



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Jared Koita Chiteri (Deceased) (Succession Cause
153 of 2002) [2026] KEHC 5603 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5603 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 153 OF 2002**

RN NYAKUNDI, J

APRIL 28, 2026

**IN THE MATTER OF THE ESTATE OF THE LATE JARED KOITA CHITERI
(DECEASED)**

BETWEEN

LUCAS MAKUNDA KOITA 1ST ADMINISTRATOR

JOSEPH MUNYANYA KOITA 2ND ADMINISTRATOR

GEOFREY ALWANGA KOITA 3RD ADMINISTRATOR

LEONIDA OGOLA KOITA 4TH ADMINISTRATOR

AND

WYCLIFFE WAMUKOYA KOITA APPLICANT

RULING

1. What is pending before this Honourable Court for determination is Summons for Revocation and/or Annulment of Grant dated 3rd February 202 under section 47 and 76 of the [Law of Succession Act](#) and Rules 44 and 73 of the Probate and Administration Rules in which the Applicant is seeking the following orders: -
 - a. The Amended Certificate of Confirmation of Grant issued on 17/12/2025 be revoked and/or annulled pursuant to section 76 of the [Law of Succession Act](#).
 - b. The orders made pursuant to the Summons for Amendment of the Certificate of Confirmation of Grant be set aside.
 - c. The estate do revert to the position obtaining under the lawful confirmed Grant prior to the amendment, pending fresh confirmation.



- d. Costs of this application be provided for.
2. The Application is made on the grounds on the face of it among others: -
- a. That the two (2) of the Administrators of the estate of the deceased, leaving only two surviving administrators.
 - b. That one of the surviving administrators filed a Summons for amendment of the Certificate of Confirmation of Grant without lawful authority and without involving the beneficiaries.
 - c. That the said application was supported by a purported consent allegedly signed by the beneficiaries, which consent contains forged signatures.
 - d. That the amended distribution unlawfully altered the mode of distribution of the estate and disentitled lawful beneficiaries of their rightful shares.
 - e. That the application for amendment was never served upon the beneficiaries and no opportunity was offered for them to be heard.
 - f. That the beneficiaries only became aware of the amendment upon discovering an amended certificate of Confirmation of Grant after it was issued and when the matter was mentioned on 16/1/2025 to confirm status.
 - g. That third parties with lawful interests in the estate especially in LR. NO. 533/10/11 (Molo Township) which was jointly owned by the deceased and two other people were also adversely affected and disentitled without notice. That the estate is only entitled to 1/3 of the property yet in the amended confirmation of Grant, the other owners have been disentitled of their shares.
 - h. That the Grant was therefore obtained through concealment of material facts, fraud, forgery and by means of untrue allegation contrary to section 76 of the *Law of Succession Act*.
 - i. That the proceedings leading to the amendment of the confirmed grant were substantively and procedurally defective.
3. The Application is supported by the annexed affidavit sworn by the said Wycliffe Wamukoya Koita, the Applicant herein who deponed as follows;
- a. That I am the son of the late Jared Koita Chiteri and the late Risper Namuyai Koita.
 - b. That a Grant of Letters of Administration Intestate in respect of the Estate of the deceased was issued to four (4) Administrators representing the four houses of the deceased.
 - c. That my mother (4th Administrator) died on 25/5/2025 that is almost a month after the certificate of Grant dated 24/4/2025.
 - d. That earlier on, that is on 6/5/2025, the 3rd Administrator James Chiteri Koita passed on.
 - e. That we were told to hold a family meeting for us to choose other two administrators to come in place of the late Risper and the late James.
 - f. That the Grant was lawfully confirmed on 24/4/2025 and a Certificate of Confirmation of Grant was issued setting out the proper and lawful mode of distribution of the estate.
 - g. That without knowledge, consent and participation of the beneficiaries, the 1st Administrator filed a Summons for Amendment of Certificate of Confirmation of Grant.



- h. That the application was purportedly supported by a consent allegedly executed by the beneficiaries, which consent contains forged signatures, including my own as I never signed or authorized the signing of the same.
- i. That the application was never served upon me or my counsel and also other beneficiaries were not aware.
- j. That I am advised by my advocates on record which advice I believe to be true, that any amendment of a Confirmed Grant affecting distribution requires free and informed consent of all beneficiaries or a hearing of all affected parties which was not done in this case.
- k. That the said Summons for Amendment was never served upon me or other beneficiaries or a hearing of all affected parties which was not done in this case.
- l. That the said summons for amendment was never served upon me or the other beneficiaries and we were completely unaware of the existence of the application of the proceedings leading to the amendment.
- m. That I only became aware of the amendment upon discovering an amended Certificate of Confirmation of Grant after it was issued and when the matter was mentioned on 16/1/2025 to confirm status.
- n. That as a result of the said application, an amended Certificate of Confirmation of Grant was issued, which substantially altered the mode of distribution of the estate.
- o. That the amended distribution unlawfully disentitled lawful beneficiaries of their rightful shares of the estate without any legal justification.
- p. The 1st Administrator has altered the previous grant that was issued on 24th April 2025 to their benefit especially Lucas Makunda Koita. The earlier grant dated 24/4/2025 Lucas Makunda Koita had 2.4 Acres in Marama Lunza 867 and the one confirmed on 17/12/2025 he has allocated himself 5 acres and excluded other beneficiaries including myself.
- q. That the exclusion of the interest of the Joint owners of LR.No. 533/10/11 (Molo Township) has occasioned miscarriage of justice and therefore the proceedings and the Grant should be revoked and/or annulled and that I should be made of the Administrators to the said estate in order to ensure that justice is done.
- r. That I believe that the 1st Administrator misled this Court with a view to disinheriting the joint owners.
- s. That the late James Chiteri Koita had two wives: Petronila Roda Chiteri and Leonida Ogola Koita and both their interests should be accounted for in the Certificate of Confirmation of Grant.
- t. That the amendment was obtained through fraud, concealment of material facts, forgery and by making false statements to court contrary to the provisions of section 76 of the [Law of Succession Act](#).
- u. That the 1st Administrator lacked legal capacity to unilaterally amend the confirmed Grant particularly where such amendment affected substantive rights of beneficiaries.



- v. That the proceedings leading to the amendment of the Certificate of Confirmation of Grant were therefore procedurally and substantively defective, irregular and an abuse of the court process.
- w. That unless the amended Grant is revoked or annulled, the beneficiaries and affected third parties stand to suffer grave prejudice, injustice and irreparable loss.
- x. That it is in the interest of justice, equity and fairness that the amended Certificate of Confirmation of Grant be revoked and the estate revert to the position obtaining prior to the unlawful amendment.

Analysis and Determination

4. I have read and considered the Summons for Revocation. There is one sole issue manifest for determination by this Honourable Court: -

a. Whether the Applicant has established sufficient grounds for revocation?

5. The jurisdiction of this Honourable Court to entertain this application is provided for in section 47 of the *Law of Succession Act* as read with Rule 73 of the Probate and Administration Rules. Section 47 of the *Law of Succession Act* provides as follows: -

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.

6. The law relating to Revocation or annulment of a Grant is stipulated in section 76 of the *Law of Succession Act* which provides as follows: -

76. Revocation or annulment of grant

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.

7. In the case of *Matheka & Another Vs Matheka* [2005] KLR, the Court of Appeal set out the guiding principles for revocation of a Grant as follows; -

“From the foregoing, it is clear that a grant may be revoked either by application by an interested party or on the Court’s own motion. But even when revocation is by the Court upon its 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 a false statement or by concealment of something material to the case, or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate. The grant may also be revoked if it can be shown to the Court that the person to whom the grant has been issued has failed to produce to the Court such inventory or account of administration as may be required.”

8. The Applicant in this intestate succession cause seeks to invalidate the amended grant, set aside all consequential orders and revert the estate to the position obtaining prior to the amendment. The law governing revocation is well settled under Section 76 of the *Law of Succession Act*, which provides specific and limited grounds upon which a grant may be revoked as already stated above in this ruling. These include defects in the substance of the proceedings, fraud or concealment of material facts, untrue allegations essential in law, failure by administrators to discharge their duties, or where the grant has become useless and inoperative. The jurisprudence surrounding this provision underscores that revocation is not to be granted as a matter of course; rather, it is a discretionary remedy to be exercised cautiously and only where the statutory threshold has been strictly met. It follows, therefore, that not every dissatisfaction with the mode of distribution or procedural complaint warrants the nullification of an otherwise valid grant.

9. A grant may be revoked upon production of evidence proving the grounds in Section 76 *Law of Succession Act*, whereupon the court will exercise its discretion and revoke the grant. In the case of *Albert Imbuga Kisigwa Vs Recho Kavai Kisigwa* [2016] KEHC 1528 (KLR), Mwita J. made pertinent remarks on principles for the revocation of a grant as follows: -

“(13) 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 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.”

10. In the case of *Jamleck Maina Njoroge Vs Mary Wanjiru Mwangi* [2015] eKLR the court set out the circumstances under which a grant may be revoked as follows: -

“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



a false statement or by 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.”

11. In the present case, the Applicant’s primary grievance revolves around the alleged lack of consent, non-service and purported fraudulent conduct in the process leading to the amendment of the confirmed grant. However, these allegations, when subjected to legal scrutiny, fall short of establishing the kind of fundamental defect contemplated under Section 76. While it is true that Rule 40 of the Probate and Administration Rules contemplates the involvement and where possible the consent of beneficiaries in matters of confirmation and distribution, the absence of such consent does not ipso facto render the grant void. The Probate Court retains jurisdiction and discretion to confirm or amend a grant where it is satisfied that the distribution is just and that the process substantially complies with the law. In this regard, there is no evidence placed before the Court to demonstrate that the Court was misled, that it acted without jurisdiction, or that the amendment proceedings were so fundamentally defective as to vitiate the entire process. Accordingly, in so far as the Probate Court is concerned, the law was complied with and any alleged procedural irregularities do not rise to the level necessary to justify revocation.
12. The Applicant further alleges that the amended grant was procured through fraud and forgery, particularly with respect to the purported consent of beneficiaries. However, it is trite law that allegations of fraud must not only be specifically pleaded but must also be strictly proved to a standard higher than that of a balance of probabilities, though not as high as beyond reasonable doubt. In the instant case, the Applicant has merely asserted that signatures were forged without tendering any forensic evidence, expert reports, or initiating any investigative or criminal process to substantiate such claims. There is also no demonstration of how the alleged forgery materially influenced the Court’s decision to issue the amended certificate. In the absence of cogent and credible evidence, these allegations remain speculative and cannot form a basis for revocation under Section 76(b) or (c) of the Act.
13. A critical consideration in this matter is the effect that revocation would have on the broader body of beneficiaries. The Applicant urges the Court to revert the estate to the earlier confirmed grant dated 24th April 2025. However, such a course would not only unsettle the current distribution framework but would also prejudice and/or limit the inheritance rights of the beneficiaries who may have already relied on the Amended Certificate of Confirmation of Grant dated 17th December 2025. Succession proceedings are intended to facilitate the orderly and final distribution of estates and the Court must be slow to reopen concluded matters unless compelling reasons are demonstrated. Revoking the amended grant in its entirety would, in effect, limit and potentially disrupt the inheritance rights of other beneficiaries who are not before the Court protesting the aforesaid Amended Certificate of Confirmation of Grant. The Applicant’s grievances, even if taken at their highest, relate to specific aspects of distribution and are more appropriately addressed through rectification or targeted orders rather than the wholesale revocation and/or a nullification of the grant.
14. With regard to the allegation that third parties, particularly in respect of LR No. 533/10/11 (Molo Township), were prejudiced and unlawfully disentitled, the Court must be guided by evidence rather than assertion. The Applicant contends that the property was jointly owned and that the amended grant allocated interests beyond the deceased’s share. However, no documentary evidence has been produced to establish the nature of the joint ownership, the respective shares of the co-owners, or the manner in which the amended grant interfered with those interests.
15. With this I put reference to section 107, 108 and 109 of the *Evidence Act* which states that the burden of proof lies upon the party who asserts the existence of a fact. In view of this, the rule of evidence is clear that “He who alleges must prove”. The maxim has been grounded in law under Section 107



of the Evidence Act. The same was enunciated by late Justice Majanja in *Evans Otieno Nyakwana Vs Cleophas Bwana Ongaro* [2015] eKLR when he said that: -

“...As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue.

16. That is the purport of section 107 (1) of the Evidence Act (Chapter 80 of the Law of Kenya) which provides: -

“ 107.

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist...”

17. Section 108 of the Evidence Act states that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. For avoidance of doubt, the provision states as follows: - “The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.” In addition, section 109 of the same Act states: - “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

18. In any event, the jurisdiction of the probate court is limited to the distribution of the deceased’s estate. It does not extend to adjudicating proprietary disputes involving third parties. If indeed the property was jointly owned, the law is clear that only the deceased’s undivided share would devolve through succession, and any purported distribution of the entire property would be legally unenforceable against the co-owners. Consequently, the allegation of prejudice to third parties is unproven and cannot sustain a claim for revocation.

19. On the issue of the death of two administrators and the alleged lack of authority by the surviving administrator, section 81 of the Law of Succession Act provides a clear answer. The provision stipulates that upon the death of one or more administrators, the powers and duties of administration vest in the surviving administrator or administrators. Specifically, section 81 of the Law of Succession Act provides as follows: -

81. Powers and duties of personal representatives to vest in survivor on death of one of them

Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.

20. This means that the estate does not become incapable of administration merely because some administrators have died. In the present case, the surviving administrators were legally empowered to continue administering the estate. Furthermore, it is evident from the Amended Certificate of Confirmation of Grant dated 17th December 2025 that substitution had already been effected, thereby regularizing the administrative structure of the estate. The argument that the 1st Administrator acted without authority is therefore inconsistent with the express provisions of the law.



21. That said, a legitimate concern arises with respect to the interest of the late James Chiteri Koita. The material before the Court indicates that under the earlier confirmed grant dated 24th April 2025, he had a defined share in the estate, which appears to have been omitted or altered in the amended grant. The law is clear that the death of a beneficiary does not extinguish their entitlement; rather, such entitlement devolves to their estate to be administered in accordance with the law. While this issue is significant, it does not, in itself, justify the revocation of the entire grant. Further to the above, on the issue concerning the estate of the late James Chiteri Koita, it is evident from the material placed before the Court that there exists an error apparent (or patent) on the face of the record in the Amended Certificate of Confirmation of Grant dated 17th December 2025. This arises from the clear inconsistency between the earlier confirmed grant dated 24th April 2025, in which the said James Chiteri Koita was allocated a definite share of the estate and the amended grant, in which his entitlement appears to have been omitted or substantially altered without any legal justification or explanatory basis.
22. An error apparent on the face of the record is one that is self-evident, does not require elaborate argument to establish and can be discerned from a plain reading of the record. In this instance, the omission or displacement of the share of a duly recognized beneficiary who had already been provided for in a confirmed grant constitutes such an error. The position is further compounded by the fact that the death of a beneficiary does not extinguish their entitlement to inherit; rather, pursuant to the principles of succession law, their share devolves to their estate and ought to be administered accordingly.
23. The failure to reflect the entitlement of the late James Chiteri Koita in the amended grant is therefore not merely a matter of discretionary redistribution but a clerical or procedural anomaly that goes to the accuracy of the record. Importantly, this kind of error does not fall within the ambit of Section 76 of the *Law of Succession Act* so as to warrant revocation of the entire grant. Instead, it is the kind of defect contemplated under the Court's inherent powers and the provisions relating to rectification of grants where the Court is empowered to correct errors in names, descriptions, or in the setting out of the interests of beneficiaries. Accordingly, the proper legal approach is not to invalidate the amended grant in its entirety, but to acknowledge that there was an error patent on the face of the record and to direct that the same be corrected so as to reinstate and properly account for the share due to the estate of the late James Chiteri Koita. This ensures fidelity to the law, preserves the integrity of the succession process and avoids the disproportionate consequence of revocation where a more precise and legally appropriate remedy is available.
24. It is evident that the Applicant has failed to establish any of the statutory grounds for revocation under Section 76 of the *Law of Succession Act*. The allegations of procedural defect, fraud, concealment and prejudice are either unproven or insufficient in law. Moreover, the remedy sought is disproportionate, as it would disrupt the administration of the estate and prejudice other beneficiaries without sufficient justification. In light of the foregoing analysis and findings, the following orders shall abide: -
- a. That the Summons for Revocation and/or Annulment of the Amended Certificate of Confirmation of Grant dated 17th December 2025 be and is hereby dismissed for failure to meet the threshold set under Section 76 of the *Law of Succession Act*.
 - b. That the Amended Certificate of Confirmation of Grant dated 17th December 2025 be and is hereby upheld as valid and properly issued within the jurisdiction and discretion of the Probate Court.
- That the Administrators of the Estate be and are hereby directed to ensure that the share due to the late James Chiteri Koita is duly identified, preserved and transmitted to his estate in



accordance with the Law of Succession Act and for avoidance of doubt, such share shall not lapse by reason of his death.

- c. That the Administrators be and are hereby put on notice to review the mode of distribution as contained in the Amended Certificate of Confirmation of Grant to ensure that all beneficiaries, including the houses of the deceased, are duly accounted for in accordance with the law, failing which any aggrieved party shall be at liberty to apply.
 - d. That in respect of LR No. 533/10/11 (Molo Township), the distribution shall be limited strictly to the deceased's lawful share, if any and any claims by third parties shall be pursued in the appropriate forum and not through revocation proceedings.
 - e. That the Administrators shall proceed with due diligence to complete the administration and transmission of the estate in accordance with the Amended Certificate of Confirmation of Grant dated 17th December 2025.
 - f. That a status conference be held on 4th June 2026 to monitor compliance.
 - g. That each party shall bear their own costs of the application.
25. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 28TH DAY OF APRIL 2026

.....

R. NYAKUNDI

JUDGE

