikanga(son), Levi Shikanga(son), and Everlyne J. Shikanga (daughter).

25. It was the family decision that John Shikanga, the eldest son, was appointed as the administrator of the estate of the deceased. On 2<sup>nd</sup> October, 2006, the administrator was issued with the grant of letters of administration intestate for the two parcels of lands/Kabras/Samitsi/174 measuring 36.0 Ha and S/Kabras/Samitsi/601.
26. On 17<sup>th</sup> January 2007, the administrator applied for a summons for confirmation of the grant, which was never confirmed.
27. What was clear was that the administrator began the subdivision of the properties before the confirmation process was completed, and he attached the official search of the subdivided land parcels as well as the mutation form of the parcel of land.

### **Issues for Determination**

28. From the pleadings and submissions, the key issues are:
  - a) *Whether the grant issued on 2nd October 2006 was lawfully obtained and administered;*
  - b) *Whether the Applicant has met the threshold for review or revocation under Section 76 of the Law of Succession Act;*

*c) Whether the subdivision and transfers should be annulled;*

*d) What orders should be issued as to costs.*

29. Grounds for revocation or annulment of the grant of Letters of Administration are set out in Section 76 of the Law of Succession, thus:

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.

30. In **Matheka & Another v Matheka [2005] eKLR**, the court emphasized that concealment of material facts and failure to involve all beneficiaries are sufficient grounds for revocation.

31. According to the Applicant, the petitioner obtained the ground by false misrepresentation, claiming that he forged his signature, and further, he did not consent to the mode of distribution by which the estate of the deceased was distributed, even before the grant was confirmed, which amounted to intermeddling.

32. In the case of **Jamleck Maina Njoroge v Mary Wanjiru Mwangi [2015] eKLR**, the court discussed circumstances when a grant can be revoked. The court observed that:

***“11. The circumstances that can lead to the revocation of grant have been set out in section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something***

***material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”***

33. The Applicant contends that he is a son to the deceased and was rightfully to be included in the succession process by the administrator who was the eldest son to the deceased.
34. He avers that he never consented to the mode of distribution as was suggested by the administrator. And further that the administrator began the sub division of the estate before the grant was even confirmed by the court.
35. On the other hand, the respondent avers that all the beneficiaries were involve in the distribution and further that he prepared the mode of distribution for which the applicant failed to attend court and further that his siblings had started the division process
36. I have perused the court’s record and note that no consent form was attached to show that the mode of distribution was approved by the beneficiaries. What is even more puzzling is that the petitioner started the mode of distribution even before the grant had been confirmed by the court. He never attached a certificate of a confirmed grant, which in this case means that there was intermeddling on the part of the administrator.

37. Section 45, Law of Succession Act, prohibits intermeddling with the property of a deceased person before a grant has been confirmed, and such acts render any transactions void.
38. It is undisputed that the grant issued on 2nd October 2006 was never confirmed. Under Section 71 of the Act, confirmation of a grant is a mandatory step before distribution of estate property. The Respondent's admission that subdivision and transfer of the estate took place before confirmation is a direct contravention of Section 55 of the Act, which prohibits distribution before confirmation.
39. The allegation of forgery of the Applicant's and the late widow's signatures on consent forms is a serious claim. Although the Applicant did not provide forensic evidence, the absence of his participation in the proceedings is corroborated by the lack of formal objections or consents filed in court.
40. Further, the Respondent's argument that the Applicant sold his share cannot sanitize an illegality in the administration process. As held in **Re Estate of Julius Ndubi Javan (Deceased)**, illegality in obtaining or executing a grant renders subsequent actions void ab initio.
41. The long delay in bringing the application, while a consideration, is not in itself a bar to revocation where fraud or concealment is shown. In **the Matter of the Estate of Mwaura Mutungi alias Mwaura Gichichio Mbura (Deceased) [2018] eKLR**, the court held that there

is no limitation period for moving the court to revoke a grant under Section 76.

42. On the facts before me, I find that:

- a) The grant was obtained without the full participation of all beneficiaries;
- b) There was premature distribution of the estate without confirmation.
- c) Such actions amount to intermeddling and contravene the Act.

### **Disposition**

43. Accordingly, I make the following orders:

- a) The grant of letters of administration intestate issued to the Respondent on 2nd October 2006 in respect of the estate of Japheth Shikanga Mulunda is hereby revoked according to Section 76 of the Law of Succession Act.
- b) All subdivisions, transfers, and dealings with Land Parcel Nos. S. Kabras/Samitsi/174 and S. Kabras/Samitsi/601, done pursuant to the said grant are hereby declared null and void and are cancelled forthwith.
- c) The Land Registrar, Kakamega, shall rectify the register to restore the estate properties in the name of the deceased pending fresh administration.

- d) A fresh grant shall issue jointly to the Applicant and Respondent within 30 days.
- e) The parties shall thereafter apply for confirmation of the grant in accordance with Section 71 of the Act, ensuring full participation of all beneficiaries.
- f) Costs shall be in the cause.
- g) Right of Appeal 30 days.
- h) Mention on 15.7.2026 to confirm compliance and for further directions.

**DATED SIGNED, and DELIVERED in open court at KAKAMEGA THIS 30<sup>th</sup> OF APRIL, 2026.**

**S.N. MBUNGI**

**JUDGE**

**In The Presence of;**

**CA:** Angong'a/Velma

Parties absent.

Advocates absent, though aware of the ruling date. Court Assistant to upload the Ruling in the CTS forthwith.

