



**In re Estate of the Late Barnabas Simiyu Munialo (Deceased) (Succession Cause 252 of 2015) [2025] KEHC 5339 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5339 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
SUCCESSION CAUSE 252 OF 2015**

**AC MRIMA, J**

**APRIL 30, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE BARNABAS  
SIMIYU MUNIALO (DECEASED)**

**BETWEEN**

**KENNETH BULITIA MUNIALO ..... OBJECTOR**

**AND**

**ANTHONY BULITIA SIMIYU ..... 1<sup>ST</sup> PETITIONER**

**AMOS WANJALA SIMIYU ..... 2<sup>ND</sup> PETITIONER**

**SARAH NEKESA SIMIYU ..... 3<sup>RD</sup> PETITIONER**

**RULING**

**Background:**

1. This ruling is yet another opportunity to interrogate the legal and factual matrix on whether or not to revoke a Grant of Letters of Administration. In this cause, a Grant was issued on 15<sup>th</sup> June 2016 to Anthony Bulitia Simiyu, Amos Wanjala Simiyu and Sarah Nekesa Simiyu, the Petitioners/ Respondents herein which Grant was confirmed on 23<sup>rd</sup> July 2019.
2. Through a Summons for Revocation of Grant dated 7<sup>th</sup> July 2021, Kenneth Bulitia Munialo, (hereinafter referred to as ‘the Applicant’ or ‘the Objector’) sought to revoke the grant. The application was vehemently opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and was heard by way of viva voce evidence, hence, this ruling.

**The Summons:**

4. The Summons sought the following reliefs: -



1. Spent
  2. That the grant of letters of administration Intestate issued to the Respondents, Anthony Bulitia Simiyu, Amos Wanjala Simiyu and Sarah Nekesa Simiyu on the 15<sup>th</sup> June 2015 and confirmed on the 23<sup>rd</sup> July 2019 over estate of Barnabas Munialo be revoked and or annulled.
  3. That while pending the inter parties hearing and determination of this Application, this honourable Court be pleased to stay the enforcement and implementation of the confirmed grant of representation to the estate of the late Barnabas Simiyu Munialo.
  4. That the Applicant herein and his sister Leornida Susan Khisa who are also children of the deceased be provided for from Estate of the late Barnabas Simiyu Munialo.
  5. That this honourable Court be pleased to set aside the distribution of the estate of the late Barnabas Simiyu Munialo as per the confirmed grant of 23<sup>rd</sup> July 2019 and then proceed to distribute the estate afresh to all beneficiaries including the Applicant and his sister Leornida Susan Khisa.
  6. Cost of this Application be paid out of the estate.
5. In the grounds and Affidavit in support of the application deposed to on 7<sup>th</sup> July 2021, the Applicant claimed that the proceedings that preceded the confirmation of the grant were defective in substance since there was concealment of material fact and the making of fraudulent statement by the Respondents herein. He deposed that he and Leornida Susan Khisa were children of the deceased and were maintained by him before his death and are entitled to equal share from the estate. It was his case that despite being included in the list of beneficiaries, he was given 2.5 acres of land which do not exist since the said land was given to her mother who was an objector in this Cause and was to be transferred and registered in her name.
  6. The Applicant further claimed that Leornida Khisa was excluded as a beneficiary of the deceased and are still in school in dire need of money. He asserted that as per the confirmed grant the amount of money in Kenya Commercial Bank and Barclays Bank was to be shared equally among all the beneficiaries after paying out the liabilities of the estate but he never received his share of the money.
  7. In conclusion it was his position that they stand to be disinherited unless the grant is revoked.
  8. In his oral testimony, the Objector stated that the Respondents herein Antony Simiyu and Amos Simiyu were his step-brothers whereas Sarah Simiyu was his Auntie. He averred that he and his sister were left out as beneficiaries and did not get any share of his late father's estate. He asserted that in the objection that was filed by his mother, the share she was given did not include his share and that of Leornida. It was his evidence that at the time the grant was confirmed he was 19 years of age and was unable to own property. He stated that his mother was the third wife to the deceased and that Amos Simiyu and Anthony Simiyu are from the 1<sup>st</sup> and 2<sup>nd</sup> house respectively. He was emphatic that he did not participate in the confirmation proceedings. He clarified that the allocation to his mother as per the order of 3<sup>rd</sup> May 2018 did not include his share. He refuted that his mother held the property she was given in trust for him and his sister.
  9. On cross-examination, he was referred to the affidavit of her Mother, Christine Chelagat, in support to the application dated 5<sup>th</sup> January 2017 where in paragraph 5, she declined that the Applicant was her child. Further, in paragraph 10, he stated that that the objection instituted by his mother was on behalf of her children. He confirmed that Waitaluk/Mabonde Block 13/1002 and Plot No. 1025/Waitaluk/Mabonde Block 13/ Bikeke/21 were transferred to his mother and that the two parcels of land are



- 2.5 acres, on the highway along Kitale – Eldoret road and 5 kilometres from Kitale town. He further conceded that the house his mother lives in was put up by the deceased and is where he resides to-date.
10. The Applicant agreed that the consent by her mother was in full and final settlement of the objection. As regards the Bank accounts, it was his testimony that he did not have any piece of evidence in the name of the deceased. On further cross-examination by the Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, it was his case that he did not have any authority to speak on her sister’s behalf. He stated that he was aware of the Court order of 10<sup>th</sup> December 2018 but had not applied to set it aside. It was his case that he only became aware of the orders of the Court when he was served with the Judgment of 23<sup>rd</sup> July 2019 wherein he was given 2.5 acres of the farm in Bikeke and that he confirmed as much in the Affidavit. It was further his evidence that he got the judgment in 2019 but filed the instant Application two years later in the year 2021 because at that time he still was in campus.
  11. On re-examination, he stated that the 2.5 acres he was allocated is the same one which had been transferred to his mother in 2018 and as such was not available for further allocation. He also stated that in the Certificate of Confirmation the beneficiaries were to receive monies from two Bank accounts, but he did not receive any amount of money. He reiterated that the delay in instituting the instant application was occasioned by the fact that he was still in campus and was kept out of the matter.
  12. The Applicant urged this Court to allow the Summons.

**The 1<sup>st</sup> Respondent’s case:**

13. Anthony Bulitia Simiyu challenged the Summons for Revocation through his Replying Affidavit deposed to on 20<sup>th</sup> July 2021. From the outset, he admitted that the Objector was his brother but claimed that the application was misconceived and in bad faith since the judgment of 23<sup>rd</sup> July 2019 distributing the land factored in all the beneficiaries. He deposed that in the course of the proceedings, the Applicant’s mother, Christie Chelagat, filed an Objection dated 5<sup>th</sup> January 2017 on behalf of her children and the said Application was compromised by consent, duly signed and filed in Court.
14. In the consent, he deposed, that the Applicant’s mother was given Waitaluk/Mabonde Block 13/1002 measuring 0.809 Ha, Plot No. 1021 part of Waitaluk/Mabonde Block 13/Bikeke/21 approximately 0.204 Ha and Plot No. 1025 being part of Title No. Waitaluk/Mabonde Block 13/Bikeke/21 approximately 0.09 Ha. It was his position that the Applicant’s mother was to hold the properties on her own and on behalf of her children including the Applicant herein in full and final settlement of her claim and that of her children.
15. He urged this Court to dismiss the objection.

**The 2<sup>nd</sup> Respondent’s case:**

16. Amos Wanjala Simiyu responded to the application through his Replying Affidavit deposed to on 26<sup>th</sup> July 2021. Save from stating that the Applicants’ mother was unwilling to finalize the succession herein and that she had been built a permanent house worth Kshs. 6,000,000/- and that the parcel of land allocated to her was valued at Kshs. 25,000,000/-, his depositions were largely a reflection of the 1<sup>st</sup> Respondent’s case.
17. In his oral evidence, he stated that he was the 2<sup>nd</sup> Administrator and that the Applicant herein is his step-brother. It was his position that the Applicant was fully catered for in the distribution. He was allocated two plots in Bikeke-Waitaluk approximately 2.7 acres, where he and his mother stay. It was his testimony that the deceased put up a permanent residential house for the Objector’s mother and that the land the Objector got was of higher value than what the two houses got in Nzoia and Saboti.



18. Regarding the money in the Bank, it was his testimony that Absa Bank in Hurlingham called and informed him that the money therein had been transferred to Unclaimed Assets Authority and he was in the process of reclaiming it is ongoing and they do not know the amount therein. With respect to the money at KCB Bank it was his evidence that he has not initiated the process and if there is any money therein, it still intact. He denied there being any vehicles or farm machinery that belonged to the deceased.
19. On cross examination, it was his evidence that the land in Bikeke area is of high value compared to the one in Nzoia and Saboti. He stated that it is an urban set up and an acre of land goes for 25 million.
20. It was his testimony that the deceased's land was distributed according to houses and not on individuals and affirmed that the process of transfer is ongoing and that it was not true that the Applicant was about to be disinherited.
21. It was his prayer that the Summons be dismissed as to pave way to the finalization of the distribution and transfer.

**Analysis:**

22. Having carefully appreciated the Summons, the responses, the evidence and the submissions, the issue that emerges for determination is whether the Summons meets the legal threshold.
23. Section 76 of the *Law of Succession Act*, which provides for revocation of grants, 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; 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
    - iv. that the grant has become useless and inoperative through subsequent circumstances.
24. The Court of Appeal in *Matbeka and Another v Matbeka* [2005] 2KLR 455 embellished Section 76 of the *Law of Succession Act* as follows: -



- i. A grant may be revoked either by application by an interested party or by the court on its own motion.
  - ii. 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 the 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.
25. Further, in Civil Appeal No.161 of 1993, *Samuel Wafula Wasike v Hudson Simiyu Wafula*, the Learned Judges of Appeal spoke to Section 76 as under: -
- ... A grant obtained on the strength of false claims, without obtaining the consent of persons who had prior right to the grant and on the basis of facts concealed from the court, is liable to revocation.
26. Having settled the law, this Court shall now ascertain whether the Summons is merited.
27. The application under consideration was mainly premised on the ground that there was concealment of material fact in that at the time the instant succession case was lodged and adjudicated upon, the Applicant and his sister Leornida Khisa were still minors and as such were not involved in the process. He, however, admitted that Christine Chelagat was his mother and also the mother of his sister Leornida Khisa and that his mother had filed an objection in this cause which was settled by the recording of a consent in Court.
28. The Applicant further admitted in paragraph 8 of his Affidavit in support of the application that he and his said sister were included in the list of beneficiaries filed in this cause. The Applicant's grievance was, however, that the 2.5-acre allocation in the consent was for his mother and not him and his sister and as such, they were disinherited.
29. The Respondents rebutted the foregoing by relying on the objection dated 5<sup>th</sup> January 2017 which was filed by the Applicant's mother and the attendant consent.
30. This Court has keenly perused the record. In the objection filed by Christine Chelagat through a Summons for Revocation of the Grant, the quest for annulment of the grant was on the contention that she was a lawful wife of the deceased herein and that they were blessed with the Applicant herein and Leornida Khisa and alleged that they had been excluded from the Succession Cause. She sought a share of the estate for her children and herself.
31. The parties thereafter discussed the matter out of Court and reached a settlement which was recorded in Court as follows: -
- By consent of the parties herein, the Objector/Applicant is (sic) Objection dated 5<sup>1</sup>-2017 is compromised in the following terms;
1. Waitaluk/Mabonde Block 13/1002 of 0.809 Ha
  2. Plot No. 1021 part of title Waitaluk/Mabonde Block 13 Bikeke 21 of 0.204 Ha
  3. Plot No. 1025 part of Waitaluk/Mabonde Block 13/Bikeke 21 of 0.09 Ha total 1.103 ha equivalent to 2.7123 Acres
  4. That all properties describe in paragraphs 1, 2 and 3 above be transferred and registered in the name of the objector Christine Chelagat in full and final settlement of her claims herein.



32. It is the interpretation of the above consent that is now at the centre of the application. Whereas the Applicant contended that the consent did not concern him and his sister, but only her mother, the Respondents hold that the settlement included the Applicant's mother and her children's shares since the deceased was polygamous and that the estate was distributed on the basis of houses.
33. This Court is clear in its mind and from the record that indeed the Applicant mother's objection was on her own behalf as a wife and on behalf of her two children. That objection was amicably resolved at the family level and a consent was recorded in Court. That consent has not been set-aside. In as much as the Applicant did not personally participate in the discussions that resulted to the settlement, there is no doubt that his mother did and the distribution of the estate was done in accordance to the deceased's houses. Further, item 4 of the consent settled all the Applicant mother's claim on the estate.
34. It is also the position that the Applicant is not contending that their house got a raw deal out of the settlement. No. What the Applicant is engaged in is an attempt to re-distribute the estate differently and not according to houses. The distribution of the estate according to houses was not only agreed upon by the beneficiaries, but is also provided for in Section 40 of the Law of Succession Act as follows: -
- 40 (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal estate shall in the first instance, be divided among the houses and the household effects and the residue of the net intestate according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.
- (2) The distribution of the personal and household effects and the residue of the net intestate within each house shall then be in accordance with the rules set out in Sections 35 to 38.
35. From the above discussion, this Court finds it rather difficult to agree that there as material concealment in the process towards the issuance of the grant. What is apparent though is that the Applicant was unhappy with the manner in which the estate was distributed, but chose to instead challenge the issuance of the grant and not the confirmation proceedings. This Court remains alive to the position that the legal considerations in seeking to revoke a grant are quite distinct from those pertinent to revoking the process of confirmation of a grant and the distribution of estate.
36. With such a finding, the application is unmerited.

**Disposition:**

37. As I come to the end of this ruling, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and later elected to the Judicial Service Commission thereby mostly being away from the station. Apologies galore.
38. In the end, the following final orders are hereby issued: -
- a. The Summons for Revocation dated 7<sup>th</sup> July 2021 is hereby dismissed.
- b. This being a family dispute, there shall be no orders to costs.
- Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL, 2025.**

**A. C. MRIMA**



## **JUDGE**

Ruling virtually delivered in the presence of:

Miss. Arunga, Learned Counsel for 1<sup>st</sup> Petitioner.

Mr. Kraido, Learned Counsel for the Objector.

Miss Nguigwo, Learned Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners.

Amina – Court Assistant.

