

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KENYA
SUCCESSION APPEAL NO E005 OF 2024

AMWAYI ANYANGU WOMUKA.....1ST
APPELLANT

FRIDAH AMWAYI ANYANGU.....2ND
APPELLANT

EUNICE SHIKUKU AMWAYI.....3RD
APPELLANT

VERSUS

ELEANOR JEMAIYO NANDWA.....1ST
RESPONDENT

MELODY KAMBIHA.....2ND
RESPONDENT

“This appeal arises from the ruling and consequential orders of the Hon E. N. Wasike, Senior Principal Magistrate at Butere, delivered on the 25th of April 2024. The trial court dismissed with costs the appellants’ summons for the revocation and annulment of the grant of letters of administration issued to the respondents and the subsequent certificate of confirmation of grant”

JUDGMENT

1. Solomon Bhaddy Amwayi, died intestate on the 31st of October 2021. Following his death, the respondents, Eleanor Jamaayo Nandwa, who is the surviving spouse and Melody Khaimba, the wife’s sister in law, petitioned for and were issued with a grant of letters of administration intestate on the 11th of March 2022.

2. This grant was confirmed on the 28th of June 2022, distributing the estate to the surviving spouse and the four children of the deceased namely:
 - a. Jayson Amwayi
 - b. Blaire Ashley Amwayi
 - c. Blake Akim Bhaddy
 - d. Blaine Adriel Bhaddy .
3. The appellants, Eunice Shikuku, Amwayi Anyanga, and Blake Akim Bhaddy, subsequently raised objections. Their core grievances, as crystallized in their application for revocation dated 9th March 2023 and the present appeal, are:
 - a. That the 1st and 2nd appellants who include a parent and a sister of the deceased, were wrongfully excluded as beneficiaries from the succession proceedings.
 - b. That the motor vehicle registration number KBQ 876V, a Peugeot saloon, which the deceased had allegedly sold to the 1st appellant, was not included as an asset of the estate, prejudicing the completion of its transfer.
4. The trial court found these objections to be without merit. Aggrieved, the appellants have lodged this first appeal, raising eight grounds which fundamentally challenge the court's evaluation of evidence, application of the law of succession, and its failure to rectify the confirmed grant.

5. This court, having considered the pleadings, the grounds of appeal, and the submissions of counsel, frames the following issues for determination:
- a. Whether the trial court erred in law and fact by dismissing the application for revocation of grant.
 - b. Whether the parents and siblings of the deceased have a rightful claim to a share of his intestate estate where he is survived by a spouse and children.
 - c. Whether the alleged inter vivos transaction concerning motor vehicle KBQ 876V constitutes a matter for revocation of grant or a separate civil claim.

Analysis

6. This being an appeal, the duty of the court is to analyze a fresh evidence adduced at trial, re-evaluate and reconsider it so as to reach an independent determination bearing in mind the fact of not having seen or heard witnesses who testified. This was insisted in the case of **Selle & Another v Associated Motor Boat Co. Ltd & Others [1968] EA 123**, as the court stated that;

“This being a first appeal, it is trite law, that this court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this

court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.”

7. Section 76 of the Law of Succession Act, provides that:

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;

8. The court has inherent jurisdiction under Rule 73 of the Probate and Administration Rules to make such orders as are necessary for the ends of justice.

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be

necessary for the ends of justice or to prevent abuse of the process of the court.”

9. Administration of estates in Kenya is governed by the Law of Succession Act (Cap 160). Section 66 (a) provides the following order of preference:

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference...(a) surviving spouse or spouses, with or without association of other Beneficiaries”

10. **Section 35 of the Laws of Succession Act**, governs the estate of a deceased person who is survived by a spouse and children. The surviving spouse shall be entitled to a life interest in the whole of the net estate. Upon the demise of the surviving spouse, the estate shall devolve to the children of the deceased in equal shares. If the surviving spouse remarries, their life interest ceases and the estate passes directly to the children.

“(1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to:

(a) the personal and household effects of the deceased absolutely; and

(b) a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.

(2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.”

11. The deceased was survived by a lawful spouse as evidenced by a marriage certificate and children. Consequently, by operation of law, the entire net estate is held in trust for the benefit of the surviving spouse during her lifetime, with the children as the ultimate, absolute beneficiaries. There is no residual portion, share, or discretionary interest left for distribution to the deceased’s parents, siblings, or any other extended family member under this provision. The court in **Re**

Estate of JOO (deceased) [2014] eKLR while discussing the issue of who ought to benefit from the estate of the deceased stated that:

“Where a deceased person is survived by a spouse and child or children, the other relatives are not entitled to a share in the estate of such a person. The spouse and children are entitled to the estate to the exclusion of all others.”.

12. The appellants’ primary contention is that the respondents intentionally and fraudulently excluded the deceased’s parents and sister from the proceedings, thus warranting revocation of the grant under Section 76 of the Laws of Succession Act. **In Kagau & another v Kagau & another (Civil Appeal 477 of 2018) [2025] KECA 696 (KLR) (11 April 2025)**, it was held that:

“Failure to disclose all legal heirs constitutes a valid ground for revocation of a grant. The High Court, on a preponderance of all the facts and evidence placed before it, found that the appellants had knowledge of the 1st respondent’s relationship with the deceased and the children’s dependency but omitted them from the list of beneficiaries, making the grant defective.”

13. This contention is legally unsustainable. For a grant to be revoked on grounds of concealment of beneficiaries, the persons concealed must be lawful beneficiaries as defined by the Law of Succession Act. As established above, under Section 35 of the Act,

where a spouse and children survive, parents and siblings are not beneficiaries entitled to a direct share of the estate.

14. The trial magistrate was therefore correct in finding that their exclusion, even if deliberate, did not constitute a concealment of a material fact that would invalidate the grant. The respondents had no legal obligation to list them as beneficiaries in the petition or the schedule of distribution. Their role as reported in the chief's letter is merely informative of the family tree but does not confer a beneficial interest.
15. The claim regarding the Peugeot motor vehicle presents a different question. The 1st appellant claims it was sold to her by the deceased before his death, while the 1st respondent acknowledges an agreement to transfer it but cites procedural hurdles.
16. This dispute does not, in itself, justify the drastic remedy of revoking the entire confirmed grant. The jurisdiction of a succession court is primarily to identify, preserve, and distribute the net estate of the deceased, that is, assets owned by the deceased at the time of death. A dispute over whether an asset ever formed part of the estate, because it was transferred inter vivos, is a proprietary claim between individuals that falls outside the summary succession process.
17. This court observes jurisdiction while adjudicating succession matters. This court cannot delve into intricate disputes over ownership of assets claimed by third parties. The proper recourse for the 1st

appellant, if she maintains her claim, is to file a separate civil suit to enforce the alleged sale agreement or claim specific performance. The succession court cannot resolve this contested question of contract and ownership within these proceedings.

18. On the prayer for rectification of the grant, the appellants pray, in the alternative, for the grant to be rectified to include them to enable them to receive a share from a pending civil suit, Molo CMCC No. 17 of 2022.

19. This prayer is misconceived. Any damages awarded in a suit under the Law Reform Act and Fatal Accidents Act for the death of the deceased are new assets that accrue to his estate. The administration of that estate is already vested in the confirmed grant holders. **Section 2(5) of the Law Reform Act** states

“(2) Where a cause of action so survives for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person:

(5) The rights conferred by this Part for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependents of deceased persons by the Fatal Accidents Act or the Carriage by Air Act, 1932, of the United Kingdom, and so much of this Part as relates to causes of action against the estates of deceased

persons shall apply in relation to causes of action under those Acts as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).”

Conclusion

20. Any award likely to be awarded in Molo CMCC No. 17 of 2022, shall be distributed according to the provisions of the Law Reform Act and Fatal Accidents Act, but not under the Law of Succession Act.
21. For the exhaustive reasons set forth above, this court finds that the learned trial magistrate arrived at the correct conclusion, albeit this court’s path of reasoning differs on the specific application of the law of intestate succession.
22. The appeal is entirely devoid of merit. The appellants, not being beneficiaries entitled to a share under Section 35 of the Law of Succession Act, lack the legal standing to challenge the distribution. Their grievances, while perhaps rooted in familial expectations, find no support in the statutory succession regime established by Parliament.

Orders

23. Consequently, the final orders of this court are as follows:
 - a. The appeal lodged against the ruling of the Senior Principal Magistrate’s Court at Butere in Succession Cause No. 10 of 2022 delivered on 25th April 2024 is hereby dismissed.
 - b. The ruling of the lower court dated 25th April 2024 is hereby upheld.

- c. The certificate of confirmation of grant issued on 28th June 2022 shall stand as presently constituted.
- d. Each party shall bear its own costs of this appeal.
- e. Right of appeal in 30 days explained

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA 17th DAY OF DECEMBER, 2025.

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

In absence of the parties and their advocates, though aware of the judgment dates