



**In re Estate of Kimurgor (Deceased) (Succession Cause
31 of 2017) [2026] KEHC 5814 (KLR) (4 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 5814 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 31 OF 2017**

RN NYAKUNDI, J

MAY 4, 2026

**IN THE MATTER OF THE ESTATE OF THE LATE
CHARLES CHEMIMOI KIMURGOR (DECEASED)**

BETWEEN

AMOS KIPROTICH APPLICANT

AND

**NATASHA CHEROTICH MURGOR (LEGAL REPRESENTATIVE) OF HELLEN
CHERONO KIMURGOR 1ST ADMINISTRATRIX**

MATILDA CHEMELI MURGOR 2ND ADMINISTRATRIX

AND

CHABILAL MULJI PATEL 1ST INTERESTED PARTY

ALEXANDER KIPNGETICH SITIENEY 2ND INTERESTED PARTY

RULING

1. What is pending before this Honourable are two (2) Applications. The first application is summons for revocation or annulment of grant dated 5th day of May of 2025 premised under sections 52 and 76(b) of the [Law of Succession Act](#) and Rule 44(1) of the Probate and Administration Rules where the 1st Interested party herein Chabilal Mulji Patel is seeking the following orders: -
 - a. That the amended confirmation of the grant of letters of administration (intestate) to Matilda Chemeli Murgor and Caroline Chebet Murgor as issued on 8th April 2025 be revoked (or annulled) on the ground that the amendment to the confirmation of grant was obtained fraudulently by the making of a false statement and through the concealment from court of something material to this matter.



2. The Application is made on the following grounds among others: -

- a. That the Administrators herein, Matilda Chemeli Murgor and Caroline Chebet Murgor made an application dated 25th March 2025 seeking to have this Honorable Court amend the Certificate of Confirmation of Grant in respect of the Deceased's estate to include a property known as Mombasa/Block XXVI/756 (the Property) allegedly on the basis that it had been inadvertently omitted from the Deceased's schedule of assets (the Application) as it had not been discovered by the Administrators at the time of filing for grant of representation.
- b. That in the Application, the Administrators stated that in respect of the Property the Deceased "is the registered proprietor since 1996".
- c. That this Honorable Court granted the Administrators the prayers they sought through an order dated 8th April 2025 (the Orders) amending the confirmation of grant to include the Property.
- d. That the Administrators herein willfully and maliciously failed to disclose to this Honorable Court that the 1st Interested Party is currently the registered proprietor of the Property, a fact well known to both Administrators and to their counsel on record, Muthee & Partners LLP, given the Property is the subject of proceedings in ELCPC E003 of 2024 before the Environment and Land Court at Mombasa in which Matilda Chemeli Murgor is the plaintiff purportedly on behalf of the Deceased's estate and is represented by Muthee & Partners LLP (the ELC Proceedings).
- e. That the Administrators willfully and maliciously and with intent to defraud this Honorable Court, failed to disclose that the green card in respect of the Property, which they themselves adduced in the ELC Proceedings in their List and Bundle of Documents dated 22nd February 2024, clearly indicate that a transfer was registered in favour of Salim Mohamed in February 1996, who subsequently transferred it to a related party of the 1st Interested Party in December 2004, which in turn transferred it to the 1st Interested Party in 2015.
- f. That the Administrators were fully aware that the Deceased is no longer the registered proprietor of the Property, yet they explicitly swore an affidavit to that effect.
- g. That the ELC Proceedings have been ongoing since February 2024, and in their pleadings therein, the Administrators disclose that they became aware of the Property in 2022, contrary to what they have deponed in the Application which was heard by this Honorable Court.
- h. That the Administrators deliberately adduced before this Honorable Court, in support of the Application, an old copy of the title in respect of the Property with intent to mislead this Honorable Court.
- i. That by obtaining the Order under false pretences, the Administrators have attempted to:
 - a. Co-opt this Honorable Court in its fraudulent bid to dispossess the 1st Interested Party of the Property
 - b. Undermine the jurisdiction of the Environment and Land Court in which the ELC Proceedings are still ongoing.
- j. That the Administrators also relied on a provision of the [Law of Succession Act](#) and the Probate and Administration Rules intended for minor rectifications of errors on the grant of



representation to introduce a property without regard for other stakeholders such as the 1st Interested Party.

- k. That the 1st Interested Party is apprehensive that the Administrators intend to rely on the amended confirmation of grant which lists the Property as part of the Deceased's estate to engage in fraudulent dealings on the Property and to undermine the 1st Interested Party's defence in the ELC Proceedings. Already, the Administrators have used the Orders, which they obtained fraudulently, to confirm to the Environment and Land Court that the Property did indeed form part of the Deceased's estate.
 - l. That unless this application is certified as urgent and the Amended Certificate of Confirmation of Grant in respect of the Deceased's estate issued on 8th April 2025 is revoked/annulled, the 1st Interested Party's position in the ELC Proceedings will be greatly prejudiced.
 - m. That it is only fair and just that this application be allowed as prayed.
3. The Application is supported by the annexed affidavit sworn by Chabilal Mulji Patel who deponed as follows;
- a. I am a director of the 1st Interested Party herein and hence competent to swear this Affidavit. From time to time, I will be referring to documents collectively marked, paginated and annexed to this affidavit as Exhibit CMP.
 - b. The Administrators of the Deceased's estate, Matilda Chemeli Murgor and Caroline Chebet Murgor made an application dated 25th March 2025 seeking to have this Honorable Court amend the Certificate of Confirmation of Grant in respect of the Deceased's estate to include a property known as Mombasa/Block XXVI/756 (the Property) allegedly on the basis that it had been inadvertently omitted from the Deceased's schedule of assets (the Application) as it had not been discovered by the Administrators at the time of filing for grant of representation.
 - c. This Honorable Court granted the Administrators the prayers they sought through an order dated 8 April 2025 (the Orders) amending the confirmation of grant to include the Property and issued an amended certificate of confirmation of grant.
 - d. In the Application, which I have perused, the Administrators stated that, in respect of the Property, the Deceased 'is the registered proprietor since 1996'.
 - e. The Administrators willfully and maliciously to disclose to this Honorable Court that the 1st Interested Party is currently the registered proprietor of the Property, a fact well known to both Administrators, and to their counsel on record, Muthee & Partners LLP, given the Property is the subject of proceedings in ELC PCC E003 of 2024 before the Environment and Land Court at Mombasa in which Matilda Chemeli Murgor is the plaintiff on behalf of the Deceased's estate, and is represented by Muthee & Partners LLP (the ELC Proceedings).
 - f. The Administrators wilfully and maliciously, and with intent to defraud this Honorable Court, failed to disclose that the green card in respect of the Property, which they themselves adduced in the ELC Proceedings in their List and Bundle of Documents dated 22nd February 2024, clearly indicate that a transfer was registered in favour of Salim Mohamed in February 1996, who subsequently transferred it to a related party of the 1st Interested Party in December 2004, which in turn transferred it to the 1st Interested Party in 2015.
 - g. The Administrators were fully aware that the Deceased is no longer the registered proprietor of the Property, yet they explicitly swore an affidavit to that effect.



- h. The ELC Proceedings have been ongoing since February 2024, and in their pleadings therein, the Administrators disclose that they became aware of the Property in 2022, contrary to what they have deponed in the Application which was heard by this Honorable Court
- i. I understand from counsel on record, whose advice I verily believe to be true, that the Administrators have committed various offences in deponing that the Deceased is the registered proprietor of the Property in a bid to secure the Orders. For one, I am advised that the Administrators have made a willful and reckless statement which is false in a material way contrary to Section 52 of the *Law of Succession Act*. I am further advised that on the basis that the Orders were obtained fraudulently through making a false statement to this Honorable Court and by concealing a material fact from this Honorable Court, the amended certificate of confirmation of grant should be annulled/revoked in accordance with the provisions of Section 76(b) of the *Law of Succession Act*. Finally, I am advised that the Administrators have committed perjury contrary to Section 108 of the Penal Code.
- j. I also note from the Application, that the counsel on record for the Administrators, Elijah Gathu of Muthee & Partners LLP also represents the plaintiff in the ELC Proceedings. Being the Administrators' professional advisor and an officer of the court, and being aware of the ELC Proceedings, counsel for the Administrators was able to advise the Administrators against making false statements under oath in support of the Application but failed to do so. In drawing the affidavit dated 25th March 2025, I am advised by counsel on record, whose advice I verily believe to be true, that Mr. Gathu has suborned perjury.
- k. The Administrators deliberately adduced before this Honorable Court, in support of the Application, an old copy of the title in respect of the Property with intent to mislead this Honorable Court.
- l. By obtaining the Order under false pretences, the Administrators have attempted to:
 - a. co-opt this Honorable Court in its fraudulent bid to dispossess the 1st Interested Party of the Property; and
 - b. Undermine the jurisdiction of the Environment and Land Court in which the ELC Proceedings are still ongoing.
- m. I am also advised by counsel on record, whose advice I verily believe to be true, that the enabling law invoked by the Administrators in the Application, that is, Section 74 of the Law of Succession Act as read with Rule 43 of the Probate and Administration Rules, is reserved for rectifications of minor errors such as spellings of names or errors as to the date and location of the deceased's death. The Administrators have sought to rely on these provisions to include the Property and, in the amended confirmation of grant issued on 8th April 2025, Matilda Chemeli Murgor, who is also the sole plaintiff in the ELC Proceedings to the exclusion of her co-administrator, is listed as the beneficiary of the Property. It is unclear whether the other beneficiaries are even aware of the Application.
- n. Based on the Administrators' conduct thus far, I am apprehensive that the Administrators intend to rely on the amended confirmation of grant which lists the Property as part of the Deceased's estate to engage in fraudulent dealings on the Property and to undermine the 1st Interested Party's defence in the ELC Proceedings. Already, the Administrators have used the Orders, which they obtained fraudulently, to confirm to the Environment and Land Court that the Property did indeed form part of the Deceased's estate. See page 113 of Exhibit CMP



for a copy of submissions filed in the ELC Proceedings by the Administrators referencing the Orders.

- o. Unless this application is certified as urgent and the Amended Certificate of Confirmation of Grant in respect of the Deceased's estate issued on 8 April 2025 is revoked/annulled, the 1st Interested Party's position in the ELC Proceedings will be greatly prejudiced.

Summons dated 17th June 2025

4. The second application is summons dated 17th June 2025 brought pursuant to section 76 of the [Law of Succession Act](#) and Rule 44 (1) of the Probate and Administration Rules where the Applicant is seeking the following orders;
 - a. Spent
 - b. That pending the hearing and determination of this Application and/or until further orders of this Honorable Court, a status quo order do issue, preserving the prevailing occupation, possession, and use of the parcel of land known as Mohoroni L.R. No. 21959/14, forming part of the estate of the deceased.
 - c. An order of injunction do issue, restraining the Respondent, Purported Purchasers their agents, servants, assigns or any other person acting at her behest, from evicting, harassing, or in any manner interfering with the Applicant's quiet possession and occupation of Mohoroni L.R.No. 21959/14 pending the hearing and determination of this application.
 - d. That this Honorable Court do find and declare that the purported amendment or rectification of the Grant of Letters of Administration made by the Respondents was fraudulent, unlawful, and calculated to aid an illegality, and was done to the detriment of the Applicant and other interested parties with beneficial and equitable interests in the estate.
 - e. That the Grant of Letters of Administration issued on the 16th July 2020, and/or any subsequent rectification thereof, be revoked for having been obtained by means of misrepresentation, concealment of material facts, and deliberate non-disclosure of purchasers and co-beneficiaries with proprietary claims on the estate.
 - f. That the costs of this Application be provided for.
 - g. That this Honorable Court do grant such other or further reliefs as it shall deem just, equitable, and expedient in the circumstances of this case.
5. The Application is made on the following grounds on the face of it among others;
 - a. That the deceased, Charles Chemimoi Kimurgor, passed away on 20th December 2009, and a grant of letters of administration intestate was issued to the Respondent on 16th July 2020.
 - b. That the Respondent unilaterally obtained the grant, contrary to pre-existing arrangements and agreements, and without the participation, consent, or notification of the
 - c. That the Respondent subsequently sought to amend the said grant fraudulently, with the intent to dispose of or alienate parts of the estate, including Mohoroni L.R. No. 21959/14, without declaring liabilities or existing interests such as purchasers and residents on the land.
 - d. That the said amendment was designed to defeat equitable rights, and to mislead the court into believing that no other parties had interest in the subject parcel or the estate at large.



- e. That unless restrained, the Respondent's actions will result in dispossession, unlawful eviction, and further fragmentation of the estate, leading to irreparable loss, injustice, and hardship upon the Applicant and other rightful beneficiaries.
 - f. That it is just and necessary in the interest of justice and proper administration of estates that this Honorable Court intervenes to preserve the estate, revoke the fraudulent grant, and issue directions for fair re-administration.
6. The Application is supported by the annexed affidavit dated 17th June 2025 sworn by AMOS KIPROTICH who deponed as follows;
- a. That I am the applicant herein, a purchaser and/or beneficially interested party in the estate of the late Charles Chemimoi Kimurgor (deceased) and therefore competent and authorized to swear this affidavit in support of the Chamber summons application herein.
 - b. That the deceased, Charles Chemimoi Kimurgor, died intestate on or about the 20th day of December 2003, and the Respondents herein, were subsequently issued with a Grant of Letters of Administration Intestate on 16th July 2020 in respect of his estate.
 - c. That the said grant was obtained unilaterally by the Respondent without consultation, consent, or disclosure to other interested parties and purchasers, including myself, contrary to prior arrangements and agreements known within the family and among stakeholders. That in 2009, prior to the grant, a meeting was held in which agreements and representations were made concerning the administration of the deceased's estate, particularly touching on the parcel of land known as Mohoroni L.R. No. 21959/14, where I and others have established residence and made developments.
 - d. That I am informed, and verily believe, that the Respondent has since amended or rectified the original grant without due notice, consultation, or reference to the beneficiaries and third parties with proprietary or beneficial interest in the estate.
 - e. That the said amendment or rectification was fraudulent and calculated to unlawfully exclude purchasers and other beneficiaries for the Respondent's own benefit and in a manner likely to lead to illegal evictions, dispossession, and conflict over the estate's property.
 - f. That the Respondent deliberately concealed material facts from the court during both the initial petition and subsequent amendment of the grant, including the existence of persons in occupation of the estate property and the interests they hold.
 - g. That the parcel of land known as Mohoroni L.R. No. 21959/14 is currently occupied by several persons, including myself, who have invested in structures, developments, and community livelihood over the year under legitimate belief and expectation of good title or interest through the estate
 - h. That unless this Honorable Court intervenes urgently, there is a real and imminent risk of illegal eviction, forceful dispossession, and irreversible loss, and the estate risks being alienated, wasted, or mismanaged to the prejudice of the Applicant and other legitimate stakeholders.
 - i. That it is in the interest of justice that the grant issued to the Respondent on 16th July 2020 and/or any subsequent amendments be revoked for having been obtained through misrepresentation, fraud, and concealment of material facts from the court.



- j. That it is further in the interest of justice that the status quo currently prevailing in respect of the occupation and use of Mohoroni L.R. No.21959/14 be preserved pending the full and fair hearing of this application.
- k. That I swear this affidavit in good faith and in support of the prayers sought in the Chamber Summons filed herein.

Grounds of Opposition

- 7. The Application was opposed by the Respondents/Administratrix vide their Grounds of Opposition dated 11th July 2025 in which they deposed that the Application is incompetent and misconceived as it offends the provisions of the Law of Succession Act and in particular is not grounded in any valid provision of law permitting issuance of an injunction or declaratory orders under the said Act.

Replying Affidavit

- 8. The Application was also opposed by a Replying Affidavit dated 29th September 2025 sworn by Alexander Kipnetich Siteney, the 2nd Interested Party herein who deposed as follows: -
 - a. That the orders sought by the Applicant as this stage is supported by contradictory and falsified grounds set out in the Supporting Annexed Affidavit of the Applicant which is devoid of merit and an abuse of the Court process, vexatious and frivolous.
 - b. That I know of my own knowledge that the allegations levelled in the Notice of Motion herein and the Supporting Affidavit hereto, sworn by the Applicant is false and mischievous, crafted with the sole intention of misleading this Court into granting the orders to the Applicants herein without any basis in law.
 - c. That I know of my own knowledge that the deceased herein Charles Kimurgor passed on the 9th Day of October 2005 and not on the 20th day of December 2009 as alleged by the Applicant.
 - d. That I know of my own knowledge that the Respondents are the children to the deceased and that Matilda Chemeli Murgor alongside her sister Caroline Chebet Murgor were granted letters of Administration on the 17th day of December 2021.
 - e. That I know of my own knowledge that the said Grant was confirmed by the Honourable Court on the 1st of December 2021.
 - f. That I know of my own knowledge that the said grant was not obtained unilaterally contrary to the pre-existing arrangements and or agreements as alleged by the Applicant herein.
 - g. That I know of my own knowledge that I acquired the property herein having purchased the same from the previous owner now deceased, the deceased having acquired it in the year 1998 or thereabout from the Agricultural Development Corporation ADC.
 - h. That I know of my own knowledge that upon the Deceased acquiring the suit land in the year 1998 or thereabout he immediately took possession of the same and had beacons planted on the boundaries.
 - i. That the deceased CHARLES CHEMIMOI KIMURGOR took possession and were in actual use of the suit property wherein they conducted farming beside cultivating other food crops.



- j. That upon harvesting sugarcane the then owner would occasionally supply them to Chemilil Sugar Company Limited.
- k. That I acquired the above land parcel by way of sale from the deceased and was duly included in the Certificate of Confirmed Grant.
- l. That the same was subsequently transmitted to me via assent by the Administrators of the estate.
- m. That I know of my own knowledge that sometimes in 2016 some strangers forcefully through coercion and intimidation of the deceased estate administrators with the help of the deceased son entered the suit land on purported leases.
- n. That the Estate Administrators had filed a trespass suit being Kapsabet Environment Eldoret Environment and Land Case Number 148 of 2021 Formerly Eldoret Land Case No. 037 of 2021 formerly the parties who alleged to have been residing on the suit land wherein the application was allowed and the court observed that none of the Respondents were residing on the land.
- o. That the purported beneficiaries and or liabilities had similarly filed a suit in Kapsabet Magistrate's court case 16 of 2020 which suit was dismissed and or struck out.
- p. That I thereafter caused to lease part of the property to a number of persons within the community.
- q. That the lessees breached the terms and conditions of the lease an action that necessitated me to file suit vide Kapsabet Land and Environment Case Number E007 of 2023.
- r. That the Honourable Court heard the matter on merit and has since rendered the judgement.
- s. That some persons also filed suit against myself claiming to be on the 20-acre land that was not under lease.
- t. That the said Kapsabet Chief Magistrates Land Case Number E027 OF 2024 has since been heard and determined wherein the same was struck out with costs.
- u. That the suit filed by myself over the 30 - acre land that I leased out, the Applicant is not amongst the Respondents neither is he amongst the parties in a suit filed against myself and therefore the claim that he is residing and to have established residence on LR 21959/14 is untrue and he shall be subjected to strict proof.
- v. That the Applicant has filed suit against the Administrators over land parcel number MUHORONI LR 21959/14 which parcel is registered in my names.
- w. That the application before court is thus purely a land issue and not a succession cause to be determined by the Honourable Court.
- x. That the Applicant is not a beneficiary and or liability to the estate to warrant the issuance of the orders sought.
- y. That the orders sought by the Applicant herein is misplaced and therefore cannot issue in the prevailing circumstances and that the Application is devoid of merit thus the same ought to be dismissed.



- z. That the Applicant herein has never at any given time leased and or purchased any of the property the subject of the present proceedings.
 - aa. That the application as filed by the applicant is not a class suit and that the applicant has only attached purported leases and or agreements when he is not even a party to any of the purported agreements and or leases.
9. The Application was canvassed by way of written submissions.

Applicants Written Submissions

10. I note that at the time of writing this ruling, a look at the Court file and the Case Tracking System (CTS) indicate that the Applicant had not filed written submissions. I will however determine the Application on merit.

Respondents Submissions Summary

11. The 2nd Interested Party herein filed his written submissions dated 30th July 2025 through his learned Counsel Mr. Muthee. The learned Counsel submitted on two (2) issues for determination as follows: -
- a. Whether the Application is merited?
 - b. Whether the rectification of the Grant was lawful?
12. On the first issue, the learned Counsel Mr. Muthee submitted that application offends the provisions of the *Law of Succession Act* which does not provide for the issuance of injunctions or declaratory reliefs, save as may be specifically incorporated under Rule 63 of the Probate and Administration Rules. Counsel also submitted that the orders of status quo and other civil remedies are in nature of reliefs found under the *Civil Procedure Act*, which have no direct application to Succession proceedings unless expressly permitted under the Succession Rules. Counsel opined that the application was hence fatally defective in law, lacking any statutory foundation within the Succession Act.
13. Counsel further submitted that court orders must be specific, precise and enforceable failing which they are liable to cause confusion or expose the court to ridicule. Counsel made reference to the case of *B Vs Attorney General* [2004] 1 KLR 431. It was the learned Counsel's submission that the Applicant has not established a prima facie case with a probability of success, nor any legal or beneficial interest in the estate of the deceased or in the suit land for grant of the orders sought particularly in the Affidavit in support of the Applicant's Application dated 16th June 2025, the Applicant has annexed a copy of unattested agreement purported to have been signed by the Respondents and the Respondents are strangers to that agreement as they never signed the same. He made reference to the case of *Giella Vs Cassman Brown* [1973] EA 358.
14. On the second issue, the learned counsel submitted that the rectification of Grant issued on 16th July 2020 was lawfully undertaken pursuant to section 74 of the *Law of Succession Act* and no procedural irregularity has been shown and or proved by the Applicant to warrant this Honourable Court to revoke the Grant that was issued on 16th July 2020. Counsel noted that the allegations of fraud and concealment of facts are unsubstantiated and unsupported by evidence and remain bare allegations without probative value. Counsel made reference to the case of *Vijay Marjario Vs Nansingh, Madhusingh Darbar & Another* [2000] eKLR and *Muriithi Vs Makena & Another* (Environment and Land Appeal E035 of 2022).



15. It was learned Counsel's final submission that the attempt by the Applicant to revoke or challenge the validity of the rectified grant through an interlocutory application is procedurally untenable and urged the court to dismiss the Application dated 17th June 2025 with costs to the Respondent.

Analysis and Determination

16. Before delving into the merits of this Application, this Court had earlier, vide its ruling dated 11th August 2025, issued interim conservatory and preservation orders halting the transmission of the estate pending further directions and the filing of additional evidence, including the possibility of a trial within a trial under Article 50 of *the Constitution*. In particular, this Honourable Court pronounced itself as follows: -

In determining the two limbs, this court has weighed and balanced the competing claims of both parties bearing in mind that each application must be determined on its own peculiar facts. I therefore exercise my discretion to grant interim conservatory and preservation orders against the transmission of the model decreed in the amended certificate of confirmation of grant pending the filing of additional evidence including if necessary a trial within a trial under Article 50 of *the Constitution* 2010.

The trial within a trial on the contentious issues shall be held on 24th September 2025. In addition, both legal counsels are directed to file their legal perspectives on the matter. It is so ordered.

17. I have read and considered the applications herein and the rival affidavits. There are two (2) issues manifest for determination by this Honourable Court: -
- a. Whether the amended Certificate of Confirmation of Grant dated 8th April 2025 ought to be revoked?
 - b. Whether the Applicant in the application dated 17th June 2025 has established sufficient grounds for revocation of the grant, injunctive and preservative reliefs?

Whether the amended Certificate of Confirmation of Grant dated 8th April 2025 ought to be revoked?

18. 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.

19. 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.”

20. 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.”

21. 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.”

22. The central complaint by the 1st Interested Party is that the Administrators, in seeking amendment of the confirmed grant on 8th April 2025, misrepresented to this Court that the deceased was the registered proprietor of Mombasa/Block XXVI/756, while knowingly concealing the existence of an ongoing dispute before the Environment and Land Court (ELC) in Mombasa being ELC Case No. E003 of 2024.

23. Material non-disclosure arises where a party fails to disclose facts that are relevant and would have influenced the Court’s decision. From the record, the following facts are not controverted: that there exists an ongoing suit before the Environment and Land Court in Mombasa concerning the same property; the Administrators are parties to that suit; the issue of ownership of the property is actively contested and the Administrators were aware of the history of the title, including transfers to third parties.

24. Despite this, the Administrators approached this Court and represented that the deceased is the registered proprietor since 1996. This statement, viewed against the background of the ELC proceedings, was at best incomplete and misleading to this Honourable Court. This Court is persuaded



that the existence of parallel proceedings touching on ownership of the property was a material fact that ought to have been disclosed.

25. The mandate of the probate court under the *law of succession Act* is limited. It does not extend to determining issues of ownership of property. It is not a matter of the probate court being incompetent to deal with such issues but the provisions of the law of succession and the relevant subsidiary legislation do not provide a convenient mechanism for determination of some issues. It is true that the mandate of a Probate and Administration Court is to determine the assets of the deceased, identify the rightful beneficiaries of the estate, ascertain their respective shares and finally, distribute the estate accordingly. This has been restated in a plethora of decisions including for instance, the case of re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR, in which W. Musyoka J held that: -

“The *Law of Succession Act* and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.”

26. In succession proceedings, the Court’s role is limited to distribution of estate property. Where ownership is disputed, such disputes fall within the jurisdiction of the Environment and Land Court pursuant to Article 162(2)(b) of *the Constitution*. Failure to disclose such proceedings had the effect of inviting this Court to assume jurisdiction over a contested property; risking conflicting decisions between courts of concurrent jurisdiction and potentially prejudicing third-party rights.
27. This Court must also establish Whether Revocation is the Appropriate Remedy in this instance. While the Court finds that there was material non-disclosure, it must also consider the proportionality of the remedy sought. The Applicant relates not to the entire grant, but specifically to one asset included through amendment. The Court is guided by the principle that revocation should not be resorted to where a lesser remedy can adequately address the injustice. In the circumstances, the justice of the case will be served by varying the Certificate of Confirmation of Grant to exclude the disputed property pending determination by the Environment and Land Court. Accordingly, the Court finds merit in part and holds that the inclusion of Mombasa/Block XXVI/756 in the amended certificate was procured through material non-disclosure; that the issue of ownership of the said property is sub-judice before the Environment and Land Court and that this Court must refrain from making determinations that may prejudice or pre-empt that process.

Whether the Application dated 17th June 2025 is merited?

28. The second application seeks, inter alia revocation of the grant; injunctive relief and recognition of the Applicant’s alleged interest in LR No. 21959/14 Muhoroni. The Applicant claims to be a purchaser and/or beneficiary. 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.



29. 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...”

30. 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.”

31. The record reveals a Transfer Instrument dated 31st March 2022 transferring the property to the 2nd Interested Party, Alexander Kipngetich Sitienny; the transfer was executed by the Administrators in their lawful capacity and the interest in the property has therefore crystallized and passed to the transferee. The Applicant has not produced cogent evidence to impeach that transfer.

32. On the alleged agreement, the Applicant relies on an Agreement to Vacate. The Court notes that the said agreement is not properly executed; it is not attested as required by law hence its evidentiary value is therefore minimal. Under Kenyan law, agreements affecting interests in land must comply with statutory formalities. Failure to do so renders them unenforceable.

33. On revocation of the grant, the Applicant has alleged fraud and concealment. However, there is no sufficient evidence has been placed before the Court to demonstrate fraud within the meaning of Section 76 and the allegations remain largely speculative and unsubstantiated.

On injunctive and preservative orders

34. The Applicant seeks, inter alia, orders of status quo and injunction restraining the Respondent, purported purchasers and/or any other persons from evicting or interfering with his alleged quiet possession of land parcel Mohoroni L.R. No. 21959/14 pending the hearing and determination of the application. At the outset, it is necessary to situate the prayer within the proper legal framework. While succession proceedings are governed by the *Law of Succession Act* (Cap 160) and the Probate and Administration Rules, injunctive reliefs are not expressly provided for under the Act. However, by virtue of Rule 63 of the Probate and Administration Rules, certain provisions of the Civil Procedure Rules are imported, including those relating to interlocutory relief. Further, this Court retains inherent jurisdiction under Rule 73 to make such orders as may be necessary for the ends of justice. Accordingly, this Court is not divested of jurisdiction to grant injunctive relief, but such relief must be exercised cautiously and within the confines of established principles.



35. The conditions for the grant of a temporary injunction were set in the now famous case of *Giella Vs Cassman Brown & Co Ltd* (1973) EA 358 where the Court of Appeal held as follows: -

“First an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the court is in doubt it will decide an application on the balance of convenience.”

36. In the case of *Nguruman Limited Vs Jan Bonde Nielsen & 2 Others* (2014) eKLR, the Court of Appeal further explained that: -

“...these are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”

Whether a prima facie case has been established

37. A prima facie case entails more than arguable grounds; it requires demonstration of a legally protectable interest that has apparently been infringed. In the present case, the Applicant claims to be a purchaser and/or a person beneficially interested in the estate, alleging occupation and developments on the suit property. However, the evidentiary foundation of this claim is tenuous. The material placed before the Court reveals several critical deficiencies: -

- a. The alleged purchaser’s interest is not supported by a valid and enforceable agreement. The “Agreement to vacate” annexed by the Applicant is neither properly executed nor attested, thus failing to meet the mandatory requirements of Section 3(3) of the *Law of Contract Act*. It is therefore incapable of conferring any proprietary or equitable interest.
- b. The record demonstrates that the suit property L.R. No. 21959/14 (I.R. 77556) was lawfully transferred to the 2nd Interested Party, Alexander Kipngetchi Siteny, through a registered Transfer Instrument dated 31st March 2022 executed by the Administrators. This transfer has not been impeached through cogent evidence of fraud, illegality or procedural impropriety.
- c. The Applicant has not demonstrated privity of contract with either the deceased or the administrators, nor has he shown inclusion as a beneficiary or liability in the confirmed grant.
- d. The Replying Affidavit further challenges the Applicant’s alleged occupation and asserts that prior litigation before the Environment and Land Court determined that persons claiming occupation were not in possession of the land.

38. Taken together, these factors lead to the inescapable conclusion that the Applicant has not demonstrated any legally cognizable interest in the suit property capable of protection by this Court. His claim remains speculative, unsupported, and legally deficient.



Whether the Applicant will suffer irreparable harm

39. The Applicant alleges risk of eviction, dispossession, and loss of developments. However, irreparable harm must be actual, imminent, and incapable of compensation by damages. In this instance, the Applicant has not established lawful occupation or ownership rights over the property. Any alleged developments or occupation, absent a valid legal foundation, cannot ground a claim for equitable protection. The alleged harm is not shown to be irreparable; if at all the Applicant had any provable interest (which he has not), such interest would be quantifiable and compensable in damages.
40. Moreover, the Court cannot ignore the competing rights of the 2nd Interested Party, whose proprietary rights have crystallized through registration. To restrain a registered proprietor in the absence of a demonstrated legal challenge would be to unjustifiably interfere with vested rights protected under law.

Balance of convenience

41. Where doubt exists, the Court considers which party would suffer greater prejudice. In this case, the balance of convenience tilts decisively against the Applicant. The 2nd Interested Party holds a registered interest in the property, which has not been impeached. The Administrators have already completed transmission of the property pursuant to a confirmed grant hence granting injunctive orders would disrupt settled proprietary rights and undermine the finality of succession proceedings.
42. Conversely, the Applicant's claim is uncertain, unproven and lacks legal anchorage. Granting injunctive relief on such a basis would amount to sanctioning speculative claims at the expense of established rights.
43. It is also noteworthy that the dispute, as framed by the Applicant, substantially relates to ownership, occupation and purchaser's interests in land. Such matters fall squarely within the jurisdiction of the Environment and Land Court under Article 162(2)(b) of *the Constitution*. This Court, sitting as a probate court, is primarily concerned with identification of estate assets and their distribution. It cannot properly adjudicate contested claims of ownership between third parties and the estate, particularly where title has already passed to a third party.
44. The *law of Succession Act* in its codification on the letter and spirit sets out very clear timelines upon which the Administrators are bound under Section 71, as read with Sections 81, 82 and 83 of the Statute to petition for Grant of Letters of Administration, thereafter set in motion confirmation of grant which is the final decree of a succession cause which paves way for the transmission of the shares of the estate to the beneficiaries and ultimately prepare a probate account for the Court to liquidate the estate.
45. The story in this litigation is a re-litigation on issues which could easily be isolated without the necessity of invoking Section 76 of the Act on revocation of the certificate of confirmed grant. This decision by the Court is always arrived at by the material evidence presented by the Administrators accompanied with the consent of the beneficiaries unless for one reason or another there is an error apparent on the face of the record which can be reviewed by invoking Section 80 of the *Civil Procedure Act*, Order 45 Rule 1 of the Civil Procedure Rules as read with Rule 73(1) of the Probate and Administration Rules. The effect of revocation is to ask the same Court to start de novo including petitioning afresh for grant of letters of administration which ought to be processed through gazettment of the new Administrators now appointed to provide the necessary leadership in the administration of the estate. This appointment in law is in personam that the Administrators while delivering the key parameters in the administration of the estate are presumed to sit in the armchair of the deceased. The chance of the Court being able to do justice and have the dispute dissolved within a reasonable time is



even withheld because some of the beneficiaries approached the table of inheritance with self-serving interests ignoring the collective rights of other beneficiaries in the same estate. My reading of this record does demonstrate that this litigation on multiplicity of applications is not for the objective of meeting the ends of justice. It cannot be over emphasized that the issues of this parcel of land in question cannot be used as a sword to revoke the grant to this estate. I consider this not to be the only recourse available to both the Administrators and beneficiaries to this estate.

46. In light of the foregoing analysis, the Court finds that the Applicant has failed to establish a prima facie case with a probability of success, the Applicant has not demonstrated irreparable harm and the balance of convenience does not favour the grant of injunctive relief. Accordingly, the prayers for status quo and injunction sought in the application dated 17th June 2025 are unmerited and untenable in law.
47. Accordingly, the Court makes the following orders: -
1. The Summons dated 5th May 2025 partially succeeds in the following extent: -
 - a. That the property known as Mombasa/Block XXVI/756 be and is hereby removed from the Amended Certificate of Confirmation of Grant dated 8th April 2025.
 - b. The said property shall remain excluded pending the hearing and determination of ELC Case No. E003 of 2024 in Mombasa.
 2. That the Summons dated 17th June 2025 is hereby dismissed in its entirety.
 3. That the interim conservatory orders issued on 11th August 2025 are hereby varied pursuant to section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules. The restriction against transmission of the estate is lifted save for Mombasa/Block XXVI/756, which shall remain preserved pending ELC determination.
 4. That the Administrators are hereby directed to proceed diligently with the administration and transmission of the estate; ensure compliance with Section 83 of the *Law of Succession Act* and distribute the estate strictly in accordance with the Amended Certificate of Confirmation of Grant dated 8th April 2025 excluding the Mombasa property.
 5. There shall be a status conference on 3rd June 2026 to confirm compliance with the aforesaid orders.
 6. That each party shall bear their respective costs in respect of the first application, while costs of the second application shall be borne by the Applicant herein Amos Kiprotich.
48. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET VIA CTS THIS 4TH MAY 2026

.....

R. NYAKUNDI

JUDGE

