



REPUBLIC OF KENYA



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**In re Estate of the Late William Morogo (Succession Cause  
12 of 2001) [2025] KEHC 11208 (KLR) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11208 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 12 OF 2001  
RN NYAKUNDI, J  
JULY 29, 2025  
IN THE MATTER OF THE ESTATE OF THE LATE WILLIAM MOROGO**

**BETWEEN**

**LINDA CHELIMO SAINA ..... 1<sup>ST</sup> APPLICANT  
CALVIN KIPTOO SAINA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**STELLA CHEPCHUMBA SAINA ..... 1<sup>ST</sup> RESPONDENT  
MICHELLE CHEBET SAINA ..... 2<sup>ND</sup> RESPONDENT  
JOANNE CHEROTICH SAINA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. William Morogo Saina died on 29<sup>th</sup> July, 2000 through a cardiorespiratory arrest due to severe bronchopneumonia. Ruth Jepchirchir Saina in her capacity as a widow petitioned for Grant of letters of administration intestate on 30<sup>th</sup> January, 2001 indicating the following as beneficiaries of the estate:
  - a. Linda Chelimo Saina – daughter
  - b. Patricia Chepkemboi Saina – Daughter
  - c. Joanne Cherotich Saina – Daughter
  - d. Stella Chepchumba Saina – Daughter
  - e. Michelle Chebet Saina – daughter
  - f. Ruth Jepchirchir Saina – Widow
2. She equally highlighted the assets and liabilities of the deceased as hereunder:



#### Assets

- a. Motor vehicle Registration No. KAA 699C Make Peugeot 504
- b. Kaboswa Farm Kitale East LR NO. 2217/2
- c. Parcels in Nandi/kipkaren Salient Scheme (251, 254 & 289)

#### Liabilities

- d. KCB loan (to be ascertained)

3. The Grant was made on to her on 12<sup>th</sup> July, 2001 and was later confirmed on 19<sup>th</sup> March, 2002 allocating all the assets to her as the administrator. After the said confirmation, the estate was never distributed. Ruth Jepchirchir Saina died leaving the estate without an administrator. This triggered an application for substitution by Linda Chelimo Saina dated 6<sup>th</sup> April, 2011 seeking to have her replace the late Ruth Jepchirchir Saina. The grounds of the application were that this court has jurisdiction under section 47 & 74 of the Law of Succession Act to make orders meant to meet the ends of justice and that since Ruth Jepchirchir Saina died on 15<sup>th</sup> June, 2009 and as such there is need to substitute the deceased administratrix. The application was allowed and gave rise to the amended certificate of confirmation dated 27<sup>th</sup> June, 2011. It is the said amended Grant that has been in contention and which the Respondents seek to revoke. The applicants, vide an application dated 8th April, 2021, which is the subject of this decision, are challenging the impugned certificate of Grant and have sought orders as follows:

- a. Spent
- b. That pending the hearing and determination of this application inter partes, this honourable court be pleased to issue a temporary order of injunction restraining Respondent, her agents and/or servants and/or anyone acting under her directions from disposing of, dealing with, distribution of the assets of the deceased's estate.
- c. That the Amended Certificate of Confirmation of Grant made in favour of the substituted Petitioner Linda Chelimo Saina on 27<sup>th</sup> June, 2011 be revoked and or annulled.
- d. That upon issuance of Order C above, the applicants Michelle Chebet Saina, Stella Chepchumba Saina And Joanne Cherotich Saina be made joint administrators.
- e. That costs of this application be sourced from the Respondent.

2. The application is anchored on grounds that:

- a. The substitution proceedings to obtain the Amended Certificate of Confirmation of Grant were defective in substance.
- b. The Amended Certificate of Confirmation of Grant was obtained fraudulently by the deliberate making of false statements, concealment from the court or suppression of some vital facts material to this case.
- c. The Amended Certificate of Confirmation of Grant was obtained by means of untrue allegations of fact essential in points of law to justify its issuance.
- d. The substituted Petitioner/Administrator has failed to faithfully, diligently and lawfully proceed with the administration of the estate.



- e. In view of the above cited circumstances it has become impractical for the estate to be lawfully administered and the grant has consequently been rendered inoperative and therefore useless.
  - f. The entire process of obtaining the Amended Certificate of Confirmation of Grant amounts to an abuse of the due process of this Honourable Court.
  - g. The Substituted Petitioner/Administrator knowingly and maliciously excluded some of the true dependants and or beneficiaries to the deceased's estate in the process of obtaining the grant and unlawfully purported to inherit the whole estate by herself.
5. The summons for revocation were further supported by an affidavit sworn by Michelle Chebet Saina who deposed as follows:
- a. That I am one of the surviving daughters to the late William Morogo Saina (Deceased) and Ruth Jepchirchir Saina (Deceased).
  - b. That I am aware that the Grant of Letters of Administration Intestate was issued to Ruth Jepchirchir Saina (deceased) on 12<sup>th</sup> July 2001 which grant was later confirmed on 19<sup>th</sup> March 2002 with the said Ruth Jepchirchir Saina as the sole heir for purposes of settling the liabilities of the estate.
  - c. That the said Ruth Jepchirchir Saina fully administered the estate and repaid all the liabilities due to the estate with a remainder of the assets being available for distribution to the beneficiaries.
  - d. That unfortunately, the said Ruth Jepchirchir Saina died on 15<sup>th</sup> June 2009 having only settled all liabilities and without fully administering the estate of the late William Morogo Saina (deceased).
  - e. That the said Ruth Jepchirchir Saina was at the date of her death survived by all the other beneficiaries to the Deceased's estate being: a) Linda Saina b) Patricia chepkemboi Saina c) Joanne Cherotich Saina d) Stella Chepchumba Saina e) Michelle Chebet Saina f) Calvin Kiptoo Saina.
  - f. That it has come to my attention that the Respondent vide an application dated 16<sup>th</sup> April 2011 and without obtaining my consent and those of the other beneficiaries of the deceased's estate named above unilaterally made an application for the amendment and substitution of the administrator in place of Ruth Jepchirchir Saina (deceased).
  - g. That I have also noted that pursuant to her Application, the Honourable Court allowed the application and the Respondent was issued with an Amended Certificate of Confirmation of Grant issued on 27<sup>th</sup> June 2011 with the Respondent being named as the sole heir of the estate of late William Morogo Saina (deceased).
  - h. That I have been advised by my advocates on record whose advise I verily believe to be true the proceedings leading to the amendment and substitution of the Respondent as a sole administrator are fatally defective in substance as the said proceedings are not provided under the *Law of Succession Act* or any other laws in Kenya.
  - i. That I have been advised by my advocates on record whose advise I verily believe to be true that the Grant of Letters of Administration Intestate issued to Ruth Jepchirchir Saina ought to have been revoked for becoming useless and inoperative due to her death pursuant to Section 76(1) of the *Law of Succession Act* and the Grant de bonis non administratis be issued.



- j. That the Respondent failed to disclose to all persons who held equal priority to administer the estate of the existence of application to be substituted as an administrator of the estate of late William Morogo Saina (deceased) contrary to the provisions of Rule 26 of the *Probate and Administration Rules*.
- k. That neither have we issued our written consent to have the Respondent appointed as the sole administrator of our father's estate nor consented to the confirmation of the grant of Letters of administration Intestate of late William Morogo Saina nor waive my right to inherit.
- l. That I am aware that the Respondent has now commenced the transfer of the main assets of the estate to her name to the exclusion of other beneficiaries.
- m. That the Respondent did not consult and/or involve us prior to negotiating for the sale of the fixed asset of the estate.
- n. That it is prudent that for the court to issue a temporary injunction prohibiting the Respondent, her agents and/or servants and/or anyone acting under her directions from disposing of, dealing with, distribution of the assets of the estate of Late William Morogo Saina (Deceased).
- o. That unless the Honourable Court issues an order of injunction, the legal beneficiaries of the estate stand to lose their share of inheritance through the callous conduct of the Respondent whose main motive is to inherit the entire estate alone.
- p. That further, the distribution indicated in the Amended Certificate of Grant favours the Respondent alone yet there are other beneficiaries of the estate who stand to be locked out of the administration.
- q. That as beneficiaries to the deceased's estate, I and the other applicants had created various interests over our respective shares with third parties over parts of the deceased's estates through various contracts which contracts we have a legal obligation to fulfill failure to which we shall be subjected to suits and other legal proceedings to our irreparable detriment.
- r. That the Respondent's actions of filing an application for amendment substitution of Ruth Jepchirchir Saina (deceased) with her name as a sole administrator without involving me and other beneficiaries is intended to unlawfully disinherit other beneficiaries and I from what we are entitled to.
- s. That I have been advised by my advocates on record whose advise I verily believe to be true that based on the above facts and circumstance the Grant was issued to the Respondent was thus obtained fraudulently by the making of a false statement and by the concealment from the court material facts to the case and qualifies to be revoked.
- t. That further the Grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant to wit that the Applicants and other beneficiaries had given consent to the Respondent to be the sole administrator and the sole heir of the estate.
- u. That the Respondent being the person to whom the Grant was made has failed, after due notice and without reasonable cause to proceed diligently with the administration of the estate and to produce and/or render any such inventory or account of administration to the beneficiaries of the estate.



- v. That I am aware that the Respondent currently resides out of the jurisdiction of the court and the assets being the United States of America and has been unable to adequately administer the estate.
  - w. That the Respondent has involved strangers in the administration of the estate who are neither children nor dependents and/or beneficiaries of the estate, to the exclusion of the legal dependents thus intermeddling with the estate.
  - x. That further, it is in the best interest of justice and for protection of the estate that the Grant of Letters of Administration issued to the Respondent be revoked and the same issued in favour of the Applicants herein.
6. In response to the application, the Respondent swore a replying affidavit sworn on 16<sup>th</sup> September, 2021 in which she deposed as follows:
- a. That quite contrary to the narrative created so cleverly by the applicants in their application before this Honourable Court, the true factual and legal position is very different as can be seen herein below with regard to the circumstances, and events leading to my application for substitution as an Administratrix.
  - b. That following the passing on of my mother Ruth Jepchirchir Saina who was the sole Administratrix of the estate of my late father William Morogo Saina, my immediate family members, as well as other close family members held a consultative first meeting sometime in August, 2009 to deliberate on the properties of the deceased, and distribution of the same amongst all lawful beneficiaries. The meeting was held at our then family home; and the following people were attendance:  
 Family Members Present
    1. Linda Chelimo Saina-Daughter to Deceased;
    2. Michelle Chebet Saina-Daughter to Deceased;
    3. Joan Cherotich Saina-Daughter to Deceased;
    4. John Birech-Chairman, First Cousin to the Late William Morogo Saina;
    5. Peter Kipsugut Saina-Now Deceased, Brother to the late William Morogo Saina;
    6. David Ngala Kibichy-Secretary, Family Advocate, now deceased;
    7. John Cheruiyot-Member, Brother-in-Law to the Late William Morogo Saina;
    8. Naor Cheptile-Member, Brother-in-Law to the late William Morogo Saina;
    9. Hosea Ruto-Member Brother-in-Law to the Late William Morogo Saina;
    10. William Cheruiyot-Member-First Cousin to the Late William Morogo Saina;
    11. Hosea Sambai-Member-First Cousin to the Late William Morogo Saina;
    12. Benjamin Mutai-Member-Deceased-First Cousin to the Late William Morogo Saina;
    13. Stephen Maraba-Member-Brother-in-Law to the Late William Morogo Saina;
    14. Selina Poland-Member, and a close family friend to the late, William Morogo Saina;
    15. Richard Kerich-Member-Cousin to the late William Morogo Saina;



16. Wilson Koloti- Member-Cousin to the late William Morogo Saina

17. Kibiwot Bungei –Former Fired Farm Manager.

18. Moses Saina - Brother-in-Law to the late William Morogo Saina  
Immediate Family Members Absent With Apology

1. Patricia C. Saina;

2. Stella C. Saina Kinsman;

3. Calvin Kiptoo Saina (minor at the time)

- c. In this meeting, it was deliberated, and agreed that since both our parents had passed on, letters of administration of the estate of my late father be issued to me as the eldest daughter in whom everyone had bestowed trust. I certainly therefore, did not nominate myself as alleged or at all. I was nominated by the council of elders, made up of family members from my maternal and paternal side, the community and my siblings who were present at that meeting. The committee instructed the family lawyer, Mr. David Ngala Kibichy who was the Secretary of the meeting to proceed to prepare the requisite probate and administration documents for filing.
- d. Most of the attendees of the said meeting are available are ready to be witnesses in this matter if called upon to testify. The current situation has taken them aback with how the applicants have turned against me. They have all along know me as the sole Administratrix as first born. That was unanimously resolved for the good of the family; and actually, we have all along had a good relationship until when they sold off most, if not all of their shares.
- e. In fact, when I filed my application for substitution of Administratrix from my late mother to myself, I duly informed Court that I had siblings. I expressly deposed to this in my affidavit dated 6<sup>th</sup> April, 2011; and therefore the Court issued the Orders after considering all the circumstances of the matter. I did not conceal any fact as alleged or at all. I expressly stated as follows under paragraph 3 of my affidavit in support of the application for substitution:

“That the deceased herein was survived by Ruth Jephchirchir Saina who was the sole widow of the deceased and the following children:

Ian Kipkoech Saina-Deceased;

Linda Chelimo Saina;

Patricia C. Saina;

Joanne C. Saina;

Stella C. Saina Kinsman;

Michelle C. Saina;

Calvin Kiptoo Saina”

- f. I have peacefully administered the estate of our late father; and have at all times offered transparent and consultative leadership. It cannot be that the applicants have just wakened up now and realized that they ought to be Administratrix in my stead. This is openly mischievous; and they are estopped from purporting to exercise their alleged rights eleven (11) years down the line!



- g. Routine family meetings have continued to take place, and recently on 14<sup>th</sup> July, 2021, family members held a meeting to deliberate on the current happenings as well as other agendas. Most of the attendees who attended the August, 2009 meeting were part of this; save for a few who have since passed on. Members were shocked with how drastic things had turned, and as part of the close relatives that actively oversaw the division of the properties of the estate of my late father, found it prudent to document their deliberations. They confirmed that the property of the late William Saina had already been divided amongst his children; and infact most of them had sold off their portions to third parties.
- h. That as it is now succinctly clear that the Applicants have: a. In their application before Court deliberately failed to make full and frank disclosure to the Court; b. Deliberately and willfully withheld from the Court vital and material information within their knowledge. c. That the above by and itself disentitles them from any orders from the Court having deliberately set out to mislead this Honourable Court.
- i. That with regard to the second limb of the application relating to the allegation that I have disinherited other beneficiaries; I wish to state as follows:

Beneficiary Allocation Table



Name Of Beneficiary	Shares Allocated In The Estate
1. Linda Chelimo Saina	a. 137 acres next to the Land Reserved for the Forest; b. 20 Heads of Cattle; c. 15 Sheep;
2. Patricia Chepkemboi Saina	a. 137 acres within the coffee Plantation; b. 20 Heads of Cattle; c. 15 sheep;
3. Joan Cherotich Saina	a. 137 acres near the dairy area towards the main road; b. 20 Heads of Cattle; c. 15 sheep;
4. Stella Chepchumba Saina Kinsman	a. 137 acres adjacent to the coffee plantation; b. 20 Heads of Cattle; c. 15 sheep
5. Michelle Chebet Saina	a. 137 acres bordering Lettings toward Kibuswa Shopping centre; b. 20 Heads of Cattle; c. 15 sheep
6. Calvin Kiptoo Saina	a. Entire Ngenyilel Farm 82 acres; b. 10 acres of the Home Stead at Kibuswa; c. 20 Heads of Cattle; d. 15 sheep.

- j. As has been demonstrated hereinabove, the division of the remainder of the properties of the estate of our deceased father was in strict conformity with the law; and all the beneficiaries consented and in fact took possession of the same immediately. It is however very sad that the applicants herein have squandered almost all their shares by selling off to third parties with reckless abandon, and now are back in Court to clandestinely obtain more shares from my bother Calvin Kiptoo Saina and myself. The table below shows the current status of the properties allocated to all the Beneficiaries:

Current Status Of Allocated Properties



Name Of Beneficiary	Shares Allocated In The Estate	Current Status Of The Properties
1. Linda Chelimo Saina	a. 137 acres next to the Land Reserved for the Forest; b. 20 Heads of Cattle; c. 15 Sheep;	a. 137 acres next to the Land Reserved for the Forest; b. 83 Heads of Cattle; c. 41 Sheep; d. 21 acres avocado under irrigation e. 15 acres of blue gum trees
2. Patricia Chepkemboi Saina	a. 137 acres within the coffee Plantation; b. 20 Heads of Cattle; c. 15 sheep;	a. 17 acres b. Nil cows; c. Nil 5 Sheep;
3. Joan Cherotich Saina	a. 137 acres near the dairy area towards the main road; b. 20 Heads of Cattle; c. 15 sheep;	a. Land – NIL b. Cows – NIL c. Sheep - NIL
4. Stella Chepchumba Saina Kinsman	a. 137 acres adjacent to the coffee plantation; b. 20 Heads of Cattle; c. 15 sheep	a. Land – 95 acres b. Cows – NIL c. Sheep – NIL
5. Michelle Chebet Saina	a. 137 acres bordering Lettings toward Kibuswa Shopping centre; b. 20 Heads of Cattle; c. 15 sheep	a. Land – NIL b. Cows – NIL c. Sheep - NIL
6. Calvin Kiptoo Saina	a. Entire Ngenyilel Farm 82 acres; b. 10 acres of the Home Stead at Kibuswa; c. 20 Heads of Cattle; d. 15 sheep.	a. 10 acres Kibuswa Homestead. b. 42 Acres Ngenyilel Farm



- k. The Applicants have admitted in their affidavits at paragraph 18 thereof that they have already sold off their properties to third parties and have already effected transfers in the names of the third parties. This application is as such inviting the Court to act in vain.
- l. That as such, if the applicants were genuinely interested in pursuing their alleged rights, they would have done so before selling off their portions of properties to third parties; and immediately after the Certificate was confirmed in my name. To come to Court 11 years later; and lying under oath that I have disinherited them disentitles them of the prayers sought in the application.
- m. That with the fact that they have lied under oath that I have disinherited them coupled with the admission that they have sold off their portions of land confirms beyond peradventure that this application is an abuse of court process. The applicant are approbating and reprobating at the same; and one cannot really understand what their stand point is. The desire to drive this matter into anarchy is manifest in this kind of confusion; and I humbly invite this Honourable Court not to countenance such conduct.
- n. That in the run up to the filing of the impugned application contrary to what has been alleged the following events took place.
- o. That I have not sold any portion of the estate and have no such intention whatsoever. To the contrary, the applicants have sold off their portions even before they got title and/or succession is concluded as demonstrated under paragraph 15 here above; and by their admissions under paragraph 18 of their affidavit.
- p. To safeguard the family estate, I tried to keep the entire acreage under one title deed just after our mother's passing, but the applicants pressurized me outside the funeral home at my mother's funeral culminating into the August 2009 family meeting and subsequent division of the estate in equal measure.
- q. As an example to the family and the community, I have added value to my inheritance. I have built a dairy that houses a maximum capacity of 300 dairy cows; I have increased infrastructure of irrigation to cover 60 acres; planted 21 acres of Hass avocado; built a large farm cottage with a learning hall attached to educate my women's empowerment group I started in 2013, and planted 15 acres of trees. Upgraded the irrigation water pumps to bigger horse power and now in the process of installing solar powered pumps for irrigation and green house.
- r. Amongst the applicants, and Patricia Saina, their total inherited acreage was 548 acres; what is left is Stella Saina Kinsman's share 95 acres; Patricia 17 acres; the other two applicants have sold off everything. I own 137 acres and 10 acres I bought from my brother Calvin Saina. How then is it possible that the applicants having sold off everything would now want to become administrators?
- s. The 2<sup>nd</sup> Applicant, Stella Saina Kinsman, intends to use this application to defeat my claim for 30 acres from her share. Through a sale agreement dated 8<sup>th</sup> June, 2011, I, Patricia Saina, Joan Saina, and Calvin Saina sold of our shares in Plot No. Eldoret Municipality/Block 14/371 (Elgon View House) to Michelle Saina and Stella C. Saina Kinsman. It was an express term of the sale agreement that 30 acres of land from the estate of the deceased would be hived off in my favour and Calvin's favour (15 acres each). In over a decade, Stella has not performed her part of the bargain and intends to defeat mine, and my brother's, rightful claim.



- t. I travel to Kenya every year sometimes twice a year, apart from the Covid period of 2020 and there has never been any complaint on my administration in the last 11 years. The 2<sup>nd</sup> Applicant, Stella Saina Kinsman is not visiting the country for the first time in 9 years as she claimed asylum in the United States and, I was told by Stella in 2013, who can only sneak into Kenya through the Uganda border. Asylum status forces one to denounce their original country of birth and that alone disqualifies Stella Saina Kinsman from applying for any administration role in Kenya.
- u. The 1<sup>st</sup> and 3<sup>rd</sup> Applicants, Michelle Saina and Joanne Saina despite living in Eldoret and Nairobi respectively, have not been to the property for over 8 years, given they sold 100% of their property. This application is coming late in the day to facilitate their selfish desires which I have so far managed to control. I am firmly in charge, and I am struggling to understand how total absentees would know what is on the ground until recently. My husband goes to the farm frequently, and our presence in the community is well known.
7. The applicants' version through an affidavit sworn by Mitchell Chebet Saina on 11<sup>th</sup> January, 2022 gives a different story. According to her, the Respondent obtained the amended letters of representation fraudulently and without the participation and or involvement of the other beneficiaries. That no family meeting was held to approve of her as the sole administrator and no consent was filed in court to that effect.
8. It is her account that the members of the family who attended the meeting alluded to by the respondent herein which happened on 23<sup>rd</sup> June, 2009 was only a meeting to discuss continuation of farm operations until December, 2009 when another meeting would be held. That in the minutes annexed, the purported chairman is one Mr. John Birech who has never been appointed by the family to be the chairman of the family.
9. That the administratrix since obtaining the grant in 2011 has failed to discharge her duties by distributing the estate to the rightful beneficiaries.
10. On record I have sight of the 1<sup>st</sup> applicant's submissions who has advanced various arguments in impeaching the impugned Grant.

### **1<sup>st</sup> Applicant's written submissions**

11. Learned Counsel Mr. Githaiga, appearing for the 1<sup>st</sup> Applicant, commenced his submissions by providing the background to the case and formulating two distinct issues for determination by this Honourable Court.
12. Mr. Githaiga outlined that the Applicants had made an application to revoke the Amended Certificate of Confirmation Grant dated 8<sup>th</sup> April, 2021, seeking that upon revocation, the Applicants be made joint administrators of the estate of the late Hon. William Morogo Saina. He stated that the Respondent had obtained an impugned Amended Certificate of Confirmation of Grant dated 6<sup>th</sup> April, 2011, which amended the original Certificate of Confirmation of Grant confirmed on 19<sup>th</sup> March 2002 by substituting the deceased administrator Ruth Jepchirchir Saina with Linda Chelimo Saina.
13. Learned Counsel submitted that the main reason for seeking revocation, as set out in the supporting affidavit, was that the proceedings leading to the amendment and substitution of the Respondent as sole administrator were fatally defective in substance. He emphasized that the resultant instrument, being the amended certificate of confirmation of grant, was an alien document not recognized in law.



14. Mr. Githaiga couched two issues for the Court's determination. The first was whether the procedure for administering an estate in intestacy was followed to the letter in the present case, and the second was whether the grant made to the late Ruth Jepchirchir Saina had become inoperative by dint of her death.
15. On the first issue, learned counsel submitted that the proceedings leading to the impugned Amended Certificate of Confirmation of Grant were fatally defective in substance as they were not provided for under the [Law of Succession Act](#) or any other laws in Kenya. He argued that since the late Hon. William Morogo Saina died in the year 2000, the distribution of his estate should be governed by the [Law of Succession Act](#), pursuant to Section 2(1) which provides that the Act shall be the applicable law in Kenya regarding deceased persons dying after 1<sup>st</sup> July, 1981.
16. Mr. Githaiga outlined the proper procedure under the Act, submitting that the law requires a sequential process beginning with a person petitioning the court in the prescribed form to be appointed administrator, supported by an affidavit containing details required by Section 51 that outlines the beneficiaries of the deceased's estate. This is followed by publication of the application in the Kenya Gazette per Section 67, inviting objections within 30 days. Subsequently, the applicant is issued a temporary grant of letters of administration, which Mr. Githaiga emphasized serves as an essential legal document authorizing the administration of the deceased's estate, with confirmation following this grant. Finally, that under Section 71, the administrator makes an application for confirmation of the grant, accompanied by the proposed schedule of distribution and consents of beneficiaries.
17. He submitted that during cross-examination, Respondent/Administratrix confirmed that she had not been issued with a grant of letters of administration and that the elders had made her the administrator of the estate. Learned counsel further submitted that the 1<sup>st</sup> Applicant did not consent to the Respondent's appointment as sole administrator nor to the amendment of the certificate of confirmation of the grant. He stated that during cross-examination, the Respondent confirmed there was no consent by her siblings to her appointment as administrator or to the mode of distribution.
18. Mr. Githaiga submitted that after confirmation of certificate of grant, the administrator should account by reporting to the court the extent of administration of the estate. That during cross examination, the Respondent confirmed that she has never reported to court the accounts of the estate.
19. On the second issue regarding whether the grant made to the late Ruth Jepchirchir Saina had become inoperative by dint of her death, Mr. Githaiga submitted that the Grant of Letters of Administration to the late Ruth Jepchirchir Saina had become useless and inoperative following her death, leaving behind no administrator to carry on the exercise. In support of this position, he cited [re Estate of Ngaigwo M'Shomba \(Deceased\)](#) [2019] eKLR, where Muchemi J. found that an application made to substitute a deceased administrator was incompetent and therefore proceeded to strike it out.
20. Learned Counsel submitted that there was no provision for the substitution of a deceased administrator under the [Law of Succession Act](#). He concluded by arguing that the Respondent not only failed to obtain the consent of the beneficiaries but also substituted the deceased administrator, which procedure is foreign under the [Law of Succession Act](#), Cap 160, Laws of Kenya.

### **Analysis & Determination**

21. The question to be answered by this court is whether the proceedings to obtain the substituted certificate of confirmation of grant by Linda were defective in substance.



22. The Applicable law invoked by the Applicants falls within the spectrum of Section 76 of the [Law of Succession Act](#) which provide 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
- (e) that the grant has become useless and inoperative through subsequent circumstance”

23. The respondents in this matter seek to challenge an amended certificate of confirmation obtained over a decade ago, claiming it was procured through improper legal procedures. At first glance, their argument appears to have merit. The law is indeed clear that substitution of deceased administrators is not provided for under the [Law of Succession Act](#). However, the facts of this case reveal a more unsettling reality. Beneficiaries who have substantially enriched themselves under the very grant they now challenge, disposing of inherited assets worth hundreds of acres to third parties, yet returning to court years later seeking benefits from an estate they claim was improperly administered.

24. Without a doubt and as I have stated elsewhere, the [Law of Succession Act](#) did not envisage the issue on substitution of a deceased administrator. What is contemplated under Section 81 of the [Act](#) is that, in the event of the death of one or more of joint administrators and where there are several administrators, the surviving administrator or administrators would then have the mandate to continue with their duties to completion without the need to replace the deceased ones. In the case of [Re Estate of Mwangi Mugwe alias Elieza Ngware \(deceased\)](#) [2003] eKLR, the court held the view that:

“...the operative word is “substitution”. The [Law of Succession Act](#) has no provisions talking about substitution of a deceased single administrator...In the circumstances therefore, it is my considered view that the proper provisions of the law to apply is section 76(e) of the [Law of Succession Act](#) and Rule 44 of the Probate and Administration Rules whereby the Applicant would apply for revocation or annulment of a grant on the ground “that the grant has become useless and inoperative through subsequent circumstances.” The Applicant



would proceed to put a prayer in the same application that a new grant be made to him and could as well add a further prayer, if need be, for confirmation of the new grant. The application, should, of course, be supported by consent from adult beneficiaries in the estate of the first deceased person, the second deceased person being the deceased administrator.”

25. Similarly, Hon. Musyoka J. held as follows in [Re Estate of George Ragui Karanja \(Deceased\)](#) [2016] eKLR:

“The [Law of Succession Act](#) does not expressly provide for substitution of personal representatives who die in office, particularly in cases where the estate is left without one. The closest provision is section 81 of the Act, which provides for vesting of the powers and duties of personal representatives in the survivor or survivors of a dead personal representative... It would appear to me that once all the holders of a grant die, section 81 of the Act would be of no application. Indeed, the said grant becomes useless and inoperative, and liable to revocation under section 76(e) of the [Law of Succession Act](#), to pave way for appointment of new administrators. The appointment of fresh administrators to take the place of the previous ones following their death is subject to the provisions of sections 51 through to section 66 of the Act.”

26. The applicants seek revocation of an amended certificate of confirmation obtained through what they characterize as an improper substitution procedure. However, as I have pointed out, the evidence reveals that these same applicants have substantially benefited from the administration they now challenge, disposing of significant portions of their inherited assets to third parties while remaining silent for over ten years. This conduct speaks to the equity doctrines. This Court is a court of equity and he who comes to equity must come with clean hands. It therefore calls for this court to establish whether equity should intervene to prevent what appears to be an attempt to approbate and reprobate the same legal instrument.
27. The practical reality is that most of the estate has already been distributed and, in many cases, transferred to third parties. This court must therefore weigh the imperative of procedural correctness against the need to protect legitimate expectations and prevent unconscionable results that would prejudice parties who have acted in good faith.
28. The law regarding substitution of deceased administrators is well-settled and admits of no ambiguity. The cited authorities herein establish beyond doubt that the substitution procedure followed in this case was legally improper. The grant to Ruth Jephchirchir Saina became inoperative upon her death on 15<sup>th</sup> June, 2009, and the proper course would have been to seek revocation under Section 76(e) followed by fresh appointment under Sections 51-66 of the [Law of Succession Act](#). The amended certificate of confirmation dated 27<sup>th</sup> June, 2011, was therefore undeniably obtained through a procedure not recognized in law.
29. The fact that the estate has been substantially distributed does not negate the need for proper legal procedures. The [Law of Succession Act](#) establishes mandatory procedures for good reason; to ensure transparency, protect beneficiaries' rights, provide judicial oversight, and maintain public confidence in the administration of estates. Courts cannot overlook procedural requirements merely because the outcome appears satisfactory to some parties.
30. The evidence reveals that despite the formal defects in the grant, substantial and apparently equitable distributions were made to all beneficiaries. Each daughter received 137 acres of land plus livestock, while Calvin received 82 acres plus a homestead and livestock. This distribution pattern suggests that



the substantive purpose of estate administration ensuring fair distribution among beneficiaries was achieved despite procedural irregularities.

31. In this respect the position taken *Re- Estate of Mwangi Mugwe alias Elieza Ngware (deceased)* (2003) eKLR which I subscribe to is that: “ the operative word is “substitution”. The *Law of Succession Act* has no provisions talking about substitution of a deceased single administrator...In the circumstances therefore, it is my considered view that the proper provisions of the law to apply is section 76€ of the *Law of Succession Act* and a Rule 44 of the *Probate and Administration Rules* whereby the Applicant would apply for revocation or annulment of a grant on the ground “that the grant has become useless and inoperative through subsequent circumstances”. The Applicant would proceed to put a prayer in the same application that a new grant be made to him and could as well add a further prayer, if need be for confirmation of the new grant. The application, should of course, be supported buy consent from adult beneficiaries in the estate of the first deceased person, the second deceased person being the deceased administrator.”
32. From the record, the initial certificate of confirmation of grant was issued to Ruth Chepchirchir Saina which was duly confirmed on 19.3. 2002. The administrator thereafter passed on without evidence of having filed a probate account on the status of transmission of the estate to the beneficiaries under Section 83(g) of the *Law of the Succession Act*. Indeed, if Ruth Saina the administrator then, managed to administer the estate before her demise, the specifics of it were not crystalised by the parties during the pendency of these proceedings. There is no dispute that Linda Limo Saina was substituted as an administrator to the estate of the deceased following the demise of her mother. The aforesaid impugned grant dated 27.6.2011 issued by this court presided over by another session judge. On the face of it, it provided as follows:

Name	Prescription Of Property	Shares Of Heirs
Linda Chelimo Saina	Motor Vehcile Reg No Kaa 699c	Whole
-	L.r. No 2217/2	Whole
-	Nandi/kipkarren Salient Scheme (25) .254 & 289	Whole

33. On the other hand, certificate of confirmation of grant dated 19.3.2002 issued to Ruth Chepchirchir Saina mother to Linda had the following matrix

Name	Description Of Property	Share
Ruth Chepchirchir	Motor Vehicle Registration No. KAA 699c	Whole
-	LR NO 2217/2 Nandi Kipkaren Salient Scheme (251,254 &289)	-



34. There is no prima-facie evidence that the two certificate of confirmation of grant kept in view the due and proper administration of the estate and the interests of the parties beneficiary entitled thereto to the intestate estate of the deceased. The law requires under the following provisions of the *law of Succession Act* as follows:
- “ (36) Where intestate has left one surviving spouse but no child or children When the intestate has left one surviving spouse but no child/children the surviving spouse shall be entitled out of the net intestate estate to:-
- (a) The personal and household effects of the deceased absolutely, and the first 10,000 shillings out of the residue of the net intestate estate, or 20 per centum thereof, which ever is the greater: and a life interest in the whole of the remainder.
- (38) Where intestate has left a surviving child or children but no spouse “ Where an intestate has left a surviving child or children but no spouse the net intestate estate shall subject to the provisions of Section 41&42 devolve upon the surviving child, if there be only one, or be equally divided among the surviving children,
35. Although the certificates of confirmation of grants issued to Ruth Saina now deceased and later to her daughter Linda do not seem to have incorporated the scheme of distribution as envisioned by the law under Section 38 of the Act there is evidence that the heirs to the William Morogo Estate have each benefited by way of shares of both movable and immovable assets as averred by Linda in her evidence before this court. However notwithstanding that position, there is doubt as to whether the sisters and brother to Linda obtained or had their shares transmitted during the survivorship of their mother or at the time an amended grant was issued to Linda as a substitute upon the demise of the mother. Those are questions in terms of the available documentary evidence could not be answered by the objectors later on the current impugned administrator.
36. However, the fact that distributions were made and accepted cannot validate the grant under which they were made. The distributions themselves may be protected as completed transactions undertaken in good faith, but this protection does not extend to validating the defective administrative framework. In the appointment of the administrators under Section 66 of the *Law of Succession Act*, although the court retains the residual jurisdiction the process is participatory and inclusive of all the beneficiaries of the intestate estate as defined under Section 29 of the *Act*. The panoramic view of the record does not show that upon the demise of Ruth Saina and on subsequent substitution Linda obtained the necessary consent from the objectors. This statutory framework is not optional for one to elect not to comply or not. The other key characteristics in the making of the grant is for the nominee set to be appointed as the administrator to the estate of the deceased to fill forms 38, form P&A 11, Form P&A 57, Form P&A 12, Form P&A 5 and Form P&A 80. My examination of the record provides no credible evidence that Linda made any attempts to comply with procedural law tailored towards the making of the certificate of confirmation of grant. That means the amended certificate of confirmation of grant held in the name and style of Linda Saina is fatally defective and any other action or step taken even in good faith on the part of the beneficiaries to me is null and void as far as the law is concerned.
37. A critical consideration is determining what, if any, estate remains to be administered. The evidence suggests that most beneficiaries have disposed of substantial portions of their allocations, with some retaining no assets from the estate. Before determining the appropriate administrative structure going forward, the court must establish through proper accounting what net estate, if any, requires ongoing administration.



38. An important aspect of this matter that cannot be overlooked is the apparent discrepancy between the formal terms of the amended grant and the practical reality of how the estate was actually distributed. While the amended certificate of confirmation dated 27<sup>th</sup> June, 2011, may have designated Linda Chelimo Saina as the sole beneficiary on its face, the undisputed evidence before this court reveals a different picture. The comprehensive allocation table presented by Linda in her replying affidavit demonstrates that all beneficiaries, including the current respondents, received substantial and equal distributions from the estate. Each daughter was allocated 137 acres of land, 20 heads of cattle, and 15 sheep, while Calvin received 82 acres plus a 10-acre homestead along with livestock. This distribution pattern clearly contradicts any suggestion that Linda intended to, or actually did, exclude the other beneficiaries from their rightful inheritance.
39. Better still, the respondents not only accepted these substantial allocations but have since dealt with them as absolute owners, disposing of their inherited assets to third parties over the years. The current status table reveals that Michelle Chebet Saina and Joan Cherotich Saina have completely disposed of their allocations, retaining no land, cattle, or sheep. Patricia Chepkemboi Saina retains only 17 acres from her original 137 acres, while Stella Chepchumba Saina retains 95 acres from her original allocation.
40. The timing of this application also calls to question the true motivations of the applicants. The amended certificate of confirmation was granted on 27<sup>th</sup> June, 2011, yet this application challenging it was filed on 8<sup>th</sup> April, 2021, a delay of nearly ten years. During this period, the respondents/applicants remained conspicuously silent while disposing of their inherited assets and engaging in various transactions with third parties. It was only after they had substantially depleted their allocations that they chose to challenge the legal foundation of the very transactions that they benefited from.
41. The question that naturally arises is what purpose would be served by revoking the grant and appointing fresh administrators when the estate has essentially been distributed and most beneficiaries have dealt with their shares as they saw fit.
42. Nonetheless, this court finds that the proper legal remedy is the revocation of the Amended Certificate of Confirmation of Grant dated 27<sup>th</sup> June, 2011, which was obtained through a procedure not recognized under the *Law of Succession Act*. The law requires adherence to proper procedures, and the substitution mechanism employed was fundamentally flawed and without legal foundation.
43. One other question which should not escape the mind of this court is about the provisions of Section 83 of the *Law of Succession Act* which provides the duties of and administrator in the intestate estate to include but not limited to the following:

Asset Management: The administrator is responsible for identifying, collecting, and safeguarding all assets of the deceased, including both movable and immovable property.

Debt Settlement: The administrator must settle all outstanding debts, liabilities, and expenses of the estate before distributing any assets to the beneficiaries.

Distribution of Assets: The administrator is obligated to distribute the remaining assets (after paying debts and expenses) to the rightful beneficiaries according to the *Law of Succession Act*.

Accounting: The administrator must maintain accurate records of all transactions and dealings with the estate's assets and liabilities and provide a full and accurate account of the estate's administration to the court.



Fiduciary Duty: The administrator is a fiduciary, meaning they must act in the best interests of the beneficiaries and exercise diligence, honesty, and prudence in managing the estate.

Compliance with Court Orders: The administrator must comply with all court orders and directions regarding the administration of the estate.

Timeline: The [Law of Succession Act](#) does not specify a strict deadline for completing the administration of an intestate estate, but it's expected to be done within a reasonable time.

44. The interim probate account filed by Linda is not comprehensive within the legislative scheme without the other clauses on payment of debts, and liabilities, the particulars of the assets which have devolved to other third parties who are not direct beneficiaries to the estate, the instruments used to transmit the estate to the beneficiaries like the mutation and other such mandatory forms as required by the Land Registrar. It is also necessary to remember that prior to the issuance of the amended certificate of confirmation of grant Linda's mother was the one who had been empowered under Section 66 of the [Act](#) to administer the estate. It is not clear what portion of the administration was undertaken by the mother before her demise and thereafter the residual estate taken over by the defective grant of letters issued to Linda subject matter of this proceedings. There various protocols which must take effect for the purpose of the propriety, legality, and regularity of the intestate estate of the deceased.
45. For those reasons, before determining the appropriate course for fresh administration, this court must first establish whether there remains any net estate available for distribution. The outgoing administrator, Linda Chelimo Saina, having administered the estate for over a decade under the defective grant, is mandated to provide a comprehensive account of her stewardship. This account is essential to determine the current state of the estate and whether any assets remain undistributed or require ongoing administration.
46. The law is littered with confusion when it comes to the concept of voidness. Although legal scholars and jurisprudence alike seem to trivialize the distinction between void and voidable as little more than a trap for amateurs, the reality is that this seemingly simple distinction has been causing grievance for Judges and Lawyers since even before the existence of the Republic of Kenya. The question of whether under Section 76 of the [Law of Succession Act](#) the certificate of confirmation of grant is void or voidable can sometimes be dispositive of an entire case. Yet for many years since the enactment of the [Law of Succession Act](#) 1981 the courts have been revoking certificate of grant of representation without reference to the distinction whether that legal instrument as arrived by the court prior to the application on revocation can be distinctly defined as void or voidable. The courts linguistic looseness in this context is somewhat understandable given the ambiguity in the language expressly classified largely under the provisions of Section 76 of the [Act](#). In the ordinary language, the word void means lack of existence or nullity. In law a thing, an Act, a contract etc is void which was done against the law at the very time of doing it and no person is bound by such an act. However, a thing is only voidable which is done by a person who ought not to have done it but who nevertheless cannot avoid it himself after it is done. This means, that the Act by Linda to seek amendment of the certificate of confirmation of grant is an act in law which renders the impugned amended certificate of confirmation of void. As already stated elsewhere in this ruling following a new appointment of administrator or administrators under Section 66 of the Act the fresh forms provided for in the schedule of the primary law on Succession must be filled for that administrator or administrators to seek a fresh mandate. This is more so that the Law of Succession incorporates the canons of inclusivity, non-discrimination, public participation, accountability, and transparency to say the least. I suppose that in Succession context gazettement of Probate or intestate estate is mandatory by the provisions of the law. This is to inform all persons out there who may be having a stake or interest in the estate to be made aware that the process of succession



has since commenced. This is one branch of law in which gazette of the petition and the would-be administrators must be entered in the column of the Kenya gazette. Did Linda go through this process as stipulated in our procedural law? My answer is in the negative as nuanced in the applicable statute on inheritance and the record

47. From the foregoing, the following orders do abide:

- a. The Amended Certificate of Confirmation of Grant dated 27<sup>th</sup> June, 2011, is hereby revoked as having been obtained through procedures not recognized under the *Law of Succession Act*.
- b. Linda Chelimo Saina, as the outgoing administrator, shall within sixty (45) days of this order file a comprehensive account of her administration of the estate under Section 83 of the *Law of Succession Act*, from 27<sup>th</sup> June, 2011, to date, detailing:
  - i. All distributions made to beneficiaries;
  - ii. The current status and location of all estate properties;
  - iii. Any outstanding liabilities or obligations of the estate;
  - iv. A complete inventory of any undistributed assets.
  - v. The nature and character of the administration on transmission of the estate devolved by her late mother Ruth Saina
- c. The objectors to this summons for revocation shall provide the updated inventory and instruments of transfer of the properties duly devolved in favour of the inheritance and which certificate of confirmation of grant was used under Section 38 to transmit the identifiable estate of the deceased.
- d. That in view of the prima-facie evidence on record that some shares of the properties have devolved to third parties who were not part of this proceedings a notice be issued to each one of them for purposes of taking further action to safeguard their registrable interest within 45 days.
- e. That the inheritance rights so far conveyed to the beneficiaries and other third parties shall not be interfered with until further orders from this court
- f. That in the interim, Linda Saina is appointed in the acting capacity to hold forth the administration of this estate including providing and submitting the probate account to inform the court on how best to liquidate the estate in the event nothing shall be purposed so as to render the parties to suffer substantial loss by dint of the provisions of Section 76 of the *Law of Succession Act*.
- g. The parties shall jointly engage a licensed surveyor to conduct a comprehensive survey of the original estate lands within ninety (45) days of this order to:
  - i. Establish precise boundaries of current beneficiary holdings;
  - ii. Identify any undistributed portions of the estate;
  - iii. Determine the exact acreage and location of any remaining estate assets.
  - iv. The Land Registrars of both registries in which the intestate estate is domiciled are hereby directed to file the transfer forms, mutation, and green card details of the



intestate estate as identified elsewhere in this ruling within the same period set out by the court.

h. The costs of the surveyor shall be borne by the estate.

48. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT ELDORET ON 29<sup>TH</sup> JULY 2025**

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**R. NYAKUNDI**

**JUDGE**

