

c. Baithumbi Ngeera – son

4. The only asset listed was Land Parcel No. Igoji/Kiangua/1128.
5. A grant of letters of administration was issued by the said court on 4th July 2022.
6. Subsequently, the respondent filed summons for confirmation of the said grant dated 1st September 2023. The appellant then filed an affidavit of protest on 30th October 2023.
7. After hearing the protest the lower court ordered that the estate be distributed as follows:
 - a. Mbaya Ngeera – 0.533 Ha or 1.3317 Acres
 - b. Ndege Ngeera – 0.533 Ha or 1.3317 Acre
 - c. Baithumbi Ngeera – 0.533 or 1.3317 Acres
8. Aggrieved by the said decision, the appellant lodged a Memorandum of Appeal dated 20th May 2025 in which he raised the following grounds: -
 - a) That the learned magistrate of the lower court erred in law and fact by making a judgment whose consequence was the confirmation of a grant with a proposed mode

of distribution that was against established wishes of the deceased, arbitrary, skewed, discriminatory and biased.

- b) That the learned trial magistrate erred in fact and in law by failing to find that the court was bound by law to distribute the estate while respecting the established wishes of the deceased, which unequivocally distributed definite portions of land parcel No. IGOJI/KIANGUA/1128 to his sons, to wit MBAYA NGERA 2 acres, NDEGE NGERA 1 acre and BAITHUMBI NGERA 1 acre and that they took possession since 1992, developed the same and remain in such possession todate.
- c) That the learned magistrate misdirected herself in law and in fact by failing to appreciate that the three sons acceded to the fact that their respective portions on land parcel No. IGOJI/KIANGUA/1128 were surveyed and determined quantitatively since 1994 and that there is a permanent boundary since then todate.

- d) That the learned magistrate erred in law and seriously misdirected herself on the principle of law concerning the administration of intestate specifically section 42 of the Law of Succession Act.
- e) That the learned magistrate erred in law and fact and seriously misdirected herself in finding that the wishes of the deceased to be respected a surveyor's report was necessary, in total disregard of the uncontroverted evidence adduced to the effect that a survey was conducted in 1990s which determined what quantum of land each possesses, occupies and uses with a physical permanent boundary in place.
- f) That the learned magistrate erred in law and fact and seriously misdirected herself by disregarding wishes of the deceased and distributed the estate equally among three sons and disregarded two children of the deceased without any basis in law or evidence.
- g) That the learned trial magistrate gave undue weight to the petitioner's case and least weight to the protestor's case.

- h) That the learned magistrate erred in law and in fact by relying and deciding on relying on extraneous considerations and inferences and/or misapprehensions that were not raised before her especially whether the deceased made an oral WILL or not, yet the appellants only relied on established wishes of the deceased thereby arriving at an erroneous decision against and without considering the evidence on record.
- i) That learned trial magistrate totally misdirected himself into applying unknown and/or wrong principles of the law in arriving at an erroneous and injudicious decision.
- j) The learned magistrate erred in law and in fact in failing to consider that the appellant's mode of distribution was anchored upon established wishes of the deceased and inter vivos gifts bequeathed by the deceased person before his demise.
- k) The learned magistrate erred in law and in fact by rendering a judgment that is manifestly and out rightly capable of fomenting anarchy, chaos and conflict among the beneficiaries of the deceased's estate.

9. The appeal was argued by way of written submissions.
10. The appellant submitted that the deceased had five children who included the ones cited by the petitioner in his petition and also the following:
 - a. M'Murithi Ngeera (deceased)
 - b. Beatrice Jackson
11. The appellant submitted that the petitioner excluded the said names and further that the consent of Beatrice Jackson, their sister was not sought.
12. It was further submitted that the trial court ignore the established wishes of the deceased, whereby he was to get two acres while the others were to get one acre each.
13. That the trial court ignored the plea by the said Beatrice Jackson who had also wanted a share of the estate.
14. On the alleged established wishes of the deceased, the appellant submitted that the deceased had during his lifetime, engaged a survey and that each son had been settled on their land. That the deceased died before he could formally transfer the land to them. That pursuant to the wishes, the three sons took possession of their respective

portions of land in 1994 and have continued to do so. That there was no complaint by any of the sons of the deceased even after his death.

15. The appellant cited the following authorities on the question of established wishes of the deceased: -

a) Re estate of Morogo A. Mugun alias Moroko Mukumu Succession Case No. 114 of 2011

b) Re estate of the late Siwanyara Ngilotosi deceased (2021) eKLR.

c) Martha Wanjiku Waweru -vs Mary Wambui Waweru (2007) eKLR.

16. The appellant further submitted that the trial court equated the established wishes of the deceased to an oral will.

17. For the respondent it was submitted that whereas the appellant's position was that there was no oral will the very letter that he used to establish his claim referred to an oral will. That as such the appellant is guilty of departure from his own pleadings.

18. It was further submitted that the purported oral will was invalid as the same was made in 1994, whereas the deceased died in 1997.
19. It was further submitted that whereas the appellant had averred that a survey had been conducted, no documents were availed to support this claim.
20. The respondent further submitted that the appellant's assertion that there were gifts inter vivos to the parties was misguided as there was no transfer executed by the deceased nor was there anything in writing to that effect.
21. On the interpretation of section 42 of the Law of Succession Act regarding such gifts, the respondent cited the decision in **Re Estate of Gedion Manthi Nzioka (Deceased) (2015) e KLR.**
22. The respondent further submitted that in light of the provision of section 40 of the Act, then the property ought to be shared equally among all the children of the deceased as guided by the decision in **Peter Karumbi Keingati and 4 others vs Dr. Ann Nyokabi Gotha and 4 Others (2015) e KLR.**

23. It was also submitted that the mode of distribution suggested by the appellant was biased against the other children of the deceased.
24. Having considered the matter, I find the following issues as falling for determination:
- a. Whether the respondent failed to disclose all the beneficiaries in his petition and if so, what are the consequences?
 - b. Whether there was an oral will by the deceased
 - c. Whether there were established wishes of the deceased prior to his death.
 - d. How should the estate be distributed?
25. It should be noted that if the court is to find that the respondent failed to disclose all the children of the deceased, then the whole grant stands to be revoked. As such, this court may not delve into any other issue regarding the estate.
26. It is trite law that a petitioner filing a succession cause is obligated to disclose all the beneficiaries of the estate. It does not matter if the said beneficiaries are alive or

deceased since in the latter case, the children of the deceased beneficiary step into the shoes of their parent.

(See **Re Estate of Veronica Njoki Wakagoto (Deceased) [2013] eKLR**)

27. It is also trite law that the petitioner has to disclose all the beneficiaries irrespective of gender or marital status.
28. In the instant case, the respondent named only 3 beneficiaries. He omitted the name of his sister Beatrice Jackson who is alive and the name of his other brother, Francis M'Twarithi (now deceased).
29. Further, it is noted that despite there being two other children of the deceased who were alive at the time he filed the petition, the respondent only obtained the consent of one child, namely Baithumbi Ngeera. The appellant and Beatrice did not sign the consent and no citation was issued to them.
30. As regards the appellant, the lack of consent may have been cured by his filing the protest, but for Beatrice, there was no such case. She came to court as the appellant's witness. She

told the court clearly that she was not given any land, and was not aware of the filing of the cause. Despite the evidence being on record, the trial court made no provision for Beatrice.

31. It is not tiring to repeat that daughters of the deceased have equal rights as those of sons. Gone are the days when the female child was discriminated upon, in the misplaced presumption that she would get married.
32. By failing to include Beatrice in his petition, by failing to get her consent and by failing to make a provision for her or filing evidence that she did not wish to inherit anything the respondent was guilty of non-disclosure of material facts.
33. Section 76 of the Act provides for grounds upon which a grant may be revoked. It states as follows:-

“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; oriii.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.”

34. **In re Estate of Prisca Ong'ayo Nande (Deceased)**

(2020) eKLR in expounding Section 76 it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where

the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was 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 matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. 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. 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.”

35. As stated, the court has powers on its own motion to revoke a grant that fails to meet the requisite threshold.
36. In this case, I find that the errors/omissions pointed out can only lead to one conclusion, that this grant stands to be revoked.

37. Consequently, the grant issued to the respondent and the certificate of confirmation thereof, are hereby annulled and/or revoked.
38. The parties are at liberty to apply for a fresh grant but must adhere to the law as stated above.
39. That being the case, I will not delve into the other issues raised in the appeal as they may unduly prejudice the arguments that may be made once a fresh petition or application is filed.
40. In the meantime, as the parties await to file a fresh petition/application, the parties are to remain as they are on the ground.
41. For the avoidance of any doubt and noting that there may be difficulties in filing a fresh cause on the CTS, I direct that the fresh petition/application made in the same cause.
42. The lower court file is returned to the said court for further action.

43. There shall be no orders as to costs on this appeal.

**Dated, signed and delivered at Meru this 8th day of May
2026.**

.....

H. M. NYAGA

JUDGE