



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Chamanga Mutsonga Chamanga (Deceased) (Succession Cause  
67 of 2015) [2025] KEHC 11680 (KLR) (Family) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11680 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**SUCCESSION CAUSE 67 OF 2015**  
**M THANDE, J**  
**JULY 31, 2025**  
**IN THE MATTER OF THE ESTATE OF CHAMANGA**  
**MUTSONGA CHAMANGA (DECEASED)**

**RULING**

1. The proceedings herein relate to the estate of Chamanga Mutsonga Chamanga (the deceased). One Martin Mwachiro Kambu (Martin) filed a citation requiring Charles Jumbale Chamanga, Karima Chamanga and Kai Chamanga the children of the deceased, to take out a grant of representation. Martin stated in his affidavit in respect of the citation that he was the beneficial owner of 4 acres to be excised from Kilifi/Roka/26 Roka Settlement Scheme and intended to have the same registered in his name. The property belonged to the deceased. After the citees failed to respond to the citation, the Court did on 26.8.12 allow Martin to file a succession case, which he did. A grant of letters of administration was issued to Martin on 4.4.16 and confirmed on 27.10.16.
2. Before me for consideration is a summons dated 14.12.21 in which Martin seeks revocation of a grant of letters of administration issued to Mwaka Sonje Mtsonga and Sisinza Mutsoga Chamanga (the Administrators) and confirmed on 2.12.13. The grounds upon which the Application is premised are that the proceedings to obtain the grant were defective, as some beneficiaries were left out and that the grant was obtained fraudulently by the concealment from the court of a material fact.
3. In his affidavit sworn on even date, Martin averred that the deceased died intestate and was survived by Charles Jumbale Chamanga, Karima Chamanga, Kai Chamanga, Rimba Chamanga and Mzungu Chamanga. His citation to the beneficiaries of the estate to take out a grant of representation was not responded to, whereupon he was ordered by the court to apply for a grant. He stated that adequate notice was issued to all parties and that no objection was raised although the administrators were aware of the proceedings in this Court.
4. It is Martin's case that the Administrators and beneficiaries of the estate of the deceased were duty bound to include him or inform the Court of the existence of another grant which was issued and confirmed without his knowledge or consent. He further stated that there was concealment from this



Court and the subordinate court of a material fact and that there are now 2 grants in respect of the estate of the deceased. He stated that his interest in the estate relates to 4 acres to be excised from Kilifi/Roka/26, and that as a beneficiary of the estate, he is entitled to 4 acres of the property.

5. The Application is opposed by Gasper Jumbale Chamanga, Donald Kai Chamanga, Sinsinza Mtsonga Chamanga and Mzungu Chamanga. They deny that the grant issued to the Administrators was obtained by the making of a false statement or untrue allegation of fact essential in point of law or concealment from the court of something material to the case. They contend that the grant was made on 29.11.12 and confirmed on 2.12.13 with the consent and involvement of all beneficiaries. They further asserted that the Application had been filed in the wrong court as the grant in question had been made and confirmed by the Kilifi Magistrates' Court. Additionally, that the Application had been made too late in the day as the estate of the deceased had been distributed to the beneficiaries and the suit property subdivided into Kilifi/Roka/1736, 1737 and 1738.
6. The Respondents further averred that at the time Martin filed the citation and succession subsequent proceedings herein in 2015, the Kilifi proceedings had already been concluded. As such, the leave granted to Martin to apply for the grant, the grant itself and confirmation thereof are null and void. The Respondents further stated that they were not served with the citation and did not participate in the succession proceedings. Additionally, that Mwaka Sonje Mtsonga died on 17.6.16.
7. The Respondents asserted that Martin is not a beneficiary of the estate of the deceased and claims to have bought a portion of the suit property from one Frederick Chamanga and not from the deceased. Further that he has filed Malindi ELC Case No. 162 of 2017 which is pending judgment. They asserted that Martin's interest if any, can be addressed in that cause. They thus urged that the grant issued to the Applicant be revoked having become useless and inoperative.
8. The jurisdiction of this Court to revoke a grant of representation is set out in Section 76 of the [\*Law of Succession Act\*](#) 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.
9. The law is that a grant of representation may be revoked on application by any interested party or of its own motion. An applicant who seeks the revocation of a grant of representation must demonstrate to the Court sufficient interest to challenge the grant.
10. *Black's Law Dictionary* Tenth Edition defines "interested party" as:  
A party who has a recognizable stake (and therefore standing) in a matter.
11. Martin seeks revocation of the grant made to the Administrators. Although he does not give details of this grant, the Court has noted from the documents exhibited by the Respondents that the grant was issued by the Kilifi Magistrates' Court in Succession Cause No. 18 of 2012.
12. Does Martin have a recognisable stake in the matter herein? His Application for revocation of grant is premised on the ground that he purchased 4 acres of the suit property and that he was excluded from the proceedings. In his citation before this Court, Martin exhibited agreements relating to the purchase of the said portion of the suit property. While the sale took place in 2005, the agreements indicate that the sale was between, not Martin and the deceased, but between him and the family of the deceased. In the agreements dated 13.4.05, 10.5.05, 13.10.05, 24.12.05, 8.1.06 and 20.5.06, the vendor is shown as Frederick Jumbale Chamanga on behalf of the deceased's family. There is another undated document indicating that the family of the deceased have in one accord agreed to sell 4 acres of the suit property to Martin. This document is signed by Frederick Jumbale Chamanga, Mwabonje Chamanga, Mzungu Chamanga, Kai Chamanga, Rimba Chamanga and Karima Chamanga.
13. It is clear from the exhibited documents that the sale was done after the demise of the deceased. As such, Martin cannot claim an interest in the estate of the deceased. He could only do so if he had purchased the said 4 acres from the deceased himself, and such claim could only be as a creditor to the estate and not as a beneficiary thereof. Perhaps aware of this, he has filed Malindi ELC Case No. 162 of 2017. This is the correct forum to prosecute his claim.
14. In light of the foregoing, it is quite clear that Martin does not have a recognizable interest in the estate of the deceased. Accordingly, he is not an interested party as contemplated in Section 76 of the *LSA* to grant him the locus standi to apply for the revocation of grant issued to the Administrators. Further, even if he did have an interest, the Kilifi Magistrates' Court, Succession Cause No. 18 of 2012 is the cause in which he ought to have filed his application for revocation of the said grant, and not in this cause.
15. The Respondents have in their replying affidavit urged that the grant issued herein be revoked. The Court recognizes that no formal application to that effect has been filed. However, Section 76 of the *LSA* empowers this Court to of its own motion, revoke a grant of representation, whether or not confirmed, on the grounds set out therein. One of the grounds is that the grant has become useless and inoperative through subsequent circumstances. The circumstances herein are that there are 2 grants of representation in respect of the estate of the deceased. Further, the Court has found that the grant to the Administrators was issued several years before the grant herein was issued to Martin. The grant herein having been applied for and issued subsequently and later in time, is null and void ab initio and must give way to the earlier grant.



16. In *Macfoy v United Africa Co. Ltd* [1961] 3 All ER 1169 Lord Denning delivering the decision of the Privy Council stated:

If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.

17. Having found as I have that the grant herein is a nullity and therefore bad and incurably bad, it follows that the same has become useless and inoperative and cannot stand.

18. In the end, and in view of the foregoing, I make the following orders which are necessary for the ends of justice:

- i. The summons for revocation of grant dated 12.10.23 lacking in merit, is hereby dismissed.
- ii. The grant herein issued on 4.4.16 and confirmed on 27.10.16 is hereby revoked.
- iii. The Respondents shall have costs.

**DATED, SIGNED AND DELIVERED IN MALINDI THIS 31<sup>ST</sup> DAY OF JULY 2025**

**M. THANDE**

**JUDGE**

