



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Julius Syano Ndonge (Deceased) (Succession Cause
181 of 2014) [2024] KEHC 6571 (KLR) (31 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6571 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 181 OF 2014**

MW MUIGAI, J

MAY 31, 2024

BETWEEN

JOSEPHINE NZISA SYANO APPLICANT

AND

**AGNES MUENI SYANO (SUED AS THE ADMINISTRATOR OF THE ESTATE
OF JULIUS SYANO NDONYE) 1ST RESPONDENT**

**WILFRED MANASE SYANO (SUED AS THE ADMINISTRATOR OF THE
ESTATE OF JULIUS SYANO NDONYE) 2ND RESPONDENT**

ANDREW MBALUTO MUSILA 3RD RESPONDENT

PRISCILLA MUMBUA MATHII 4TH RESPONDENT

JUDGMENT

1. The late Julius Syano Ndonge, deceased herein died on 21.8.2002.
2. The Petition for grant of letters of administration intestate was filed on 24.01.2014 where it was contended in the affidavit in support of the petition for grant that the deceased left the following surviving him;
 - a. Agnes Mueni Syano widow
 - b. Wilfred Manase Syano son
 - c. Josephine Nzisa Syano daughter
 - d. Fredrick Kimawni Syano son
 - e. Davidson Wambua Syano son
 - f. Danson Kioko Syano son



- g. Deborah Nthenya Syano daughter
 - h. Joyce Mukulu Syano daughter
3. The assets were listed as follows;
- a. 1/3 share of the property known as Muputi/Kiima-kimwe/400
 - b. Plot Number 1457, Situate in Vyulya in Masii
 - c. 1 share in Wendano wa Matuu Farming Society
4. On 22nd November 2014, grant of letters of administration were issued to Agnes Mueni Syano and Wilfred Manase Syano by Lady Justice B.T.Jaden.

Certificate Of Confirmation Of Grant

5. A certificate of confirmation of grant was issued of 30th May 2016 by Lady Justice P. Nyamweya

Summons For Revocation/annulment Of Grant

6. On 25.10.2022, the Applicant filed Summons for Revocation or annulment of grant seeking the following orders;
- a. The grant of representation confirmed on the 30th day of May 2016 to Agnes Mueni Syano and Wilfred Manase be revoked on the ground that the said grant was obtained fraudulently by making of a false statement and by concealment from the court of material facts that would have otherwise made the court refuse to make the grant of representation should it have been seized of the correct facts and information.
 - b. The applicant, Josephine Nzisa Syano be issued with a grant of representation in respect of the estate of Julius Syano Ndonye (deceased)
 - c. Pending the hearing and determination of the Summons the Court issues orders restraining the Respondents from alienating and/or transferring any interest in and /or in any way dealing with the following properties; Muputi/Kiima/Kimwe/ 400; Masii/Vyulya/1457 Mavoko Town Block 3/2439 & 1 share Wendani/Matuu Farming society.
 - d. The costs of the application be in the cause.
7. The Summons was supported by the affidavit of the Applicant deposed on 19.10.2022 in which it was contended that the deceased was his father and he had two wives. Alice Muneo Syano (deceased) who died on 14.6.1992 was the 1st wife and is the Applicant's mother who bore the following children;
- a. Judah Nthwao Syano
 - b. Eliud Musembi Syano
 - c. Josephine Nzisa Syano
 - d. Fredrick Kimani Syano
 - e. Achim Ndunda Syano
 - f. Wilfred Manase Syano
8. The 2nd wife was Agnes Mueni Syano who had the following children;



- a. Davinson Wambua Syano
 - b. Danson Kioko Syano
 - c. Debra Nthenya Syano
 - d. Joyce Mutuku Syano
9. It was deposed that the deceased had on 1.06.1997 expressed his wishes regarding distribution of his property at a family meeting. Further, that the grant was obtained fraudulently by making false statements and concealment of material facts. That there was concealment of beneficiaries and that the deceased had sold five acres that formed part of Mavoko Town Block 3/2439 prior to his death and as a consequence there is a third party whose interest in the estate herein had not been captured.
10. It was deposed that the 3rd and 4th Respondents were not beneficiaries of the deceased's estate herein. That the 1st, 2nd and 3rd Respondents have been intermeddling with the estate of the deceased purporting to sell and/or lease portions of land parcel number Mavoko Town Block 3/2439 to 3rd parties and the purported sale was concluded 2015 prior to the issuance of the confirmation of grant. It was averred that the sale was facilitated by the 3rd Respondent's Advocate on record.
11. It was deposed that Daniel Mutisya Ndonge, the chairman of the Ndonge family wrote to the assistance chief of Muthwani sub location to stop Judah Nthwao Syano and Wilfred Manasse Syano from selling portions of Mavoko Town Block 3/2439 until the process of carrying out the deceased's wishes had been finalized and the chief wrote to the administrators stopping them from selling.
12. A restriction was placed over the suit property and it has now been subdivided into two; Mavoko Town Block 3/53381 and Mavoko Town Block 3/53382 and the later is now registered in the name of the 3rd Respondent and Mavoko Town Block 3/53381 has been further sub divided into parcels Mavoko Town Block 3/54599 and Mavoko Town Block 3/54629.
13. The Applicant contends that she is constantly facing harassment by third parties and is in danger of being evicted from parcel known as Masii/Vyulya/1457 where she settled.

Replying Affidavit

14. The 1st Respondent filed a response dated 17.03.2023 in opposition of the Summons for Revocation of grant on her on behalf and on behalf of the 2nd Respondent in which it was deposed that the she is the wife of the deceased and he was survived by the following;
- a. Agnes Mueni Syano widow
 - b. Wilfred Manase Syano son
 - c. Josephine Nzisa Syano daughter
 - d. Fredrick Kimawni Syano son
 - e. Davidson Wambua Syano son
 - f. Danson Kioko Syano son
 - g. Deborah Nthenya Syano daughter
 - h. Joyce Mukulu Syano daughter
15. It was deposed that the assets of the deceased were;



- a. 1/3 share in Muputi/Kiima-Kimwe/400
 - b. Masii/ Vyulya 1457 /
 - c. 1 share in Wendano wa Matuu Farming Society
 - d. Mavoko Town plot 3/2439
16. It was contended that the applicant signed the consent for the grant to be issued to the 1st and 2nd Respondent. He and all family members were aware and the estate was distributed in accordance with the wishes of the deceased. The estate property particularly 1/3 share in Muputi/Kiima-Kimwe/400, Masii/ Vyulya 1457 and 1 share in Wendano wa Matuu Farming Society were to be registered in the name of the 1st and 2nd Respondent in trust for other beneficiaries including the Applicant.
17. Muputi/Kiima-Kimwe/400 was owned by Willy Ndonge, Peter Ndonge and Julius Syano Ndonge, each having 1/3 share. The share of the deceased herein was sold to Jackson Kiilu Kivinda on 15.02.2003 with the consent of all family members thus was not available for distribution.
18. It was contended that none of the beneficiaries has ever followed up regarding the 1 share in Wendano wa Matuu Farming Society to know if it is available. Further, that the deceased herein had in his lifetime sold 20 acres parcel of land in plot 2439 to one Kimundu Ndunda Nthei and the said Kimundu Ndunda Nthei had sold to Jonathan Mutuku Nthei 20 acre parcel of land situated in Lukenya Ranching and Farming Co-operative Society Limited in parcel no 406 but it had not been transferred and had been sold to someone else.
19. As such, a supplemental agreement of exchange dated 20.01.1994 was made between Kimundu Ndunda Nthei and Jonathan Mutuku Kioko in which the deceased herein and Kimundu Ndunda Nthei were to ensure that the portion of land was registered in the names of Jonathan Mutuku Kioko. The import of this deed of exchange was that Julius Syano Ndonge (the deceased)agreed to transfer in favour of Jonathan Mutuku Kioko the 20 acre parcel of land excised from mavoko Town Block 3/2439 which had initially been sold by the deceased to Kimundu Ndunda Nthei.
20. On 11.09.2015, the 3rd Respondent through his company Homeward Agencies Limited approached Wilfred Manase Syano and the 1st Respondent to sign an agreement for sale of the 20 acres together with the seller Jonathan Mutuku Kioko. It was contended that they only signed as administrators but the payment of all proceeds was done to Jonathan Mutuku Kioko. Following the completion of the succession, the administrators commenced transmission of the 20 acre parcel of land to the 3rd Respondent
21. Masii/Vyulya/1457 is where all beneficiaries including the applicant have settled and the transmission is yet to be done in accordance with the confirmed grant. It was contended that the Applicant was not sidelined and was included in the list of beneficiaries and has adequately been provided for in the distribution of the estate.

4th Respondent Replying Affidavit

22. Priscilla Mumbua Mathii contended that she is the wife of the Judah Nthwao Ndonge (deceased) who was the son to the deceased herein. She said that her husband died on 3.04.2009 she was aware that her father in law, the deceased herein had expressed his wishes in respect of distribution of his property to members of his family. She said the deceased herein had sold 20 acres comprised in Mavoko Town 3/2439 was sold to Kimundu Ndunda Nthei who later transferred to Jonathan Mutuku and it was thereafter sold to the 3rd Respondent.



23. It was deposed that the wishes of the deceased were that the remaining portion was to be shared between the deceased herein, Wilfred Manase Syano and Maiko Nzisa, the Applicant's son.
24. In 2005, it was discovered by some members of the Ndonge Family that Judah Nthwao Syano (deceased) and Manase Syano were attempting to sell the remaining portion of Mavoko Town Block 3/2439 and the family of Daniel Ndonge wrote to the assistant chief, Muthwani sub-location to stop the sale of the property and a letter was issued to that effect. Later on she learnt that her husband and Manase Syano had sold portions of their father's land to various persons. She said she placed a restriction to protect the interests of the beneficiaries of the said land and to prevent further interference as part of the land had been sold to innocent buyers without the knowledge of members of the family.
25. They decided to visit the chief Tirus Ndambuki Musyoka, Lukenya location to sort out the issue as the land had been sold to innocent purchasers. The chief summoned all the members of the family of the deceased herein. She went with the Applicant, the 1st administrator, Peter Mutundu an assistant chief and others and after close to two years and visits to the parcel of land to confirm the buyers, a settlement was reached and it was mutually resolved that all buyers would give out a portion of their land to ensure those on the road reserve are reallocated and the family would get a portion of land. The family recovered 5 acres which was distributed between the family of the deceased herein, Wilfred Manase Syano and Maiko Nzisa.
26. It was deposed that the mother title was divided into two, one in the name of the 3rd Respondent and the other in the name of Priscilla Mumbua Mathii that enabled her to further subdivide and ensure all buyers obtained titles. In addition, she said that it was resolved that since Judah Nthwao Ndonge (deceased) and Wilfred Manase Syano occasioned sale of the land, Maiko Nzisa would get a larger share of the proceeds after the recovered portion was sold. Kshs 1,000,000 would be received by Maiko Nzisa and the rest receive 75,000.
27. The Deponent indicated that she was only a custodian entrusted to follow and assist in resolving the dispute and was shocked that the Applicant alleges that she has intermeddled with the deceased's estate.

Supplementary Affidavit

28. The Applicant filed an affidavit on 29.05.2023 in which she deposed that the respondents have not supplied the court with summons for confirmation of grant in this matter nor evidence to show that she was privy to any Summons for confirmation of grant and thus it was clear that they did not follow the proper procedure. It was deposed that the Respondents had demonstrated that they intermeddled with the property prior to purported confirmation of the grant of 30.05.2016. In addition, she contended that the grant was obtained fraudulently by making false statements and by concealment from the court of material facts. Furthermore, the confirmed grant does not adhere to the deceased wishes as per the meeting of 1st June 1997.

Hearing

29. AW.2 was Derek Ndonge Kioko, Advocate who stated that he was aware of the facts relating to the document he prepared. He said the Petition was of 24/01/2014 and he prepared and filed it. He was approached by Agnes Mueni Syano and Wilfred Manase Syano. He adopted his witness statement of 29/05/2023 as evidence and further stated that he did not do anything after filing of the Petition. He did not participate in obtaining Confirmed Grant of the same neither did he prepare the Summons of Confirmation of the Grant. He was not aware of any Certificate for Confirmation nor Summons for Confirmation. The information came to him thereafter they started the Succession Cause 181 of 2012.



30. Upon Cross – examination ,he said that the deceased Julius Syano Ndonge was his uncle and the beneficiaries in court are/were people well known to him. He admitted to preparing the Petition and signed P57 and P11. It was his testimony that Judah Nthao Syano was deceased but was alive at the time of filing Petition. Eliud Musembi Syano and Achim Ndunda Syano are deceased and were not alive at the time of filing petition. Josephine Nzisa Syano (PW.1) signed Consent for Agnes and Wilfred to be administrators. He saw the confirmation of Grant last year or last year but one.
31. He said Elvis Vidolo was known to him as a former clerk of their law firm. He denied sending Elvis Vidolo to Mbaluto Andrew 3rd Respondent to collect the original certificate of confirmation of Grant so as to process transfer property Muputi Kiima Kimwe/400. It was his testimony that they were made aware by Andrew Mbaluto of Certificate of Confirmation of Grant. They did not know how he did that and it was not forthcoming. He did not complete the transmission of the property Muputi Kiima Kimwe/400 which 1/3 belonged to his father. The process stalled. In addition, he said he knew Andrew Mbaluto at a personal level as his village mate. He contended that the file left my office and went to another advocate and he was not paid. He was not aware of what happened thereafter .
32. AW2 further stated that Priscillah Mumbua Mathii is the wife of one of his cousins who is deceased Judah Syano and if she had the Grant she was Administrator. He was made to stand down.
33. Josephine Nzisa Syano was AW.1 who stated that Julius Syano Ndonge is her father. She adopted her witness statement and further stated that her father died in 2002 and the succession filed in 2014 and the grant was issued. In 2014 her cousin Derek Ndonge,advocate called her to sign documents and she thought they were documents to divide property – Schedule of Assets of paragraph 6 - 1/3 share Muputi Kiima – Kimwe/400, Plot 1457 Vulya Masii. It was her testimony that Mavoko Town Block 3/2439 is not included on pg 17 of Respondents Affidavit in support of Petition of Grant. In 2005 Manase Wilfred Syano and Judah Nthao Syano (deceased). Sold land and buyers were not included in the petition for grant of letters of Administration. She said they did not appoint Wilfred & Agnes (step mother) as Administrators and she was not aware. The certificate of confirmation of grant was not involved or agreed on by the parties/family and my family. Her father gave Wilfred Lukenya/Mavoko 2439 and Wilfred came back to Masii Vyulya/1457.Wilfred sold Mavoko 2439 and where he lived and he came to Masii/Vyulya/1457. She contended that she has been frustrated by her brothers and she cannot pass where she was given by my father. She was frustrated by Wilfred Manase and took 2 rooms one of which her son took. She asked the court for help as she had no where to go. She said that the properties were sold before the confirmation of grant.
34. Upon cross examination, she said that her father Julius Syano Ndonge had 2 wives; the 1st wife was Alice Syano, her deceased mother and Wilfred Syano represented the 2nd wife/house. She denied being involved or consulted or giving consent. She signed consent of Administrator being appointed but did not know what the documents were for. She said that Judah Nthao Syano, Eliud Musembi Syano and Achim Ndunda Syano died and by the time the succession cause was filed in 2014 the deceased children were not there.The deceased had expressed his wishes on how he wanted his properties distributed.
35. In addition, she stated that her father had 4 assets of and he wrote down his properties and what he wanted done. Kiima Kimwe 1/3 share was her fathers and Muputi Kiima Kimwe/400. She said she was in court because his wishes were not followed. It was her testimony that her father had 2 wives – 1st wife my mother Alice Muneo Syano who died in 1992. 2nd wife Agnes Mueni Syano. The 1st wife ,her mom had 6 children Judah Syano, Eliud Musembi Syano, Josephine Nzisa Syano, Fredrick Kimani Syano, Achim Ndunda Syano and Wilfred Manase Syano and Agnes Mueni had 4 children – Danson Kioko, Joyce Mukulu Syano, Deborah Nthenya Syano and Davidson Wambua Syano.



36. She contended that the wishes are in kikamba and translated in English. Her father had many shambas and she could recall Muputi/Kiima Kimwe/400 ½ of which was sold for Kshs.210,000/- and she signed the sale Agreement. She indicated that there was a problem if Agnes Mune Syano and Wilfred Manase Syano jointly given the property Muputi/Kiima/Kimwe/400 1/3 share so as to transfer to Jackline Kiilu Kivinda the Purchaser as per sale Agreement attached. She went to sign the documents I was told we were to divide the properties; Mavoko Town Block 3/2439 – 20 Acres and Mavoko Town Block 3/2439 - 24 Acres .
37. She testified that the property acreage is about 65 acres and her father expressed what he wanted with this shamba of 65 acres. 25 acres was sold by deceased to before his death which Administrators did not state to court. While referring to the agreement on page 32 of 1st, 2nd & 3rd Respondents bundle she said that her father sold 20 acres sold to Kimindo Ndunda Walter and Jonathan Mutuku Kioko and she did not know whom her father sold 5 acres to as there is the instructions by my father he sold 5 acres to refund the purchase prices to Musembi wife after they separated.
38. It was AW1's contention that Agnes had 20 acres in Mavoko Block – 65 acres and the deceased sold 20 acres in Kitanga is Mavoko Town/31 2439 which is 40 acres. She said that Mavoko Town Plot is the registration of Lukenya and Kitanga and Lukenya was sub-divided on portions of 40 acres. She said that her father sold 20 acres twice and the 1st one he sold to the said Kamindo.
39. She said that in the deceased's wishes he says he sold 20 acres and 5 acres. There was 20 acres of Alice and 20 acres to the Agnes by deceased to educate her children. The problem is that Alice family has problem with the property left in Lukenya. It was her testimony that Masii/Vyulya 1457 was her home and she has 2 children – Michael Makau Mutuku/Syano – 29/9/1984 - 39 years old and Alice Atalia Ndonye.
40. She said she lived with Mutua Makau and he left her with the 2 children and the daughter was 3 months and she was not anyone's wife. She was not aware that Masii/Vyulya/1457 was to be in the Administrator's name. It was her testimony that 3 of my brothers who have been left are deceased and their wives and children are there. She said that Achim, Eliud & Yudah settled on Lukenya. Yudah is the husband of Priscillar. Yudah died in 2009, Achim in 2010 and Eliud died in 2001 after the deceased died. When succession cause was filed they were deceased. The Masii/Vyulya/1457 has not been distributed and that is where all the family members are settled. She said they were not called to the summons for confirmation. Priscillar Mumbua Mathii – beneficiary through the husband Judah Nthao Syano to get 24 acres.
41. It was her contention that they have had meetings but could not agree, they went to the chief to stop the sale of Lukenya land by Yudah and his wife Priscillar and the land was sold. Priscillar Mumbua Mathii has put aberration and she was working at all the family land. They were at the meeting with her brother. Her son Mutuku was alive and was not there. She said that Mutuku was not her boyfriend and we lived come we stay for 6 - 7 years, she denied being married.
42. Upon re-examination, she said that she was not included in the Summons for confirmation of grant. Mutuku was left at the time my father made the wishes. Her father said she live in her mother's home and Michael was to live in Lukenya/Mavoko and when she was to at her mother's home, Kimani came and told her Wilfred, one of the administrators, sold land in Lukenya to stay with me and then constructed the home. Kimani has big land in Mombasa. Michael did not get land as her father said. Judah and Priscillar sold land and we stopped the land being sold. The land was sold as my father died and without the grant of Petition filed. Judah and Priscillar lived together and they had a dispute and Priscillar went to Emali. They parted along time ago.



43. AW.3 Alice Atalia Ndonge testified that Josephine Nzisa Syano was her mother whose home is Masii she was given land by the grandfather and in 2020. She said she lost my job and spoke to uncle Fredrick Kimani Syano and requested if it was okay to renovate the home and he agreed. She indicated that she began renovation in September 2020 and was done in mid November .Thereafter, her uncle Fredrick changed his mind and said the home did not belong to my mother but to all family. She went back to Nairobi and told her mother what happened in the village and she called the family chairman Dennis Ndonge who called for an emergency meeting in the village. Her mom’s cousin Daudi was to chair the meeting informed uncle Kimani that my mother had a right to stay in that home as per her dad’s wishes. During that meeting Kimani was informed that her mother was to live there as per her father’s wishes. Fredrick refused and said the home was for all family. The last born to the mother’s family Wilfred Manase Syano was also stay in the house because the property he was given in Lukenya/Mavoko Town 3/2429had been sold.
44. AW3 indicated that their home is in Masii/Vyulya/1457. Her grandfather’s wished 3 people were to settle in Lukenya and the rest to settle in Masii. A month later a bigger meeting was called with all family members present and it was agreed my mother and Wilfred Manase will share the house she renovated. She said her mother raised concerns there is no place to farm and she was told to come and conduct a search of Lukenya – Mavoko. She contended that it was not her grandfather’s wishes that those who were to resides in Lukenya sold and come back to Masii. The title deed of Mavoko moved from her grandfather’s name to Priscillar Mumbua wife of 4th Respondent to 1st born brother – to my mom Judah Syano (deceased) and Andrew Mbaluto 3rd Respondent.
45. She said she came to the Court Registry and upon search of her grandfather’s name there was a succession cause/process initially started and there was the Register that showed the matter was filed but had not been placed before any Judge. I was given the Case no. 181 of 2014. She went to AW1’s offive and confirmed that he started the process of succession and Agnes Syano 2nd wife to deceased and Wilfred Manase cancelled the succession as they could not raise kshs.80,000/-. They withdrew instructions from him and he did not pursue the matter.He assisted her to conduct search of 2 properties in Lukenya. 2 names Priscillar Mumbua’s portion was subdivided to 32 people/portions and Andrew Mbaluto’s was intact.
46. AW2 advised her to get another lawyer due to conflict of interest and got the lawyer who applied for reconstruction of the court file as it was missing from the Registry. The Petition did not include of her uncles who are now deceased. They were Judah Syano (Lukenya), Eliud Musembi Syano (Masii) and Achim Ndunda Syano (Masii). They had family and settled. The certificate of confirmation of Grant of 3/06/2016 the 3 children of the deceased are missing.
47. She said that when her grandfather died in 2002, Manase and Judah settled in Lukenya and the relatives was sold land in Lukenya. The chairman was informed – Derrick who wrote to the chief to stop the sale of land and had a meeting with the chief. Petition is on 2014 and confirmation is of 2016. The purported sale was of 2005 and it should have been done after the grant was issued and confirmed. The Lukenya land as per my grandfather wishes was to be subdivided among 3 people Judah Syano, Wilfred Manase and Michael Makau (my brother) as my mother was not married by the time my grandfather died. She contended that there were properties already sold in Lukenya before the petition and confirmation of Grant.The buyers are not included in the Certificate of Confirmation of Grant. She said she and Makau had not gone to any court on confirmation of grant.
48. Upon Cross examination, she said that she is a beneficiary through her mother. She said she was born in 1989 and Julius Syano died in 2002 at which time she was 11-12 years old. She said she was there with her mom and brother and all her mom’s brothers were there.Prior to his death , the decease herein sold



- 25 acres before his death. He sold to Kimindo Ndunda 20 acres. According to the agreement of sale 20 acres was transferred to Jonathan Makau K. She said that her grandfather signed the agreement but could not confirm if the signature was his. She did not have any claim to the land sold to Andrew Mbaluto the agreement is there.
49. It was her contention that no one has come to claim 5 acres sold by her grandfather. The 3 uncles and her brother Michael is alive. She said that her mother is not entitled to get a share of Lukenya but though Michael her brother and the 20 acres to be divided amongst 3 persons, 2 uncles and my brother. In 1990 her mother was married to late Alexander Makau Mutuku. She said that Uncle Judah & uncle Manaseh sold land in Lukenya and the house/Home/plot in Masii is a 3 bedroomed home and 2 extra room outside. The house belonged to Julius & Alice Syano. Wilfred Manase is a son to both parents. He had a place in Lukenya and he sold property. Wilfred lives in Mombasa. The grant was confirmed without my knowledge as my mother could not understand the documents her mother is old, she relies on me.
 50. It was her testimony that Priscillar is not a beneficiary of the deceased's estate, she was married to my uncle but she listed the property. She said her brother has been missing ;he calls, he resurfaces and he calls home. They have not received any news, any information or his body. He has children. Priscillar placed a restriction in 2014 to stop intermeddling of the land.
 51. She said she has pictures to show they have been harassed on the Masii property Fredrick Kimani has been chasing them from the house. She had a meeting with Priscillar I gave her summons and she told me her she had the certificate of Confirmation of Grant and she gave to me. In August 2022 Priscillar confirmed that she got 3 acres and 5 acres in her documents and she got a buyer and she was paid Kshs.21,000,000/-.The meeting was on 23rd August 2022 before the family before the hearing on 5/09/2023 chairman Derrick Ndonye, Priscillar Mumbua, Ndolo (Priscillar's son), mom, Alice, Daudi, Mackenzie Uncle Kimani, uncle Manase, wife to Achim Ndunda Margaret wife to Mwambi, Marietta uncle Fredrick wife, cucu Agnes grandpa Jacob etc.
 52. Priscillar, her son and us at the meeting and she came clean that she had land in Lukenya and sold. Her mother said they have property. The property was divided into - 32 people settled and managed to get 3 acres and on 23/08/2022 she sold property for 2.1 million.
 53. Upon reexamination, she said that Judah and Manasseh had sold the Lukenya land .In 2017 they had 1st meeting she was the secretary and Priscillar was to go to Lukenya. There was information not revealed before the confirmation of grant and thereafter. She said the certificate of confirmation of Grant is not according to her grandfather's wishes. She spent kshs.891,000/- on renovation in September 2020 – November 2020.

Respondent's Case

54. DW.1 Agnes Mueni Syano Stated that she was the wife/widow of Julius Syano. The 1st widow is deceased. She said the deceased left his wishes, he had 65 acres and were dispersed all over the area – 45 acres, 5 acres sold and refunded money by deceased ,60 acres – Kitanga land 20 acres sold deceased 40 acres – 2 widows were to get ½ each. She said she got 20 acres. She contended that the deceased sold to Kimindo Ndunda Nthei for school fees of her children. My land sold to Jonathan Mutuku. John Mutuku sold to Andrew Mbaluto – 3rd Respondent. She indicated that she had no problem with the sale of land.
55. Upon Cross examination, she said that she knew what she was expected to do as an administrator. She complied with wishes of the deceased in Lukenya/Mavoko Town Block 3/2439 . Josephine was



- allocated land in Lukenya ,Manase and Judah sold land and lived there. Josephine's son Michael lived at Lukenya and Manase and Judah sold the land. Josephine discovered sale of land by Judah and Manase.
56. She said they have 2 houses in the family of deceased. she represented of the 2nd house and the co-wife was representing the 1st house. She had no minutes to confirm how I was chosen. She said that Judah, Eliud and Achim are missing in the list of 24/1/2014. The 3 who are not named were not included as they were deceased and their wives and children were left out. They were also left out in the Certificate of confirmation of 3/06/2016. She said that together with Manase and Priscillar the wife of Judah went to Advocate Mr. Mutinda and gave their names and we asked why 3 of the children were not written. The advocate stated that they could be left out as they were deceased and they did not know we were to include the deceased members of the family. She said she saw the confirmation of grant at the lawyer's office and did not come to court.
 57. In re- examination, she said that the minutes were not necessary to confirm if she was appointed Administrators. She said they came before the Judge and had the grant confirmed.
 58. RW.2 Priscillar Mumbua Mathii Said that deceased was her father in law and Judah Nthwao Ndonge was her late husband. Their father last wishes, Judah, Manase and Michael (Josephine's son) were to reside on Mavoko Town Block 3/2439. Her husband was in Nairobi and was to build in Lukenya Mavoko Town Block/32439.
 59. In Cross – examination She said that her husband sold properties and others were left including Mavoko Town Block 3/2439. in 2002 and she discovered this sales in 2005. She and Josephine were reported to the family that land was sold. Derrick Ndonge chairman wrote us a letter and we took it to the chief. The purchasers went to them to process transfer of property sold . They went for meetings and were advised to allow the purchasers to stay on the land and what remained could be distributed by the family to us. The chief told us to ensure the succession cause was filed and filed in 2014. When she got the grant/confirmation of grant she could sit with the purchasers. She said that she was in charge as father, mother and deceased were not there. She said that hen they saw the certificate of confirmation of grant of 3/06/2016 they did not know that we were to bring other beneficiaries/purchasers who were 28 of them. She said that before the succession cause was filed the property of Julius Syano Ndonge was sold by Manaseh and Judah. She got 5 acres after the sale. In the certificate of confirmation of grant she was given 24 acres and at the chiefs officer the distribution was done there were 28 people purchasers.
 60. She contended that her father in law had indicated land was for Judah and Manaseh. Michael got land but she did not give him title. She said they sold 5 acres and Michael was to get Khs.1,000,000/-. She had no evidence that he got the money.
 61. She further contended that they were helped by D. M. Mutinda. The beneficiaries were not called to come to court and were told to come only 3 of them as Advocate advised; Agnes Mueni Syano 2nd wife – Julius (deceased), Manaseh Administrator – 1st house and Priscillar Mumbua w/o Judah S/o (deceased) She said that Eliud & Achim families were not awarded. They did not know that they were to be included and ought to have attended court.
 62. In Re-examination she said that Josephine told her that the shamba was sold. They discussed the matter of sale of land in 2014 and Josephine was involved. The certificate of confirmation did not include the purchasers as they did not buy from deceased but from the sons of deceased. Michael did not get any land/Kshs.1,000,000/- and the money is still there. The minutes of the Ndonge family held at Fredrick Kimani Syano home were signed by all except Josephine.



Applicant's Submissions

63. The Applicant filed submissions on 24.11.2023 in which two main issues were raised. First, that the grant was defective in substance in that the purported confirmation of grant was irregular and thus invalid. It was submitted that from the evidence and the registry records, this court should take note that the proper procedure was not followed in the purported confirmation of grant. It was submitted that the Respondents have not provided the original copies of the Petition for grant of letters of administration intestate in this matter or the purported certificate of confirmation of grant nor the application for summons of confirmation of grant, the affidavit and the consent to confirmation of grant. The gazette notice was also not provided.
64. Secondly, it was submitted that the application for confirmation of the grant of letters of administration intestate made false statements or concealed material facts and that some of the deceased's children had not been included as beneficiaries. Further that it was not disclosed that the deceased had expressed his wishes on how he wanted the estate to be distributed.

4TH Respondent Submissions

65. It was submitted that it was not in dispute that both houses were represented in the Petition for grant of letters of Administration and that during the lifetime of the deceased, he expressed his wishes over the distribution of his estate and the family had several meetings in a bid to honour this wishes. It was contended that the Applicant was well aware of the third party's buyers entitlement to a share of the estate and was being economical with the truth. Further, that no other beneficiary is opposed to the confirmed grant save for the Applicant herein who actually gave her consent to the 1st and 2nd Respondents being the administrator. P & A 37 was sent to the Applicant and included in the distribution list as a beneficiary and the Applicant did not file any objection to her proposed distribution.
66. The 4th Respondent contends that it is a rightful beneficiary of the estate and did not intermeddle with the estate. Reliance was placed on the case of *Re Estate of the late M' thigai Muchangi (Deceased)* [2020] e KLR, *Re estate of Kiberenge Mukwa (deceased)* [2021] e KLR.

Analysis & determination

67. I have perused the Summons for Revocation of grant, the Affidavits on record, the evidence submitted and the submissions by parties. I find that the issues for determination are;
- i. Whether the grant issued on 20/1/2015 and confirmed grant dated 30th May 2016 should be revoked.
 - ii. Whether there was/is intermeddling of the estate.
68. Section 76 of the *Law of Succession Act* is a proviso on the grounds upon which a grant can be revoked or annulled. It provides thus;
- “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.”

69. This section was discussed in *re Estate of Prisca Ong’ayo Nande (Deceased)* [2020] eKLR where it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

70. In *Jamleck Maina Njoroge vs. Mary Wanjiru Mwangi* (2015) eKLR, the court discussed circumstances under which a grant can be revoked. It said:

“ 11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of a first applicant or on the court’s own motion there must be



evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

71. The Applicant contends that the said grant was obtained fraudulently by making of a false statement and by concealment from the court of material facts that would have otherwise made the court refuse to make the grant of representation should it have been seized of the correct facts and information.
72. The applicant, Josephine Nzisa Syano be issued with a grant of representation in respect of the estate of Julius Syyano Ndonye (deceased)
73. Pending the hearing and determination of the Summons the Court issues orders restraining the Respondents from alienating and/or transferring any interest in and /or in any way dealing with the following properties; Muputi/Kiima/Kimwe/ 400; Masii/Vyulya/1457 Mavoko Town Block 3/2439 & 1 share Wendani/Matuu Farming society.
74. The Applicant stated that there was intermeddling of the estate and that some of the beneficiaries had been left out.
75. the certificate of confirmation of grant has divided the estate among the following;
 - a. Agnes Mueni Syano widow
 - b. Wilfred Manase Syano son
 - c. Josephine Nzisa Syano daughter
 - d. Fredrick Kimawni Syano son
 - e. Davidson Wambua Syano son
 - f. Danson Kioko Syano son
 - g. Deborah Nthenya Syano daughter
 - h. Joyce Mukulu Syano daughter
76. The Applicant alleged that Judah Nthwao Syano, Eliud Musembi Syano and Achim Ndunda Syano were left out and this has not been contested by the Respondents.
77. From the evidence Yudah died in 2009, Achim in 2010 and Eliud died in 2001. The deceased in this case died on 21.8.2002 and the application for letters of administration made in 2014. This position has been confirmed by AW1, AW3 ,RW1 and RW2. The Respondent witnesses admit to the said beneficiaries being left out but they did not know that they were to be included in the summons as advised by their lawyer.
78. This file is marked skeleton file and appears to have been reconstructed from the copies of documents and pleadings filed herein without court proceedings and conspicuously missing the Summons for Confirmation of Grant that lists beneficiaries, assets that comprise of deceased’s estate and proposed mode of distribution and written consents of ALL beneficiaries ID Nos and signatures in agreement to content of the Summons for Confirmation of Grant.
79. Secondly, the copy of Chief’s letter dated 25/11/2015 that processed the Petition for letters of administration intestate did not disclose ALL members of the deceased’s family. The Copy of Chief’s letter dated 24/9/2021 attached to the Applicant’s Summons for Revocation shows the deceased dies



on 21/8/2002, he had 2 wives, Alice Munece 1st wife who had 6 children and 2nd wife Agnes Mueni syano with 4 children.

80. The Applicant daughter of 1st Wife Alice Munece who died in 1992 disclosed her siblings who were left out in the Petition as

Judah Mthwao Syano (deceased)

Eliud Musembi Syano (deceased)

Achim Ndunda Syano (deceased)

And they must have families spouse and /or children, the disclosure was not made during obtaining of grant proceedings as required by Section 51 of LSA.

81. Thirdly, both the Applicant and Respondent admit to the deceased's instructions on distribution of his estate and each attached Letter/Note/Agreement/ minutes of Meeting where deceased told his family his wishes and are written down in Kamba and translated. If that be the case then was this a case of obtaining Grant of Probate with Will annexed or not. If as alleged the Respondent /Administrators followed the deceased's instructions from the Certificate of Confirmation of Grant they have held onto properties in trust for beneficiaries but never commenced distribution instead various sales of land are referred to in particular to Homeward Agencies Limited 20 acres which they claim they sold together with Jonathan Mutuku Kioko who had bought from the deceased. Mavoko Town Block 3/2439. If Joseph Mutuku Kioko was /is creditor to the deceased's estate that ought to have been disclosed in the Summons for confirmation so as to hive off the sold portion as not being available for distribution.
82. Fourthly, lists beneficiaries of deceased's estate only Priscilah, the wife of Yudah was included in the proceedings at the point of sale of property but not in the pleadings as representing her late husband / beneficiary of the estate. There is a mention of Eliud Musembi Syano and Achim Ndunda Syano having families but no further information has been presented to the court for consideration.
83. The law requires that when filing for letters of administration, Section 51 (2) of the [Law of Succession Act](#) provides that;

“ An application shall include information as to—

- (a) the full names of the deceased;
- (b) the date and place of his death;
- (c) his last known place of residence;
- (d) the relationship (if any) of the applicant to the deceased;
- (e) whether or not the deceased left a valid will;
- (f) the present addresses of any executors appointed by any such valid will;
- (g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;
- (h) a full inventory of all the assets and liabilities of the deceased; and
- (i) such other matters as may be prescribed.



84. The Applicant seeks to have the grant revoked or annulled is 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. In this case, the administrators declared the surviving beneficiaries only at the time of making the application for confirmation It is fatal not to declare the ones who are deceased and as such I find that this ground for revocation of the Confirmed grant has been satisfied to this extent.
85. In addition, It is not I dispute that the deceased expressed his wishes on how he wanted his estate to be distributed..
86. According to the confirmed grant, the estate property is;
- a. 1/3 share of the property known as Muputi/Kiima-kimwe/400
 - b. Plot Number 1457, Situate in Vyulya in Masii
 - c. 1 share in Wendano wa Matuu Farming Society
 - d. Mavoko Town Block 3/2439 44 acres
87. The first three properties are to be held in trust by the administrators for;
- a. Josephine Nzisa Syano daughter
 - b. Fredrick Kimawni Syano son
 - c. Davidson Wambua Syano son
 - d. Danson Kioko Syano son
 - e. Deborah Nthenya Syano daughter
 - f. Joyce Mukulu Syano daughter
88. From the documents produced in the form of annexures to the affidavits, this court has been able to see the following title documents;
- a. A certificate of search for Mavoko Town Block 3/53382 in the name of Andrew Mbaluto Musila and the title deed was issued on 22.9.2016
 - b. A title deed dated 22nd September 2016, Mavoko Town Block 3/53382 measuring 8.09Ha is registered in the name of Andrew Mbauto Musila
 - c. A title deed dated 28th September 2016, Mavoko Townn Block 3/54611 measuring 2.055 Ha registered in the name of Priscillah Mumbua Mathii
 - d. A title deed dated 22nd September 2016, Mavoko Town Block 3/53381 measuring 9.73 Ha registered in the name of Priscillah Mumbua Mathii
89. The deceased person whose estate is in question died on 21st August 2004 and the grant was confirmed on 3rd June 2016. That means that any transaction with regards to land that was done between this dates was void. The above titles appear to have been issued after the grant was confirmed but the process leading to the transfer was done before the grant was confirmed. In addition, there is a document titled “Authority To Pay” that indicates as follows;

“We Agnes Mueni Syanoand Wilfred Manase Syano hereby irrevocably authorize Homeward Agencies Limited To Pay Jonathan Mutuku Kiokoall the sale proceeds for



the sale of Twenty (20) acres piece of land comprised in the parcel of land known as Mavoko Twn Block 3/2439.

The said Twenty (20) aced piece of land being sold Homeward Agencies Limited Is Jonathan Mutuku Kioko's entitlement in the said parcel of land.

.....”

90. There is an agreement for sale made on 11th September 2015 between Agnes Mueni Syano, Wilfred Manase Syano and Jonathan Mutuku Kioko as the vendors and Homeward Agencies limited .

91. There is also a supplemental agreement dated 20.01.1994 that indicates as follows;

And Whereas Jonathan Mutuku Kioko had bought a portion of parcel No 406 situate within Lukenya Ranching And Farming Co-operative Society Limited and containing by measurement Twenty acres (20 acres) from Kimundu Ndinda Nthei

And Whereas the said Kimundu Ndunda Nthei did not transfer the said portio to Jonathan Mutuku Kioko as he sold it to another person.

And Whereas Kimundu Ndunda Nthei has agreed to exchange /transfer / substitute the portion of parcel no 2439 bought from Julius Syano Ndonye with the said parcel no 406 containing twenty acres.

92. It was a term of this agreement that the portion of parcel 2439 (20 acres) should be surveyed and excised from the main parcel and registered in the name of Jonathan Mutuku Kioko

93. The second agreement is between Agnes Mueni Syano , Wilfred Manase Syano & Jonathan Mutuku Kioko And Homeward Agencies Limited for twenty acre piece of land comprised in LR Mavoko Town Block 3/2439 dated 11th September 2015 where the vendors are selling as administrators of the estate of Julius Syano Ndonye (Deceased) that made reference to the supplemental agreement quoted above. In the agreement, it is said that Jonathan Mutuku Kiokoa is the beneficial owner of twenty acres

94. The Respondent attached a Sale Agreement to her Replying Affidavit dated 15/2/2003 where the Applicant and representatives of the omitted beneficiaries Judah, Achim and other beneficiaries agreed signed the Agreement to sell and sold Muputi/Kiima/Kimwe/400 to Jackson Kiilu Kivinda before filing for Succession proceedings to obtain a grant in Nairobi High court.

95. Section 82 (b) (ii) of the Law of Succession Act outlaws sale of immovable property of the estate before a grant has been confirmed. The provision says: “No immovable property shall be sold before confirmation of the grant.”

96. The court had to deal with that in Virginia Mwari Thurania vs. Purity Nkirote Thurania [2017] eKLR (Gikonyo J), where it said:

“ As for the assertion that the Respondents mother sold 1 ½ acres of land to Elias Mugambi Mwongera, I have this to say. The said sale agreement is null and void for violating Section 82 (b) (ii) of the Law of Succession Act, as the said Julia Thurania had not obtained Letters Administration of the estate of the deceased at the time of the alleged sale. The property of a deceased person vests in the legal representative and constitutes the estate of the deceased person. It is only the legal representative of the estate or a person under the authority of the written law shall have authority to deal with the estate of the deceased, but in accordance with the grant or authority of the written law or order of the court... Therefore, until a legal



representative is appointed in intestacy, any act done in respect of the estate of a deceased by a person without authority of the law amounts to intermeddling, illegality and is a nullity.”

97. In re Estate of Zacheaus Sumani Kadagale - Deceased [2021] eKLR where the court said that;

“By virtue of these provisions and the judicial pronouncement in Virginia Mwari Thurania vs. Purity Nkirote Thurania [2017] eKLR (Gikonyo J), with respect to such sales, the sale transactions relating to Nyangori/Gemalenga/289 were null and void, as the same were done before representation had been granted to the estate. However, this being a succession court whose mandate is limited to the ascertainment of beneficiaries and assets of the deceased, I cannot proceed to deal with issue of ownership of land, as the same is a reserve of the Environment and Land court and the magistrate’s court with jurisdiction over land matters, and, therefore, the same should be addressed in that court.”

98. This court is also guided by the finding in re Estate of Jamin Inyanda Kadambi (Deceased) [2021] eKLR where it was stated that;

“A valid sale of estate property can only be by those to whom the assets vest by virtue of section 79, and who have the power to sell the property by virtue of section 82. Even then, immovable assets, like land, such as Kakamega/Kegoye/30, cannot be disposed of by administrators before their grant has been confirmed, and if land has to be sold before confirmation, then leave or permission of the court must be obtained. That is the purport of section 82(b)(ii) of the *Law of Succession Act*. Clearly, the sale transaction that was carried out by the administrators was contrary to sections 45 and 82(b) (ii) of the *Law of Succession Act*, and was invalid for all purposes. It cannot be asserted at all, and am surprised that persons to whom administration of the estate herein can purport to support a sale transaction that was carried out contrary to the very clear provisions of the law.

a. For avoidance of doubt, sections 45, 79 and 82 of the *Law of Succession Act* provide as follows:

b. “45. No intermeddling with property of deceased person

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall

—

be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

“79. Property of deceased to vest in personal representative

The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”



“82. Powers of personal representatives

Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;

to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that—

ii. no immovable property shall be sold before confirmation of the grant...”

99. The Applicant contends that the wishes of the deceased were not adhered to. I have perused there is a translated document alleged to be written by the deceased herein that states as follows;

“ 1) 1) Regarding the land at my home in Vyulya measuring 36 acres, this is how I have distributed it on this day 1/6/97 in the presence of the following children;

1. Judah Nthwao Syano
2. Eliud Musembi Syano
3. Fredrick Kimani Syano
4. Achim Ndunda Syano
5. Wilfred Manase Syano
6. Nzisa Syano

Those that are not present are Wambua Syano and Kioko Syano and two daughters Mukulu and Nthena.

Those that shall settle here are (1) Musembi, Ndunda, Wambua and Kioko- if Nzisa does not get married she will remain in her mother’s house until when Maiko gets a job and his place shall be in Lukenya.

- 2) All the land at Lukenya measures 65 acres. I sold 5 acres to refund Musembi’s wife the money because Musembi had bought that land with his money and when she decided to separate from Musembi she demanded to be refunded her money and I had to sell the land so that I could refund her the money and that is what I did.
- 3) The land at Kitanga is that I used to obtain money for my support and I sold it. the land that measured 40 acres I divided between my 2 wives or families according to Kamba tradition (1) the house of Alice Munee (2) of the house of Agnes Munee (Mueni). I sold the land belonging Agnes Mueni’s family so that I could educate her children and so her family no longer has an inheritance at Lukenya.
- 4) The remaining land belongs to the family of Alice Munee and that is where the following people from Alice’s family will settle (1) Judah Nthwai (2) Manase Syano (3) Maiko Nzisa (If his mother does not get married)



100. It is not in dispute that the parties were summoned by the chief and the chief wrote a letter to the administrators seeking to stop the sale of all the property until the sub division process is started. The Summons for Confirmation application is missing and this Court cannot vouch as to the process of confirming the grant, certain members of the family of the deceased were left out even if deceased they have families to represent them and ought to be factored in , the distribution of the estate was /is held up todate since 2016 Administrators have held the properties in trust for the other beneficiaries and instead engaged in sale of land before distribution. The various sales if disputed shall be subject to hearing and determination before ELC Court as the proper forum.

Disposition

101. In the end, any transaction that was done before the grant was confirmed is null and void, the transactions were founded on an illegality. As such I issue the following orders;
- a. The grant of letters of administration 20/1/2015 and confirmed on 30th May 2016 is hereby revoked
 - b. A fresh Grant be issued including the Applicant Josephine Nzisa Syano & 2 former Agnes Mueni Syano & Wilfred Manase Syano & Frederick Kimani Syano
 - c. Family members to meet discuss and possibly agree on way forward with regard to distribution of deceased's estate and they may employ Court annexed mediation process and appear before DR MHC for screening.
 - d. Summons for Confirmation to be filed within 6 months of issuance of Grant
 - e. confirmation of grant to be taken out within 60days of this ruling
 - f. The Court orders preservation of deceased's estate under Section 45 LSA restraining the Respondents from alienating and/or transferring any interest in and /or in any way dealing with the following properties; Muputi/Kiima/Kimwe/ 400; Masii/Vyulya/1457 Mavoko Town Block 3/2439 & 1 share Wendani/Matuu Farming society until distribution of deceased's estate.
 - g. All disputed sale agreements shall be subject to hearing and determination before ELC
 - h. No demolition, destruction blockage of access, interference with use occupation access by beneficiaries Administrators and family of the deceased shall be allowed on the assets that comprise deceased's estate
 - i. Any aggrieved party may apply.
 - j. Each party to pay own Costs

It is so ordered.

**JUDGMENT DELIVERED SIGNED DATED IN OPEN COURT ON 31/5/2024 IN MACHAKOS
HIGH COURT VIRTUALLY/PHYSICALLY**

M.W. MUIGAI

JUDGE

