



REPUBLIC OF KENYA



**In re Estate of Jesse Chunguli (Deceased) (Succession Cause
116 of 2011) [2025] KEHC 5569 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5569 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 116 OF 2011
SC CHIRCHIR, J
APRIL 29, 2025**

IN THE MATTER OF ESTATE OF THE LATE JESSEE CHUNGULI- (DECEASED)

BETWEEN

ROSE K. SAISI PETITIONER

AND

KEFA INYUMBIRA CHUNGULI OBJECTOR

JUDGMENT

1. The Summons dated 8th April,2021 seeks orders as follows:-
 1. That the grant of letters of administration made to the petitioner /respondent on 17th March, 2014 be revoked.
 2. That the Honorable Court be pleased to issue a new grant to the objector/applicant
2. The summons is premised on the grounds appearing on the face of the application as well as the affidavit of the applicant, sworn on 8th April,2021.

The Applicant's case

3. The Applicant deposes that the respondent concealed material facts from the court; that she failed to list all the beneficiaries and that the respondent has failed to administer the estate in a manner that benefits all the beneficiaries.
4. He further states that he is the 2nd born son of the deceased; that the deceased had one wife and 10 children . He has provided a list of the children.
5. The Applicant further sates that the deceased owned two properties namely, Kakamega/Kegoye/339 and Kakamega/Lumakanda/283 and the deceased had distributed them to his children, and demarcated the boundaries as follows:



- a. Kakamega/Kegoye/339 to:
Mathayo Sasi/Rose Siasi- half a share deceased and succeeded by Rose K.Sasi- Half Share
Habil Jumba /Zira Ingasia Jumba- Half share
 - b). Kakamega/Lumakanda/283 to:
Kefa Inyumbira Chunguli....5.2 Acres
Simeon Anaya Chunguli.....4.0 Acres
Herbert Lagosa Chunguli.....3.0 Acres
Aggrey Lubia Chunguli.....3.3 Acres
6. He further stated that the daughters of the deceased had married and did not get any share from the estate; that the proposal of distribution by the respondent in respect to land parcel No. Kakamega/Lumakanda/283 is against the family agreement, which was arrived at, in the presence of the deceased.
 7. He further states that he was given the largest share since he used his money to pay off a loan owed to the settlements Fund Trustees. The loan had been advanced to the deceased .He thus prays that the distribution of Kakamega/Lumakanda/283 be done in such a way that the current occupation of the land by each of the beneficiaries remain intact .

Respondent's case

8. The application is opposed by the respondent. In her affidavit sworn on 25th June, 2025 , she states that Title No. Kakamega/ Lumakanda/283 was shared equally between the sons of the deceased. That all the sons of the deceased are cooperative, except for the applicant whose objective is to delay the process. She further states that the property has been transferred to the deceased's sons such that the title deed for Kakamega/Lumakanda no longer exists at the Land's Registry.
9. She further deposes that litigation must come to end and the matters that the Applicant is raising now should have been raised during the confirmation of grant proceedings.
10. The Applicant died on 30th August and he was substituted by Abiud Anganyu Kefa pursuant to an order of this court made on 26/01/2022
11. On 18th January, Herbert Lagosa Chunguli, a beneficiary, filed a replying affidavit in opposition to the Application. He deposed that the application is a waste of courts time and misplaced since all the beneficiaries, except the applicant, have gotten their title deeds.
12. The application was heard vide viva-voce evidence.

The Applicant's evidence

13. PW1 was the Applicant. He adopted his witness statement filed on 13th July 2022. He told the court that the deceased was his grandfather; that he had two parcels of land, being Kakamega/Kegoye/339 and Kakamega/Lumakanda/283. Kakamega/Kegoye/339 had been subdivided into two. However in respect to Kakamega/Lumakanda/283 his uncles and his father had agreed on the mode of distribution and had engaged a government surveyor one Phones Magina. He further stated that boundaries for Kakamega/Lumakanda/283 had been fixed and disputes arose later. He therefore prayed that the title deed issued to his uncles be recalled to allow for fresh distribution.



14. PWI was further recalled on 2nd October, 2023 wherein he produced the minutes dated 1st February, 1990 showcasing the agreed mode of distribution

The petitioner's case

15. DW1 was the petitioner. She relied on her witness statement dated 25th June 2021. She further stated that the deceased was her father, and the objector was her in-law. That they filed the summons together and she did not leave anyone out. That they have concluded the issue of succession . On cross-examination she stated that the first grant was issued to her and the objector as joint administrators of the estate, but objector failed to cooperate in the administration of the estate.
16. She further told the court hat the deceased gave everybody their share and that no one is complaining except for the objector(now deceased). She stated parcel No. Kakamega/ Lumakanda/283 was yet to be distributed as at the time of the demise of the deceased.
17. DW2 was Herbert Lagosa, a beneficiary to the estate and a son of the deceased. He stated that parcel No. 283 was yet to be distributed and the objector had initially left out their sisters in the distribution process. He further told the court that the objector's attempt to pay off the loan was not successful as he was unable . He points out that the present application is being filed 8 years later when the titles for the sub- divisions were out .
18. On cross -examination he confirmed that the titles had already been issued pursuant to the confirmation of grant dated 26th July, 2013.
19. The parties filed submissions which I have considered.

Analysis and determination

20. The only issue for determination is whether the grant should be revoked.
21. Section 76 of the [Law of Succession Act](#) gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It provides 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 has ordered or allowed; 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. The grant has become useless and inoperative through subsequent circumstances.
22. The power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the decision of *Albert Imbuga Kisigwa vs Recho Kavai Kisigwa* (2000)eKLR where the Judge stated:-

“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.” (Emphasis added)
23. Although the Applicant has based his claim on grounds that material facts were withheld from the court, his real complain appear to be the manner in which the property was distributed. He argues for instance that it would be impossible to distribute the property in the manner set out in the certificate of confirmation of grant issued to the petitioner.
24. To address this issue, a brief background is necessary: The petitioner and the objector were initially appointed as joint administrators of the deceased’s estate, and the grant was later confirmed. At some point the objector was removed from administration due to his failure to cooperate with his co – Administrator and a fresh Grant, and an amended certificate of confirmation of grant was issued to the petitioner herein. A perusal of both certificates of confirmation of grants however show that the mode of distribution is the same in the two certificates . It is therefore evident that the objector was aware that the deceased’s estate was to be distributed equally amongst the sons of the deceased as that was what in the initial certificate of confirmation which had been issued to the petitioner and himself.
25. Further despite stating that some of the deceased’s heirs were left out , the particulars of those left out were not given
26. What clearly comes out is that the Applicant/ objector herein was dissatisfied with the orders of confirmation of grant made on as contained in the certificate dated 17/3/2014. What the Applicant should have done therefore was to appeal against the said orders but not to wait for several years, then return to court under the guise of objection proceedings.
27. Further it is instructive that he wants the court to refer to what he calls minutes of the meeting in which the distribution was agreed. These are issues that should have been brought up during the confirmation proceedings in which he took part in , albeit through representation by his Advocate.
28. Despite its appearance , this Application, for all practical purposes, is seeking an Appeal from this court against its own decision. This is not tenable in law.
29. The Application is misguided as the Applicant has failed to demonstrate that there are any grounds for revocation of grant in terms of section 76 of the *Law of succession Act*. It is hereby dismissed.
30. Each party to meet their own costs.



DATED, SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO THIS 29TH DAY OF APRIL 2025.

S. CHIRCHIR

JUDGE.

In the presence of:

Godwin Luyundi- Court Assistant.

Mr. Orute for Mr. Manyoni for the Applicant/ Objector

Rose Siasi- The petitioner

