



REPUBLIC OF KENYA



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**In re Estate of M'kuura Mukindia alias Kuura S/O Mukindia Alias M'kuura M'mukindia
(Deceased) (Succession Cause 433 of 2012) [2025] KEHC 7249 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7249 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 433 OF 2012**

EM MURIITHI, J

MAY 29, 2025

**IN THE MATTER OF THE ESTATE OF M'KUURA MUKINDIA ALIAS
KUURA S/O MUKINDIA ALIAS M'KUURA M'MUKINDIA (DECEASED)**

BETWEEN

LAWRENCE KABURIA APPLICANT

AND

JACOB MWORIA G KUURA RESPONDENT

JUDGMENT

Introduction

1. By Summons for Revocation of Grant dated 8/7/2019 under sections 47 and 76 of the [Law of Succession Act](#), Rules 44 and 73 of the Probate and Administration Rules and all other enabling provisions of the law, the Applicant seeks that:
 1. Spent
 2. Inhibition order be issued against land parcel No. EX-LEWA/SETTLEMENT SCHEME/232 pending the hearing and determination of this succession cause and the order be served upon land registrar Meru for compliance and penal notice do issue thereto.
 3. The honorable court be pleased to revoke and/or annul grant issued to the administrator JACOB MWORIA G KUURA on 23rd day of September, 2014.
 4. The Applicant be granted leave to file objection/protest out of time.
 5. Cost of this application be provided for by the Petitioner
2. The application is founded on grounds listed therein and supporting affidavit of the Applicant setting out the facts relied on. He avers that the deceased was married to his aunt one Tabitha, and around



1965, the deceased and his wife took him to their home as their son when he was only 8 years old after his parents had separated. After the deceased was given 2½ acres of Ex-Lewa Settlement Scheme/232 in 1974, he started farming potatoes thereon, which they used to harvest with the deceased. The deceased further got an additional 2½ acres of the land bringing the total acreage to 5 acres. He used the proceeds from the sale of the farm produce to pay the government for the allotment and also buy livestock. He subsequently settled there with his family where he built his home and made other developments thereon, with the full knowledge of the deceased and his children. His children have grown and settled on that land where they have raised his grandchildren on, and he took possession of the said land long before the birth of Stephen Githinji Gitonga who purportedly shared the same during distribution. He has lived peacefully on that land since 1975 until 2015 when he was served with an eviction notice. Stephen Githinji Gitonga has further filed Meru CMCC No. 35 of 2019 seeking his eviction from the subject land. The Applicant deponed that not only did the Petitioner file this cause secretly without his knowledge and/or consent, but he also left out other estate properties.

3. The Applicant swore a Further Supporting Affidavit on 10/3/2021 in support of his application.
4. Rufus Nturibi Mburugu, the Applicant's neighbour swore a Supporting Affidavit on 27/8/2021 in support of the application.

Petitioner/Respondent's case

5. The Petitioner/Respondent opposed the application by his replying affidavit sworn on 23/9/2019 where he contends that he obtained consent from all legitimate beneficiaries of the estate to file this cause, and he was not obligated to inform the Applicant and/or obtain his consent as he is a stranger to the estate. He states that the Applicant is his cousin by virtue of being a son to his mother's sister, and that his mother Tabitha who is still alive can attest to the fact that she never adopted the Applicant. The photographed houses on the subject land were constructed by the deceased herein and the trees thereon belong to Stephen Githinji Gitonga, who is the owner thereof. The distribution of the estate was done in accordance with the wishes of his parents, to the satisfaction of all the beneficiaries. In any event, he prays that the application be dismissed with costs, because it has been brought with unreasonable delay of over 7 years and title deeds have already been issued.

Statements

6. The Petitioner, Jacob Mworira G. Kuura, his brother Julius Gitonga Kuura and their aunt Rael Mwari M'Ingoria filed witness statements dated 23/9/2019 in opposition to the application.
7. Tabitha Mukomeru M'Kuura, the wife to the deceased herein and the Petitioner's mother filed her witness statement dated 23/9/2019 refuting ever adopting the Applicant as their child.

Evidence

8. The Applicant Kaburia Mukaria testified as Protestor's Witness 1 adopting his affidavit sworn on 8/7/2012 together with the 11 annexures as his evidence-in-chief and said that "I work as a farmer. The deceased was married to my auntie. I testified about the plot on which I have lived on since 1975. It was 2 ½ acres. After sometime, it became 5 acres the succession was filed but I was not informed. I do not object to the Petitioner getting a share. I am the one who has lived on the land and some of my children have married while there. When I went into the land it was the deceased who allowed and took me there."
9. On cross examination, he stated that, "Deceased was husband to my auntie, I know his children. Jacob Mworira is the deceased's child. I know all other children and wife of the deceased. I have no problem



for a child of the deceased to file Succession for his deceased father. He could have informed me. I do not know of any child who was not informed of the succession. I was born in 1957 [witness produces his ID Card.] In 1975 I was 18 years. I started living on the land since 1975. I was given the land. The land belonged to the deceased M’Kuura M’Mukindia. He had been given 2 ½ acres and then later the Clan gave a further 2 ½ acres to M’Kuura M’Mukindia. Would you accept that the family gives a part of the land. I would agree.”

10. In re-examination, he stated that, “The deceased took me when I was a small child. He took me to his home at Nthimbiri when I was small child later, when the land were being given out he took me to the land. He took me while I was a small child about 10 years. Nobody objected to my occupation of the land. I have had my children on the plot. It was M’Kuura who helped marry my first wife. Succession was filed without informing me, and the deceased had given the land. The deceased had taken me as his child when I was a small child.”
11. Protestor’s Witness 2 Johnson Mbaabu adopted his affidavit sworn on 27/8/2021 as his evidence in chief. He testified that, “I come from Kisima. M’Kuuru Mukindia is known to me. Lawrence Kaberia is also known to me. I met Kaberia in 1975. I saw him when he came with his father Wilson M’Kuura. They came home to his home and he told me, that he had brought the son to stay with me. The land was 2 ½ acres. They started growing potatoes and they got goats. The land was bushes before he started cultivating. The land is presented with Kaberia and his wife and children. His children also live on the land and they have built their home there. Kaberia has been on the land I have never seen anyone trying to get Kaberia one of the land. When the deceased was alive, he never sought to remove Kaberia. Kaberia was known as Mzee’s son.”
12. On cross examination, he stated that, “I do not know the children of M’kuura. I do not know the wife. The deceased lived at his home Nthimbiri. I got to know M’Kuura in 1975. I got to know him when he brought Kaberia to his shamba. There was no house on the shamba. I got to know M’kuura in 1975. I got to know him when he brought Kaberia to his shamba. There was no house on the shamba. It was a bush land. When he brought him he stayed with him and then he built up his own house. I did not know the deceased before 1975. At the time I was not married. I am 70 years old today. The deceased brought Kaberia to land No 232. Kaberia built the house. He was a young man. [In 1975 Kaberia had 15 years]. I do not know he had married at the time. He was brought to my home and we stayed together with him and he got trees for the shamba and he built his land. I do not know any family member of the deceased. I know Lawrence Kaberia. I do not know the father of Kaberia. I got to know that Kaberia’s mother was different from the wife of the deceased. I do not know the biological father of Lawrence Kaberia. The mother of Lawrence is not wife of M’Kuura. Any title of the land? I do not know whether the shamba had a title. The deceased told me the he was bringing Lawrence to stay on the land and develop it. He developed it while he lived on my land. He cultivated the land while staying in my house and he later built on the land. I do not know about the title to the land. When Lawrence lived with me I had not married. I had constructed and we were living with Lawrence at our home. I was living with my parents. Why did M’Kuura not bring Lawrence to your parents? I was staying at Meru and we were given land by Kenyatta. The Applicant was brought to me. I was a youngman. He asked for a place to stay. I know the brother of Lawrence. He is a person I met at the court when this matter has been pending. I do not know whether he is a child to M’kuura. I only know Lawrence who was brought to me by M’kuura. M’Kuura told me Lawrence was his child. When M’Kuura brought Lawrence in 1975. He was not very old. He was older than me. He was about the age of my father. It is that the deceased asked for a place to stay for one Lawrence. I do not know whether land had title.”
13. In re-examination, he stated that, “A child is not necessary one who is the biological child. I say Kaberia is a child of M’kuura as he brought him to our place and asked for him to stay while developing the



- land. M’Kuura is not a neighbor but he had a shamba near our place. Lawrence was brought to our home. We stayed for 1 year before he constructed his house. M’ Mukindia came to us because our home was adjacent. We lived at our parents home. Kaberia has not shown be any other person as his father.”
14. Protestor’s Witness 3 Martin Murungi Kaberia adopted the affidavit of 27/8/21 together with its annexures as evidence-in-chief and testified that, “I came from Kisima. All my brothers live on the parcel No. 232. I was born and brought up there and I have married and raised our children. All my siblings live on the land with their family.”
 15. On cross examination, he stated that, “I was born in 1992. I was not there when the land was given. I know M’Kuura. He is my grandfather, He is deceased. I know persons at the home of the deceased. I do not know when the case was filed. I never saw M’Kuura M’Mukindia’s. I only heard of him. I do not know the wife of M’kuura M’Mukindia. I do not know whether she is living or dead.”
 16. The Respondent Petitioner’s Witness 1 Jacob Mworira Kuura adopted his witness statement dated 23/9/2019 as his evidence in chief. He testified that, “I am the Administrator. I am the one who filed the petition on behalf of the family. I indicated all the beneficiaries in our family. I did not leave anybody out. I recorded a statement on 23/9/2019.”
 17. On cross examination, he stated that, “Case No. 35 of 2019 sought to remove the objector from the suit. I am a witness in the matter. The objector has entered the shamba by force entered the shamba by force. There is a house, several houses. His children are there. I do not know whether the children have constructed on the property. Do you know that the old man went on the land in 1976? It is not true. He came recently around 2012. The buildings belong to our father. He had a shamba where we were born at Ex Lewa. It is not true. Who planted the trees? The trees were planted by Githinji and the building were built by our father. The trees are Cypress. Over 2 years after our father had died, only that time, he came on to the land. Stephen was given by his father who is a prison officer and was not there. The succession was in 2012. He was on the shamba when we filed the succession. He is my cousin and when our father were cultivating Kaburi was being given land there. I am older than Kaburi. I am telling the truth. [You gave him 2 acres?] We have not given him any shamba. I did not see need to inform them because he is not a family member. Our father did not give him any land. On the land there is tree plantation by Githinji. [In the lower court case, you say the person has occupied the land?] No. Kaberia has another place of land for his cousin. I do not know what acreage it is.”
 18. In re-examination, he stated that, “It is not true that our father had adopted Kaberia and gave his shamba. We are related. He is a cousin. He entered on to the land forcefully. Our father died on 10/2/2009. The shamba belongs to our father. That is why I recorded as an asset of our father’s estate and we distributed it as such.”
 19. Petitioner’s Witness No. 2 Tabitha M’Kuura M’Mukindia adopted her statement dated 23/9/2019 and filed on 24/9/2019 as her evidence-in-chief and testified that, “I am also known as Mukomeru. I know Lawrence Kaberia. He is a son of my elder sister. M’Kuura M’Mukindia is my husband. He is the deceased.”
 20. On cross examination, she stated that, “When did Lawrence Kaberia come to your land? He asked for a place to sleep. He did not live on the land. He was given a place to sleep. He has refused to move out. I do not know when he was given a place to sleep I do not recall which year he came. He was a big person when he came to get a place to stay. Suit parcel of land. How did Kelvin enter into land? He was warned by his mother. I do not know when he came on the land. I do have 7 children and they have nowhere to stay. [Is it because you sister mother of Kaberia disagreed with the deceased?] I do not know anything else. [Witness walks away from witness box] [Witness resumes witnesses’ statement and cross-examination] Your problem is with sister – [mother of Kaberia disagreed with your husband] When



my sister disagreed with her husband, she went back to her first husband. [Is that why you disagreed with Kaberia? She went back and got another child. The Applicant has his father who can give him land elsewhere. I do not know the size of the land. [Kaberia had his family on the land? Where does he go when he is thrown out? Your sister's child. It is not true that he has lived in the house since young stage. [Houses in photographs. How old] The houses are timber built. It is one big house. I last went to the shamba. I have not gone there since my illness. It is about 5 acres. I know it has been time since I went there. [Kaberia was adopted by the deceased] It is not true that Kaberia was adopted by my husband.”

21. In re-examination, she stated that, “The land Ex Lewa subject of his dispute belongs to Kithinji Gitonga M’Thuura. Gitonga was given by M’Kuura; to Gitonga and Gitonga gave to his son. M’Kuura is my husband. It is not true that we took the Applicant as our child. [May be your husband Kaberia gave land to Kaberia without your knowledge? It is not true. M’Kuura was saved, He was not corrupt in giving. He was a preacher.”

Submissions

22. The Applicant urged that the proceedings leading to the making of the grant herein were marred with concealment of material facts and information, secrecy and a deliberate attempt to mislead the court on untrue allegations, and cited *In the Matter of the Estate of L.A.K (Deceased) (2014) eKLR* and *Beatrice Ciamutua Rugamba v Fredrick Nkari Mutegi & 5 Others (2016) eKLR*. He prayed for the grant to be revoked because the same was obtained without disclosing that he was a dependant to the estate within the meaning of section 29 of the *Law of Succession Act* who had settled in the subject land and developed it, and cited *Mathenge v Mathenge & another (Succession Cause 578 of 2011) [2024] KEHC 223 (KLR) (18 January 2024) (Ruling)* and *Estate of Isaac Kirery Njuguna (Deceased) Nairobi High Court Succession Cause Number 1064 of 1994*. He urged that he had placed sufficient material and law before the court to warrant the revocation of the grant, and cited *Antony Karukenya Njeru v Thomas M. Njeru (2014) eKLR* and *Beatrice Mbeere Njiru v Alexander Nyaga Njiru (2022) eKLR*.
23. The Respondent urged that there was nothing in section 76 of the *Law of Succession Act* about revocation of a certificate of confirmation of grant, and the Applicant’s only recourse was to appeal against the orders of the court on distribution. He urged that the Applicant was not a beneficiary of the estate and his alleged claim revolved around ownership of the subject land, which jurisdiction was bestowed on the Environment and Land Court. He urged the court to dismiss the application with costs, and cited *In re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR*, *Re Estate of Stone Kathuli Muinde (deceased) (2016) eKLR* and *Alexander Mbaka v Royford Muriuki Rauni & 7 Others (2016) eKLR*.

Analysis and Determination

24. Before delving into the merits of the application, the Court resolves jurisdiction question. The Respondent has submitted that there is no provision under section 76 of the Law of Succession for revocation of a certificate of confirmation of grant. That contention is manifestly misconceived because the provisions of section 76 of the *Law of Succession Act* are succinct that a grant of representation, whether confirmed or not can be revoked at any time either by application of an interested party or by the court suo moto.
25. Section 76 of the *Law of Succession Act* sets out the requirements for revocation or annulment of grant as follows:-

“76. 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
- (e) that the grant has become useless and inoperative through subsequent circumstances.”

26. The certificate of Confirmation is the documentation for the order of the court distributing the estate in terms set out therein. When a confirmed Grant is revoked in terms of section 76, a new distribution schedule and a certificate of Grant therefor, under Rule 41(5) of the probate and Administration Rules, must issue accordingly.

27. The issues for determination, therefore, is whether the grant should be revoked. The question is whether the issue in dispute falls to be considered under the process of the Succession Court, whose scope is confined to ascertaining the assets of the deceased, the persons beneficially entitled thereto and the distribution thereof.

28. I respectfully agree with the observation by the Court (W. Musyoka J.) in *Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR, that:-

“The *Law of Succession Act*, and the Rules made hereunder, 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.

Disputes of course do arise in the process. The provisions of the *Law of Succession Act* and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the *Law of Succession Act* and the Probate and Administration Rules. Such have to be resolved through the structures created by the *Civil Procedure Act* and Rules, which have elaborate rules on suits by and against executors and administrators.”



29. While the Applicant contends that the deceased herein gave him the suit property as his ‘adopted’ son, and therefore a dependant, as follows:

“The deceased took me when I was a small child. He took me to his home at Nthimbiri when I was small child. Later, when the lands were being given out he took me to the land. He took me while I was a small child about 10 years.”

30. On the other hand, the wife to the deceased Tabitha M’Kuura and her son the respondent herein vehemently denied the said adoption of the Applicant by the deceased.

31. The Applicant and his witnesses have proved that the Applicant and his children have been residing on the suit property peacefully until recently when an eviction notice was issued.

32. On a balance of probabilities, the Court finds it more likely than not that the Applicant has been on the suit land since 1975. The Deceased’s widow, the Petitioner herein accepted she had not lately been to the land and could not tell when the Applicant went on to the land even though she agreed that the deceased had put the Applicant on the land as temporary relief as follows:

“When did Lawrence Kaberia come to your land? He asked for a place to sleep. He did not live on the land. He was given a place to sleep. He has refused to move out. I do not know when he was given a place to sleep. I do not recall which year he came. He was a big person when he came to get a place to stay.”

33. In view of the deceased’s wife’s testimony conceding the Applicant’s possession and asserting that he had been given a place to stay, it is not possible to accept her son’s testimony that the cousin Applicant herein had violently entered the suit land only after the father died in 2009, as follows:

“The objector has entered the shamba by force entered the shamba by force. There is a house, several houses. His children are there. I do not know whether the children have constructed on the property. Do you know that the old man went on the land in 1976? It is not true. He came recently around 2012. The buildings belong to our father.”

34. And if he had been accommodated and given “a place to sleep” as the Deceased’s wife said, why did the Deceased, during his life, not seek to remove the Applicant from the suit property if he had outlived his welcome. The presence of the Applicant and his children on the land with the buildings they have constructed thereon - despite contest as to the age of the buildings on the land – is an indication that the deceased allowed the Applicant to occupy the land for longer period than necessary for a place to sleep!

35. To the Deceased’s neighbour (Protestor Witness No. 2) to whom the Applicant was presented by the Deceased to occupy and develop the parcel of land, the Applicant was introduced as a son by the Deceased, as follows:

“The deceased lived at his home Nthimbiri. I got to know M’Kuura in 1975. I got to know him when he brought Kaberia to his shamba. There was no house on the shamba. I got to know M’kuura in 1975. I got to know him when he brought Kaberia to his shamba. There was no house on the shamba. It was a bush land. When he brought him he stayed with him and then he built up his own house. I did not know the deceased before 1975. At the time I was not married. I am 70 years old today. The deceased brought Kaberia to land No 232. Kaberia built the house. He was a young man. [In 1975 Kaberia had 15 years]. I do not know he had married at the time. He was brought to my home and we stayed together with him and he got trees for the shamba and he built his land. I do not know any family member of the



deceased. I know Lawrence Kaberia. I do not know the father of Kaberia. I got to know that Kaberia's mother was different from the wife of the deceased. I do not know the biological father of Lawrence Kaberia. The mother of Lawrence is not wife of M'Kuura. Any title of the land? I do not know whether the shamba had a title. The deceased told me the he was bringing Lawrence to stay on the land and develop it. He developed it while he lived on my land. He cultivated the land while staying in my house and he later built on the land."

36. The Deceased's wife admitted not visiting the suit parcel of land and could not tell when the Applicant moved to the land. The Court would on a balance of probabilities accept as more likely than not that the Applicant and his witnesses told the truth that the Applicant had been taken to the land way back in 1975 and had had his family raised therein during the life of the deceased. The Deceased did not take any action to remove them from his parcel of land, and the Court would find that he had accepted the Applicant as his child.

37. In the terminology of the Law of Succession Act, the Applicant had become a dependant as described in section 29 of the Law of Succession Act that:

"29. Meaning of dependant

For the purposes of this Part, "dependant" means—

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death."

38. A dependant who seeks to inherit a deceased person or secure a provision for the estate of the deceased is obliged to file a section 26 application before the confirmation of grant. Section 26 of the Law of Succession Act provides as follows:

IIIPROVISIONS FOR DEPENDANTS

26. Provisions for dependants not adequately provided for by will or on intestacy

Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased's estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate.

[Act No. 8 of 1976, s. 5.]"

39. The Court's discretion is unfettered as described in section 27 of the Act as follows:

27. Discretion of court in making order



In making provision for a dependant the court shall have complete discretion to order a specific share of the estate to be given to the dependant, or to make such other provision for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit.”

40. Section 30 of the *Law of Succession Act* limits the time for applications for provision under section 26 of the Act as follows:

“30. Limitation of time

No application under this Part shall be brought after a grant of representation in respect of the estate to which the application refers has been confirmed as provided by section 71.”

41. Although, the Applicant sought revocation on ground of concealment of his interest as a dependant, and he had not been declared a dependant in accordance with section 26 of the Act, he could not have moved the Court before confirmation of the Grant in accordance with section 30 of the Act as he did not know of the succession proceedings, which he complains were filed with secrecy.

42. Petitioner’s witness No. 1 explained failure to notify his cousin the Applicant herein as follows:

“The Succession was in 2012. He was on the shamba when we filed the succession. He is my cousin and when our father were cultivating Kaburi was being given land there. I am older than Kaburi. I am telling the truth. [You gave him 2 acres?] We have not given him any shamba. I did not see need to inform them because he is not a family member.”

43. The Applicant was on the land when the Succession Cause was filed, and he had been taken there by deceased. It is then not true as asserted by the same witness Petitioner’s Witness No. 1 (PW1) that the Applicant had entered the parcel of land violently after the death of the deceased in 2009.

44. While it may be understandable that the Petitioner, not accepting that the Applicant was an heir to her deceased husband’s estate, may have been entitled to proceed with the succession cause without notifying the Applicant, the Court must find a sufficient cause on account of an untrue allegation of a fact, in terms of section 76 (d) of the Act, that the heirs/dependants of the deceased were only as set out in the Petition, to revoke the confirmed Grant and give opportunity for the Succession Court to address the section 26 claim of the Applicant as a dependant of the Deceased who, not being notified of the succession cause, had no knowledge of the proceedings to enable him file an application for provision as he was entitled to do under section 26 of the *Law of Succession Act*.

45. The Court is pursuant to section 76 (d) entitled to intervene when satisfied “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”. In this case, the allegation by the Petitioner that the persons named in the petition were the only persons entitled to inherit the Estate as dependants, even though made mistakenly and inadvertently, left the Applicant, a person entitled to apply for provision, as a dependant without notice of the succession proceedings and thereby denied him an opportunity which is statutorily underpinned under section 26 of the *Law of Succession Act* to apply for provision from the estate. In the respectful view of this Court, these circumstances call for the revocation of the confirmed Grant.

46. In the interests of justice, the Court will further treat the application for revocation of Grant as an application for provision under section 26 of the Act. The confirmed Grant having been revoked, the limitation that an application for provision may not be made after confirmation of Grant does not then apply to the fresh distribution of the estate.



Conclusion

47. The Court has found that the Applicant is a dependant in terms of section 29 of the Act; as he could not earlier file his application for provision under section 26 of the Law of Succession of the Act, having not been notified of the filing of the succession cause, the Court finds this inability to move the Court for provision of dependant as sufficient reason in terms of section 47 and 76 (d) of the Law of Succession Act for the revocation of the Confirmed Grant, which was based on an untrue allegation in the Petition as to the identities of the heirs/dependants. Having heard the evidence on the application for revocation of the Confirmed Grant, the Court will proceed to make necessary provision of the Applicant as a dependant in terms of sections 26 and 27 of the Act.
48. Pursuant to the 'inherent power of the court to make such orders as may be necessary for the ends of justice' under Rule 73 of the Probate and Administration Rules, and giving regard to the interests of the beneficiaries of the Deceased, namely his widow and children and the interest of the Applicant as a dependant, the Court makes an order for the provision for the Applicant by distribution of two (2) acre of the five (5) acres of the suit land to the Applicant for the settlement of his family. The balance of the suit property is distributed to the deceased's widow and her children.
49. The Confirmed Grant dated 23rd day of September, 2014 shall, consequently, be revoked and reissued to make provision of two (2) acre of the suit property to the Applicant. The Confirmed Grant shall for all other assets and purposes, including the person appointed as administrator, remain unaffected.

Orders

50. Accordingly for the reasons set out above, this court finds that the application dated 8/7/2019 is pursuant to sections 47 and 76 of the Law of Succession Act allowed and the Confirmed Grant dated 23rd day of September, 2014 is revoked to the extent and only with regard to the suit property so that the Applicant as a dependant is granted two (2) acres of land out the suit property L.R. No. EX-LEWA/SETTLEMENT SCHEME/232 and the balance thereof being retained by the Deceased's family members as set out in the Confirmed Grant. A fresh confirmed Grant shall issue, accordingly.
51. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED THIS 29TH DAY OF MAY, 2025.

EDWARD M. MURIITHI

JUDGE

APPEARANCES

M/S Mutembei & Kimathi Advocates for the Applicant

M/S Kaberia Arimba & Company Advocates for the Petitioner

