



In re Estate of Timona Kiberenge Sikolia (Deceased) (Succession Cause 481 of 2012) [2026] KEHC 5512 (KLR) (9 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5512 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 481 OF 2012**

REA OUGO, J

APRIL 9, 2026

IN THE MATTER OF THE ESTATE OF TIMONA KIBERENGE SIKOLIA (DECEASED)

BETWEEN

BERNARD SIMIYU KIBERENGE APPLICANT

AND

KENNEDY MAKOKHA KIBERENGE 1ST RESPONDENT

DAVID WAMALWA KIBERENGE 2ND RESPONDENT

ZIPPORAH NAFULA KIBERENGE 3RD RESPONDENT

RULING

1. In a Notice of Motion dated 7th August 2025, the applicant requests that the court grant him leave to file a list of documents and additional documents out of time. He also seeks that the supplementary list of witnesses and the attached witness statements be deemed duly filed and served upon payment of any necessary court filing fees, where applicable. The application is brought under section 1A, 3(a) & 63 of the *Civil Procedure Act*, Order 50 rule 1 of the Civil Procedure Rules 2010, and Article 159 of *the Constitution* of Kenya.
2. The application is based on eight grounds outlined on the face of the application and supported by a sworn affidavit from the applicant dated 7th August 2025. The applicant states that he has applied for the revocation and annulment of the confirmation of grant dated 16th January 2025. While preparing for the objection hearing, he realised that he had not filed his witness statement, supporting documents, and statements from his witnesses, two elderly men whose evidence he considers vital to the court in reaching a fair decision. He inadvertently filed these documents without prior leave from the court and now requests that the court grant him leave to file these compliance documents and statements. He further asks that, once granted, these documents and statements be deemed properly filed upon payment and marked as BS-1, 2, 3, and 4 respectively. The application is made in the interests of justice



to enable the court to reach a fair verdict after considering all relevant evidence, thereby upholding the rule of law. No prejudice will be caused to the respondents, as the objection hearing has not yet taken place, and he believes they will similarly be granted time to file additional statements or documents if they wish. They will also have an opportunity to cross-examine the witnesses on their testimony.

3. The application was opposed. The respondents filed grounds of opposition as follows: the procedure offends the laid-down mechanism for the disposition of summons for revocation; the alleged evidence is a complete repetition of the allegations already made and amounts to setting aside the previous proceedings; the applicant seeks a repeat process to re-examine evidence, deviating from the initial evidence tendered; the respondents contend that the application has no legal basis and is an afterthought; therefore, it should be dismissed with costs.
4. The application was canvassed by way of oral submissions. The applicant reiterated what is deponed in his affidavit. Mr. Sichangi, for the respondent, submitted that the applicant has failed to show the evidence he seeks to introduce, which he did not have at the time he filed his application. The evidence he seeks to adduce is a replica of the first matter for revocation. The applicant has repeated what he said before. He is using the court to fish for evidence. He wants to respond to the petitioner's case. It is not procedural; thus the application should be dismissed.
5. The applicant's response was that all they want is for their father's wishes to be carried out. The chairman is still alive and can testify in court.

Determination

6. I have considered the affidavit, grounds of opposition, and arguments, and in my view, the only issue for consideration is whether the applicant should be permitted to file further witness statements in support of his case.
7. The applicant seeks to introduce additional evidence after the closure of his case. Before the matter was heard, the court directed that the parties would proceed with the case and rely on their filed affidavits. The parties then proceeded to the hearing, and each party adduced its evidence. Subsequently, the applicant filed the current application. The Supreme Court of Kenya, in *Mohamed Abdi Mahamud vs Ahmed Abdullahi Mohamad & 3 others* [2018] eKLR, set out the relevant guidelines a court should consider before admitting new evidence, as follows:
 - a. The additional evidence must be directly relevant to the matter before the court and be in the interest of justice;
 - b. It must be such that, if given, it would influence or impact upon the result of the verdict, although it need not be decisive;
 - c. It is shown that it could not have been obtained with reasonable diligence for use at the trial, was not within the knowledge of, or could not have been produced at the time of the suit or petition by the party seeking to adduce the additional evidence;
 - d. Where the additional evidence sought to be adduced removes any vagueness or doubt over the case and has a direct bearing on the main issue in the suit;
 - e. The evidence must be credible in the sense that it is capable of belief;
 - f. The additional evidence must not be so voluminous making it difficult or impossible for the other party to respond effectively;



- g. Whether a party would reasonably have been aware of and procured the further evidence in the course of trial is an essential consideration to ensure fairness and due process;
 - h. Where the additional evidence discloses a strong prima facie case of wilful deception of the Court;
 - i. The Court must be satisfied that the additional evidence is not utilised for the purpose of removing lacunae and filling gaps in evidence. The Court must find the further evidence needful;
 - j. A party who has been unsuccessful at the trial must not seek to adduce additional evidence to, make a fresh case in appeal, fill up omissions or patch up the weak points in his/her case;
 - K. The court will consider the proportionality and prejudice of allowing the additional evidence. This requires the court to assess the balance between the significance of the additional evidence, on the one hand, and the need for the swift conduct of litigation together with any prejudice that might arise from the additional evidence on the other.”
7. Guided by the above principles, having examined the proposed statements and considered the matter in question, and noting that the parties have been in court since 2012, I find that, although the applicant has not explained that the additional evidence was in his possession, it is my view that the application should be granted. Succession matters are very emotive. The statements are from persons whom the applicant claims were present at a meeting that discussed the distribution of parcel numbers 642 and 1222, which form part of the deceased’s properties. The additional evidence will assist the court in determining the applicant’s application for revocation and, hopefully, bring an end to the litigation in this succession matter. I also find that the respondent will not be prejudiced if the applicant is permitted to call the witnesses, as the respondent will have an opportunity to cross-examine and to present any additional evidence if necessary. The applicant’s list of witnesses dated 25.7.2025 is admitted as part of the court record. He shall serve the statements on the respondent within 7 days of this Ruling. The respondents are at liberty to respond to the said statements, if need be, within 14 days from the date of service. Costs of the application will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 9TH DAY OF APRIL 2026.

R.E.OUGO

JUDGE

In the presence of:

Bernard Simiyu Kiberenge/Applicant

David Wamalwa & Christopher Wanyama

Wilkister - C/A

