

KENYA / JUDGMENT

In re Estate of Isigi (Deceased) [2026] KEHC 12681 (KLR)

[2026] KEHC 12681 (KLR)

COURT

High Court

BEFORE

RN Nyakundi

CASE / FILE NUMBER

Succession Cause 5 of 2021

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REPUBLIC OF KENYA

IN THE HIGH COURT AT VIHIGA

SUCCESSION CAUSE NO. 5 OF 2021

(FORMERLY KAKAMEGA HIGH COURT SUCCESSION CAUSE NO. 282 OF 2005

ORIGINALLY ELDORET HIGH COURT CIVIL SUIT NO. 7 OF 1991)

IN THE MATTER OF THE ESTATE OF LAWRENCE KIRUNGA ISIGI (DECEASED)

SAMMY INGUUVU ISIGI ADMINISTRATOR/PETITIONER

AND

RADCLIFFE KIRUNGA ISIGI 1ST OBJECTOR/PROTESTOR

ROSELINE AGIZA ISIGI 2ND OBJECTOR/PROTESTOR

Coram: Before Justice R. Nyakundi

M/S Onsando Getanda & Co. Advocates

M/S M. Korongi & Co. Advocates

M/S Amasakha & Co. Advocates

JUDGMENT

INTRODUCTION AND NATURE OF THE CASE

* 1. Lawrence Kirunga Isigi died intestate on 18th November 1990 at Kakamega Hospital. Thirty-six years later his estate remains undistributed. In that time his widow, four of his daughters and one of his sons have themselves died. A judgment determining how his estate was to be divided was delivered on 30th November 2001; it has never been executed. The file was at one stage lost for some six years and, when traced, was found to have been interfered with. That is the melancholy background against which this judgment is delivered.

2. Before me is a Summons for Confirmation of Grant dated 20th September 2022, brought under section 71(2) of the Law of Succession Act, Cap 160, and Rule 40(2) of the Probate and Administration Rules, by Sammy Inguvu Isigi, a son of the deceased and the present administrator. It is protested by Radcliffe Kirunga Isigi, a son of the deceased by his second house, and by Roseline Agiza Isigi, a daughter by the first house.
3. The essential question is a narrow one of law with wide consequences. A judgment determining the distribution of this estate already exists and has never been appealed, reviewed or set aside. The administrator now asks this court to confirm a materially different distribution. Whether he may do so by way of a summons for confirmation is the question upon which this judgment turns.
4. I record at the outset that the cause has been variously described in the documents filed as Succession Cause No. 5 of 2021, No. 5 of 2022, No. 5 of 2005 and No. 282 of 2005, and the pleadings of the 2nd Protestor are headed at Kakamega although the cause is now at Vihiga. The correct description, which I adopt, is that in the amended grant and in the Summons: **Vihiga High Court Succession Cause No. 5 of 2021, formerly Kakamega High Court Succession Cause No. 282 of 2005.** The Deputy Registrar will ensure the file and all future pleadings bear that description.

THE COURSE OF THE PROCEEDINGS

* 1. The procedural history is long, and because the outcome depends upon it I set it out with some care.

1. The deceased died on 18th November 1990. His first wife, Rodah Muhonja Isigi, had predeceased him on 20th March 1984. He thereafter married Florah Muhalia, who survived him.
2. In 1991 Florah Muhalia Isigi petitioned for letters of administration at the High Court at Eldoret in Civil Suit No. 7 of 1991. Objection proceedings by Roselyne Agiza Isigi and Sammy Inguvu Isigi were dismissed and the grant issued to her on 4th September 1991.

3. On 29th September 1992 a certificate of confirmation was issued for the limited purpose of disposing of Kakamega Municipality Block 1/165 in order to repay a loan owed by the estate to Kenya Commercial Bank. The plot was sold. The 2001 court found that the proceeds were not applied to the loan but were used by Florah for her own benefit.
4. Thereafter the petitioner took no step to distribute. The objectors applied by chamber summons to compel her to account for the proceeds of Block 1/165. Directions were given that the parties proceed by viva voce evidence and that the estate be distributed.
5. The petitioner and her counsel, though served, did not attend. The court allowed the objectors to proceed ex parte. One witness, Sammy Inguvu Isigi, gave evidence.
6. On 30th November 2001 Nambuye J. (as she then was) delivered judgment identifying the beneficiaries and decreeing the distribution of the estate. Liberty to apply was reserved and each party was left to bear their own costs.
7. The cause was later transferred to Kakamega and renumbered Succession Cause No. 282 of 2005. On 18th May 2006 Florah applied for confirmation of the grant in terms of the 2001 judgment. She died on 4th March 2010 before that was concluded.
8. By application dated 19th March 2010 Sammy Inguvu Isigi sought to be substituted as administrator in her place and that the grant be amended and confirmed in terms of the judgment of 30th November 2001. That application proceeded ex parte and was allowed as prayed on 4th May 2011. An amended grant of letters of administration intestate issued to him under the hand of Kimaru J.
9. On 2nd June 2011 the administrator filed an affidavit of redistribution and confirmation sworn on 27th May 2011, by which he sought to redistribute the estate. Radcliffe Kirunga Isigi opposed it by affidavit sworn on 12th March 2012.
10. By a ruling delivered in July 2012, Thuranira Jaden J. declined to determine the matter. The learned Judge observed that no reasons for the proposed redistribution had been given and that it amounted to a review of the judgment to a large extent; that when the application came up only the administrator and Radcliffe Kirunga Isigi were present; that there were no affidavits of service on all beneficiaries on the record; and that the court could not conclusively determine the application without the involvement of the other beneficiaries, the proposed redistribution having far-reaching consequences. The Judge concluded that the grant had been confirmed in terms of the judgment and that, if it had become necessary to redistribute, all the beneficiaries should be served and participate in the exercise.
11. The cause was transferred to this station and renumbered Succession Cause No. 5 of 2021. The administrator states that he was directed by Musyoka J. on 21st September 2022 to take out a fresh summons for confirmation. The present Summons, dated 20th September 2022, followed.

12. The 2nd Protestor states that the cause was referred to court-annexed mediation and that a negative verdict was returned, the administrator not having disclosed all the property of the deceased. Mediation has therefore already been attempted and has failed.

THE APPLICATION AND THE PROTESTS

(a) The Summons for Confirmation

- * 1. By the Summons dated 20th September 2022 the administrator seeks confirmation of the grant made to him on 4th May 2011, and that the costs of the application be costs in the cause. It is supported by his affidavit sworn the same day.
2. In that affidavit he deposes that the deceased was survived by nine children whom he names as Sammy Inguvu Isigi, Roseline Agiza Isigi, Ann Isigi, Humphrey Ndenga, Elizabeth Isigi, Ebby M. Isigi, Mary Isigi, Radcliffe Kirunga Isigi and Humphrey Libese; and by one other dependant, Yamina Manasseh Sasida. He lists the estate as comprising Kakamega/Losengeli/803, Plot No. 2 at Old Musasa Market, Kakamega/Kedoli/938, Plot No. 7 at Chavakali Market, Kakamega/Municipality/Block 1/191, L.R. Koibarak A 262 and Kakamega/Kedoli/1040.
 3. At paragraph 7 he proposes that the shares be as follows: Kakamega/Losengeli/803 to Ann Isigi and Humphrey Ndenga in equal shares; Plot No. 2 at Old Musasa Market to Roseline Agiza Isigi; Kakamega/Kedoli/938 to Elizabeth Isigi and Ebby M. Isigi in equal shares; Plot No. 7 at Chavakali Market to Mary Isigi; Kakamega/Municipality/Block 1/191 to Sammy Inguvu Isigi; L.R. Koibarak A 262 as to 5 acres each to Radcliffe Kirunga Isigi, Sammy Inguvu Isigi and Roseline Agiza Isigi and 2.4 acres to Humphrey Libese; and Kakamega/Kedoli/1040 to Yamina Manasseh Sasida.

(b) The 1st Protestor's case

- * 1. Radcliffe Kirunga Isigi protests by an affidavit of protest and counterproposal sworn on 20th June 2025 and by a statement dated 13th October 2025. He is the only son of the second house and was some two years old when his father died.
2. He contends that Plot L.R. Koibarak A 262 belonged to his late mother Florah Muhalia and should be expunged from the estate, relying on a certified copy of the register showing her as registered proprietor; that his mother sold 12 acres of it in exercise of her rights of ownership, so that the acreage the administrator proposes to distribute does not exist; and that he was born on that land, has developed it as his homestead, and settled a debt of some two million shillings left by his mother so that it should not be taken by creditors.
 3. He contends that Plot No. 2 at Old Musasa Market is not available for distribution, his late mother having sold it to Universal Pentecostal Evangelism Church by an agreement dated 14th May 2008 for Kshs 800,000/=, and that the plot should be allocated to the Church.

4. He lays claim to the whole of Kakamega/Municipality/Block 1/191, on the grounds that at his father's death the administrator and the other siblings were adults who had already benefited from the deceased by being educated and taken abroad while he was a minor of two; that the administrator has collected rent from the property since 1991 without accounting; that he alone has cleared land rates running into millions and secured a waiver when the plot was marked for repossession on expiry of the lease; and that he is unemployed, still in school and has applied for admission to university.
5. He asserts that the administrator has omitted from the estate L.R. Kakamega/Losengeli/807, Plot No. 5 at Chavakali Market, Plot No. 3 at Sabatia Market, North Maragoli/Kedoli/935, Kakamega/Kedoli/957, Lorry KUE 574, Lorry KWF 058, Toyota Stout KRJ 415, Land Cruiser KNX 890, Tractor KDY 433, a posho mill, Mercedes Benz KPB 273, Mercedes Benz KQP 040, shares in Kenya Breweries, shares in Andimi Company and the proceeds of an Alico life insurance policy received by the administrator on 9th July 1993.
6. He proposes that Kakamega/Losengeli/803 go to Ann Isigi, Humphrey Ndenga and Dennis Agoyi in equal shares; that Kakamega/Kedoli/938 go to the first house, namely Roseline, Elizabeth, Ebby and Sammy Isigi, with Duncan Agesa Isigi, son of the late Paul Isigi, to take a share as a grandson; that Plot No. 7 at Chavakali Market go equally to Mary Isigi and Humphrey Libese; and that L.R. Koibarak A 262 be shared equally between Roseline Agiza, Elizabeth, Ebby, Sammy and Humphrey Libese. He asks to be added as a co-administrator.

(c) The 2nd Protestor's case

- * 1. Roseline Agiza Isigi protests by an affidavit in protest sworn on 15th April 2023 and a witness statement dated 30th April 2026. She says she is the first-born child of the deceased; that she was initially an administrator but was removed without her knowledge and for reasons never relayed to her; that upon the earlier confirmation only Florah Muhalia and Sammy Inguvu received any part of the estate while she and her siblings were allocated nothing; and that she was never informed of the substitution application.
2. She contends that the administrator has been selling the estate without authority; that the signatures on the consent to the schedule of distribution dated 24th October 2022 have been forged or lifted, some beneficiaries not being in the country; that there is no consent by the siblings; that mediation returned a negative verdict because the administrator had not disclosed all the property; that Koibarak A 262 was purchased by her father while her mother was alive and should be considered under her mother's house; that the chief's letter of 21st July 2011 shows that she was sidelined; that the administrator transferred Kakamega/Kedoli/957 to himself and sold it to a third party; and that the administrator intends to keep the homestead to himself. She asks that the grant be confirmed but that the parties receive equitable distributions.

(d) The administrator's reply

- * 1. The administrator replies by a statement dated 5th May 2026, a further statement, and lists of documents. He says his mother died in 1984 and his father married Florah, then a shopkeeper in the family hardware business, in 1989. He names thirteen persons as surviving the deceased, of whom Grace Lumasia, Paul Agoi Isigi, Lydia Malikia Isigi, Jane Ingasiani Isigi, Nancy Agwona Isigi and Florah Muhalia are now deceased.
2. He says that Florah filed the cause secretly; that she obtained leave to sell Block 1/165 to discharge the Kenya Commercial Bank loan but consumed the proceeds; that he personally negotiated with the bank, paid the loan and had the auction of Kakamega/Kedoli/938, the family homestead, stopped and the charge discharged; and that he personally cleared a Standard Bank loan and two charges by the Commissioner of Income Tax, all secured on Block 1/191, which is why that plot should devolve to him.
 3. As to the parcels said to have been omitted, he answers that Kakamega/Losengeli/807 belonged to his late mother Rodah Muhonja and was transferred to him and later sold; that North Maragoli/Kedoli/935 and Lorry KUE 574 belonged to the estate of his late brother Paul Agoi Isigi, administered in Eldoret Succession Cause No. 45 of 1993; that Toyota Stout KRJ 415 is registered to one Japheth Bulemi; that Mercedes Benz KQP 040 belonged to Paul's estate; that the Land Cruiser, tractor and Mercedes KPB 273 were sold as scrap and accounted for in the 2001 judgment; that Lorry KWF 058 was sold for Kshs 220,000/= and applied to the bank loan and tax arrears; and that he has no knowledge of Plot No. 5 Chavakali, Plot No. 3 Sabatia or Kakamega/Kedoli/957, and puts the 1st Protestor to proof.
 4. He concedes that shares in Kenya Breweries and Andimi Investment Company came to his knowledge later and proposes that they be sold and the proceeds shared equally among all beneficiaries. He says that the Alico policy named himself and Paul Agoi Isigi as beneficiaries at Kshs 215,190.65 each, that he received his share, and that Florah wrongly claimed and was paid Paul's share.
 5. As to Koibarak A 262, he says the parcel was part of the estate, as Florah herself admitted in her replying affidavit of 8th February 2008; that the registration of the whole parcel in her sole name on 30th October 2013 was fraudulent, she having died on 4th March 2010 and the amended grant having issued to him on 4th May 2011; and that the 1st Protestor has continued to sell portions of the parcel without the consent of the court or the beneficiaries. As to Plot No. 2 at Old Musasa Market, he relies on a letter from the County Government of Vihiga dated 14th August 2025 confirming that the plot still stands in the name of Lawrence K. Isigi, and says the 1st Protestor collects the rent from it.

6. He denies that Duncan Agesa Agoi is a son of the late Paul Agoi Isigi, and calls Patrick Musundi Isigi, a son of Paul, who states that he does not know the man, that no such child was presented at his father's burial or commemoration, that no objection was raised in the succession to Paul's estate, and that Paul's family lay no claim to this estate because Paul had already been provided for in his father's lifetime.

THE JUDGMENT OF 30TH NOVEMBER 2001

* 1. Because everything turns upon it, I set out what that judgment decided.

2. The court identified the beneficiaries of the first house as Roselyne Agiza, Elizabeth Isigi, Ebby Isigi, Ann Isigi, Lydia Isigi, Mary Isigi, Sammy Isigi, Jane Isigi (deceased, leaving two minor sons Humphrey Ndenga and Denis Agoyi, both expressly recognised as beneficiaries), Nancy Agu Ndana Isigi, Roselyne Agwona (a child born out of wedlock, expressly recognised) and Grace Lumasia. It identified the second house as comprising two units, Florah Muhalia Isigi and her minor son Radcliffe Kirunga.
3. Applying the guidelines in section 28 of the Act, the court found the distribution proposed by Sammy Inguvu Isigi to be fairly done, bearing in mind that Florah had sold Block 1/165 and used the proceeds herself, had sold 15 acres of Koibarak A 262 and used those proceeds herself, and had taken the insurance proceeds to her own benefit. The court then made two variations, in favour of Florah and her minor son. The distribution as decreed was:
 1. Kakamega/Losengeli/803 (a shop and ten residential rooms) to Nancy Isigi and Humphrey Ndenga as tenants in common in equal shares;
 2. Kakamega/Kedoli/938 (six acres under tea) to Elizabeth, Ebby and Lydia Isigi, the three having repaid a loan of one million shillings secured on it;
 3. Plot No. 7 at Chavakali Market to Mary Isigi;
 4. Kakamega Town Block 1/191, then valued at Kshs 1.8 million, to be SOLD and the proceeds applied to the debts of the estate, namely a bank loan of Kshs 280,000/=, income tax of Kshs 113,000/=, land rates of Kshs 553,989.55, telephone bills of Kshs 24,138.85 and Vihiga Municipality dues of Kshs 16,000/=;
 5. Old Musasa Market Plot No. 5 to Roselyne Agwona and Roselyne Agiza;
 6. the plot at New Musasa Market, developed by Florah with three shops, to Florah Muhalia Isigi and Radcliffe Kirunga Isigi, to be held in trust and not to be sold, mortgaged or transferred without authority of the court and until the minor attained majority;
 7. Koibarak A 262, then 32 acres, as to 12 acres to Florah Muhalia and Radcliffe Kirunga (again in trust and subject to the same restraint), 5 acres to Grace Lumasia and 14 acres to Sammy Inguvu Isigi;

8. Block 1/165, the Alico proceeds and the disposals of the motor vehicles were dealt with as already having been accounted for or applied.
4. Liberty to apply was expressly reserved.

ISSUES FOR DETERMINATION

* 1. The issues that arise are:

1. whether, the grant having been confirmed in terms of the judgment of 30th November 2001, this court is functus officio;
2. whether a summons for confirmation under section 71 may be used to substitute a distribution different from that already decreed;
3. whether the proposed mode of distribution is in any event sustainable on the evidence;
4. which of the disputed assets form part of the estate;
5. what directions are required as to accounts, representation and third parties; and
6. who should administer the estate, and who should bear the costs.

THE LEGAL FRAMEWORK

- * 1. Section 71(2) of the Act empowers the court, on an application for confirmation, to confirm the grant if satisfied that the grant was rightly made and that the applicant is administering the estate according to law, and requires the court to determine and specify the persons beneficially entitled and their respective shares. The proviso forbids confirmation in cases of intestacy until the court is satisfied as to the identities and shares of all persons beneficially entitled.
2. Section 74 permits rectification of “errors in names and descriptions, or in setting out the time and place of the deceased's death, or the purpose in a limited grant”. Its confines are narrow and have repeatedly been held not to extend to redistribution. As was put in **Miscellaneous Succession Cause No. 30 of 2017** [2023] eKLR, a rectification is not a review, and no redistribution or adjustment of shares can be dealt with in an application for rectification.
3. Section 76 permits revocation or annulment of a grant, whether or not confirmed, at any time, on the grounds there specified, including at paragraph (e) that the grant has become useless and inoperative through subsequent circumstances. The remedy is discretionary.
4. Section 79 vests all the property of the deceased in the personal representative. Sections 82 and 83 define his powers and duties. Section 82(b)(ii) forbids the sale of immovable property before confirmation save with the leave of the court. Section 83 requires the personal representative to get in the assets, to pay the debts, to distribute in accordance with the confirmed grant, and — critically for this case — to produce to the court a full and accurate inventory of the assets and liabilities and a full and accurate account of the administration

within six months of the grant, and to complete the administration within six months of confirmation.

5. Section 93(1) protects a transfer of an interest in property made to a purchaser by a person to whom representation has been granted, notwithstanding the subsequent revocation or variation of the representation. That protection extends to an interest validly acquired, not to one acquired through fraud or misrepresentation: *Benson Manani Mahinye v Waiganagana A. Kendi* [2016] eKLR; *Kenneth Litiswa Asega v Alice Muhonja* [2016] eKLR. Section 45 makes intermeddling with the estate of a deceased person without representation an offence.
6. Section 28 sets out the matters to which the court must have regard in making provision for a dependant, including the dependant's present and future means and needs, any advancement or gift made by the deceased in his lifetime, the dependant's conduct in relation to the deceased and the general circumstances of the case.
7. Finally, sections 107 to 109 of the Evidence Act place the burden of proving a fact upon the party who asserts it. A protestor who asserts that a particular parcel forms part of the estate must prove it; an administrator who asserts that it does not must equally answer the assertion with evidence.

ANALYSIS AND DETERMINATION

Issue (i): Is the court functus officio?

- * 1. It was not argued, but I must satisfy myself of my own jurisdiction. On 4th May 2011 the grant was amended and confirmed in terms of the judgment of 30th November 2001. On one view that concluded the matter and this court has no further function.
2. I am satisfied that it did not, for two reasons. First, no account of a completed administration has ever been filed in this cause, by Florah Muhalia or by the present administrator. Where the account of a completed administration has not been filed, the administration remains alive and the court is not *functus officio*: *In re Estate of Yawaya Shitanda Nyatati (Deceased)*, Succession Cause No. 88 of 2002. Section 83(g) and (h) impose that duty; it has never been discharged; the administration of this estate is not merely incomplete but has barely begun.
 3. Secondly, the judgment of 30th November 2001 expressly reserved liberty to apply. Liberty to apply exists precisely so that a party may return to the court where supervening events make the working out of a judgment impracticable. That is what has happened here, and on a considerable scale.

Issue (ii): May a confirmation summons substitute a new distribution?

- * 1. It cannot, and this disposes of the greater part of the Summons.

2. The judgment of 30th November 2001 determined who the beneficiaries were and what each was to take. It has never been appealed. It has never been reviewed. It has never been set aside. It binds every party to this cause, including the administrator, who was himself the sole witness at the hearing which produced it and whose proposals it substantially adopted.
3. Section 71 is the machinery by which an unconfirmed grant is confirmed and shares ascertained. It is not a mechanism for revisiting shares already ascertained by a judgment of this court. To confirm the present proposal would be to review the judgment of Nambuye J. in proceedings which are not review proceedings, without any of the grounds for review being pleaded or proved, and at the instance of a party who has never sought to appeal it. Section 74 offers no assistance: the proposal contains no error of name, description, date or purpose, but a wholesale reallocation of assets.
4. This is not a new observation in this cause. It is precisely what Thuranira Jaden J. told the administrator in July 2012, when the redistribution he then proposed was held to amount to a review of the judgment to a large extent, unsupported by any reasons. Fourteen years later the same course is attempted again, and the same answer must be given.
5. I should add that the direction said to have been given by Musyoka J. on 21st September 2022, that a fresh summons for confirmation be taken out, cannot bear the weight placed on it. A direction to regularise the pleadings so that the confirmation exercise could be revisited *on notice to all beneficiaries* — which is what Thuranira Jaden J. had required — is not a licence to depart from a subsisting judgment.

Issue (iii): Is the proposed distribution sustainable in any event?

* 1. Even were the objection of principle put aside, the proposal could not stand. It is instructive to set it beside the judgment:

| Asset | Judgment of 30.11.2001 | Proposal of 20.9.2022 |

| --- | --- | --- |

| Kakamega/Losengeli/803 | Nancy Isigi and Humphrey Ndenga, in equal shares | Ann Isigi and Humphrey Ndenga, in equal shares |

| Kakamega/Kedoli/938 | Elizabeth, Ebby and Lydia Isigi (who repaid the loan charged on it) | Elizabeth Isigi and Ebby M. Isigi, in equal shares |

| Plot No. 7, Chavakali Market | Mary Isigi | Mary Isigi |

| Kakamega Municipality Block 1/191 | To be SOLD and the proceeds applied to the debts of the estate | Sammy Inguvu Isigi absolutely |

| Old Musasa Market plot | Plot No. 5 to Roselyne Agwona and Roselyne Agiza | Plot No. 2 to Roseline Agiza alone |

| New Musasa Market plot (3 shops) | Florah Muhalia and Radcliffe Kirunga, in trust; no sale or transfer without leave | Omitted from the schedule altogether |

| L.R. Koibarak A 262 | 32 acres: Florah and Radcliffe 12; Grace Lumasia 5; Sammy 14 | 17.4 acres: Radcliffe 5; Sammy 5; Roseline Agiza 5; Humphrey Libese 2.4 |

| Kakamega/Kedoli/1040 | Not dealt with | Yamina Manasseh Sasida |

* 1. Four features of that comparison are fatal. First, beneficiaries decreed by the judgment have simply been dropped. Nancy Agwona Isigi disappears from Losengeli/803; Lydia Malikia Isigi from Kedoli/938; Grace Lumasia from Koibarak A 262; Roselyne Agwona from the Musasa plot; Florah Muhalia from both Koibarak and the New Musasa plot; and Denis Agoyi, expressly recognised in 2001, appears nowhere at all.

2. Each of those persons, save Denis Agoyi, is now dead. But every one of them survived the deceased. Their shares vested in them upon his death in 1990 and, upon their own deaths, formed part of their own estates. They do not fall back into this estate for the administrator to reallocate as he sees fit, and they cannot be extinguished by omission from a schedule. Each such estate must be represented before those shares can be dealt with.
3. Secondly, an asset decreed by the judgment has vanished from the schedule altogether. The plot at New Musasa Market, developed with three shops, was given to Florah Muhalia and Radcliffe Kirunga upon an express trust and an express restraint on alienation. It is not listed among the assets in the Summons. No explanation is offered.
4. Thirdly, and most seriously, Kakamega Municipality Block 1/191 — which the court directed be *sold* for the benefit of the estate's creditors — is proposed to the administrator himself, absolutely. He justifies this on the ground that he discharged the estate's liabilities from his own pocket. I shall assume in his favour that he did, and the documents he has produced go some way to supporting it.
5. The claim nonetheless fails as a matter of law. An administrator who applies his own money to the debts of the estate is entitled to be indemnified and reimbursed out of the estate. That is the effect of section 83(c) and of the retention and reimbursement permitted by section 93(2). What he is not entitled to do is to convert a right of indemnity into a right of ownership by appropriating to himself the very asset which the court directed be realised for the creditors' benefit. His remedy is a claim in account, quantified and vouched, ranking as an expense of administration. It is not a conveyance.
6. The 1st Protestor's rival claim to the whole of Block 1/191 fares no better. That he was a two-year-old at his father's death, that others were educated abroad, that he has paid rates and needs funds for university, are matters relevant under section 28(b), (c) and (d). They are not a basis for taking an asset which a judgment has directed be sold, nor for displacing that judgment. I note also that his own evidence of paying rates relates to 2025 alone, while the administrator produces a bundle of rate payments and tax settlements spanning many years.

7. There is a further and decisive obstacle common to both claims. Rent has been collected from Block 1/191 continuously — by Florah Muhalia from 1991 to 2010 and by the administrator from 2010 to date — and by the administrator's own account he has applied it to repairs, rates, lease renewal, liabilities and school fees for his late sisters' children. Not a shilling of that income has ever been accounted for to this court. Over some thirty-five years, on a fully developed commercial property in the centre of Kakamega town, that income may well exceed the liabilities said to have been discharged. Until the account is taken, this court simply cannot know whether the estate owes the administrator anything at all, or whether he owes the estate.
8. Fourthly, the schedule of distribution dated 24th October 2022 is challenged by the 2nd Protestor as bearing signatures forged or lifted onto the document, some of the beneficiaries being out of the country. An allegation of forgery is a serious one which must be strictly proved and she has produced nothing to prove it, so I make no finding upon it. But the consent cannot be relied upon as curing the defects I have identified. A consent among some beneficiaries cannot vary a judgment of the court, and it plainly cannot bind those beneficiaries and estates which are not represented at all.

Issue (iv): Which assets form part of the estate?

- * 1. A number of parcels are in contest. I deal with them shortly, and only so far as the present material permits.
2. L.R. Koibarak A 262 (now Kemeloi/Koibarak A/262). I reject the 1st Protestor's contention that this parcel belonged exclusively to his late mother and should be expunged. It is contradicted by the judgment of 2001, which treated it as an estate asset and distributed it; by the objection proceedings before the Land Adjudication Officer on 7th February 1991, in which the 2nd Protestor recorded that the parcel had been owned by her late father; by the chief's letter of 21st July 2011, which states that the land belonged to the late Lawrence Kirunga Isigi; and by Florah Muhalia's own replying affidavit of 8th February 2008. I find that the parcel formed part of the estate.
 3. As to the registration relied upon, the certified copy of the register shows the section opened on 30th October 2013 with Florah Muhalia as sole proprietor, and the official search shows a title deed issued on 18th March 2015. Florah Muhalia died on 4th March 2010. A person more than three years dead cannot be registered as proprietor of land, and by that date her grant had in any event been superseded by the amended grant to the administrator on 4th May 2011. The registration is also irreconcilable with the judgment, which gave her and her son 12 of 32 acres jointly and restrained any dealing without leave of the court. On the face of the record that registration cannot stand.

4. I stop short of declaring it void. The Land Registrar is not before me, nor are the persons said to have obtained first registration over portions of the parcel, nor any purchaser from the 1st Protestor. How the acreage fell from 47 acres to 32 and then to 17.4 acres, who sold what to whom and when, and whether any transferee is protected by section 93(1), are questions of fact which cannot be resolved on affidavit and which cannot be resolved at all in the absence of those affected. Article 50(1) of the Constitution forbids it.
5. **The Musasa Market plots.** There is an unresolved confusion here which the parties have done nothing to dispel. The judgment dealt with two distinct plots: Old Musasa Market Plot No. 5, given to Roselyne Agwona and Roselyne Agiza, and a separate plot at New Musasa Market, given to Florah and Radcliffe in trust. The Summons speaks only of “Plot No. 2 at Old Musasa Market”. The 1st Protestor says his mother sold “plot No. 2 old Musasa Market” to Universal Pentecostal Evangelism Church in May 2008, and the sale agreement describes the vendor as “the administrator/beneficial owner”. The County Government of Vihiga certifies in August 2025 that the plot remains in the name of Lawrence K. Isigi.
6. Whichever plot was sold, the sale is problematic. If it was the New Musasa plot, it was sold in direct breach of an express restraint imposed by this court. If it was Plot No. 5, the vendor had no title to convey, that plot having been decreed to two other beneficiaries. And a sale of estate land in 2008 was in any event made when no confirmation subsisting for that purpose had been obtained, contrary to section 82(b)(ii). But the Church is not before me and I make no order affecting it. The identity, number and status of the Musasa plots must be established by search and survey and, if necessary, by evidence.
7. The parcels said to have been omitted. The burden of proving that Kakamega/Losengeli/807, Plot No. 5 at Chavakali Market, Plot No. 3 at Sabatia Market, North Maragoli/Kedoli/935, Kakamega/Kedoli/957 and the several motor vehicles form part of this estate lies on the protestors who assert it. As to Losengeli/807, North Maragoli/Kedoli/935, Lorry KUE 574, Toyota Stout KRJ 415 and Mercedes Benz KQP 040, the administrator has answered with green cards, a motor vehicle search showing registration in the name of Japheth Bulemi, and the schedule of assets in Eldoret Succession Cause No. 45 of 1993 concerning the estate of the late Paul Agoi Isigi. Those answers are unrebutted and I find those items not shown to form part of this estate.
8. As to Kakamega/Kedoli/957, the position is different. The 2nd Protestor makes a specific allegation that the administrator transferred it to himself and sold it to a third party. The administrator says he does not know the parcel, yet has filed a green card for it in his further list of documents. That contradiction requires explanation on oath. Plot No. 5 at Chavakali Market and Plot No. 3 at Sabatia Market remain wholly unproved, but the administrator's answer is no more than a bare denial. These three items must be determined on evidence.

9. The shares. The administrator concedes that shares in Kenya Breweries Limited and in Andimi Investment Company belong to the estate and came to his knowledge later. They were not in the schedule and must be brought in. That concession is itself a demonstration that the inventory before the court is incomplete, and that no confirmation can safely be granted upon it.
10. The Alico policy and the motor vehicles. These were considered and disposed of in the 2001 judgment. Proceeds payable to a named policy beneficiary do not in any event form part of an estate. I decline to reopen them.
11. Duncan Agesa Agoi. The 1st Protestor asserts that this man is a son of the late Paul Agoi Isigi and entitled as a grandson. The assertion is denied by the administrator and by Patrick Musundi Isigi, a son of Paul, whose evidence is that the man is unknown to him, was never presented at his father's burial or commemoration, raised no claim in the succession to his father's estate, and that Paul's family lay no claim to this estate, Paul having been provided for in his father's lifetime. Duncan Agesa Agoi has not come to court, has filed nothing and has claimed nothing. There is no claim before me and none is established. If he wishes to assert one, he must do so himself and on evidence.

Issue (v): Accounts, representation and third parties

- * 1. The single reason this estate has consumed thirty-six years is that no administrator has ever accounted. The objection proceedings that produced the 2001 judgment began as an application to compel Florah Muhalia to account for the proceeds of Block 1/165. She never did. The present administrator has been in office since 2011 and collecting income since 2010, and has never filed the inventory and account which section 83(g) required of him within six months. The 1st Protestor, who is not an administrator at all, collects rent from a Musasa plot and income from a tea plantation on Koibarak A 262, and has on the administrator's evidence been selling portions of that parcel.
2. No court can determine equitable shares while in ignorance of what the estate has produced and what each party has already taken from it. Section 28(d) requires the court to have regard to what a dependant has already received. Accounts must therefore be taken before any further distribution is considered. That is the order which the justice of this case demands, and it should have been made long ago.
 3. Representation must also be regularised. The estates of Grace Lumasia, Nancy Agwona Isigi, Lydia Malikia Isigi, Jane Ingasiani Isigi and Florah Muhalia Isigi each hold vested interests in this estate and none is represented. Until they are, no distribution can lawfully be confirmed, and the proviso to section 71(2) forbids me from confirming an intestate grant until satisfied as to the identities and shares of all persons beneficially entitled. I am not so satisfied.

4. Third parties must be given the opportunity to be heard. Universal Pentecostal Evangelism Church, Yamina Manasseh Sasida, and any person registered as proprietor of any portion of Kemeloi/Koibarak A/262 or claiming under a sale from the estate, all have interests capable of being affected. None is a party. They must be at liberty to come in, and their rights, including any protection under section 93(1), determined then.
5. I have considered whether to refer the parties to mediation. The 2nd Protestor's evidence, which is not disputed, is that mediation was attempted and returned a negative verdict precisely because the administrator had not disclosed all the property of the deceased. Mediation without an account would fail again for the same reason. The account must come first.

Issue (vi): Administration

* 1. The administrator has proposed to himself, absolutely, the single most

valuable asset in the estate, in the teeth of a judgment directing that it be sold for the creditors. Whatever his motives, that is a plain conflict between his duty and his interest, and it would not be right to leave him to administer alone.

* 1. The 1st Protestor asks to be appointed co-administrator. He is not free of difficulty either: he claims the whole of the same asset, he deals with estate property while holding no representation, and on the evidence he sells land the subject of a court-imposed restraint. But he represents the second house, which is otherwise unrepresented, and joint administration across the two houses is the arrangement most likely to produce a proper account and to protect the estate in the meantime.

2. I shall therefore appoint him jointly with the administrator, subject to strict conditions, and reserve liberty to any party or beneficiary to apply for the appointment of the Public Trustee should the two prove unable to act together.

DISPOSITION

* 1. The judgment of 30th November 2001 stands. It has never been appealed or set aside and it binds the parties. A summons for confirmation under section 71 cannot be used to substitute a different distribution for the one it decreed, and section 74 affords no route to that result. The Summons dated 20th September 2022, so far as it seeks to do so, must be declined.

2. The court is not, however, functus officio, no account of a completed administration having been filed and liberty to apply having been reserved. Nor would it be right simply to dismiss the Summons and leave this estate where it has lain since 1990. Two items of the proposed distribution are unobjectionable and I confirm them. As to the rest, the estate must first be accounted for, its true composition established, and the missing beneficiaries and interested parties brought before the court. Only then can the working out of the 2001 judgment, and such variation of it as supervening events may genuinely require, be undertaken.

FINAL ORDERS AND COSTS

* 1. As to costs, all three parties have succeeded in part and failed in part, and they are siblings who must now administer their father's estate together. The estate itself should not be further depleted by this litigation. Each party will bear their own costs.

2. I accordingly make the following orders:

+ 1. *It is declared that the judgment of the High Court at Eldoret delivered on 30th November 2001 in Civil Suit No. 7 of 1991 subsists, has not been appealed, reviewed or set aside, and binds all parties to this cause.*

2. *The Summons for Confirmation of Grant dated 20th September 2022 is declined save as provided in order (c) below, the mode of distribution proposed at paragraph 7 of the supporting affidavit being, in substance, an application to review that judgment and not an application to confirm a grant.*

3. *The grant is confirmed in part only, as follows: (i) Plot No. 7 at Chavakali Market to Mary Kavosi Isigi absolutely, that allocation according with the judgment of 30th November 2001; and (ii) Kakamega/Kedoli/1040 to Yamina Manasseh Sasida, as purchaser from the deceased in his lifetime, the administrators to complete that transaction pursuant to sections 82 and 83 of the Act, and upon production to the Deputy Registrar of the agreement of sale. Confirmation in respect of all other assets is deferred.*

4. *Sammy Inguvu Isigi shall, within ninety (90) days, file and serve a full and accurate inventory of the assets and liabilities of the estate and a full and accurate account of his administration pursuant to section 83(g) and (h) of the Act, covering the period from 2010 to date and disclosing, with vouchers: all rent and other income received from Kakamega Municipality Block 1/191 and from every other estate asset; the proceeds of every disposal of estate property, including motor vehicles KNX 890, KDY 433, KPB 273 and KWF 058; every payment made on account of the liabilities of the estate for which he claims reimbursement; and the application of all such sums.*

5. *Radcliffe Kirunga Isigi shall, within ninety (90) days, file and serve a full and accurate account of all rent and income received by him from any plot at Musasa Market and from Kemeloi/Koibarak A/262, and of the proceeds of any sale by him of any portion of that parcel, with vouchers.*

6. *The estates of the late Grace Lumasia, Nancy Agwona Isigi, Lydia Malikia Isigi, Jane Ingasiani Isigi and Florah Muhalia Isigi hold vested interests in this estate. Representation shall be taken out in respect of each within one hundred and twenty (120) days, whether by full grant or by letters of administration ad litem, and the personal representatives so appointed shall be served and joined. The administrators shall likewise serve Denis Agoyi, Roselyne Agwona and every other beneficiary named in the judgment of 30th November 2001, and shall file affidavits of service.*

7. *Pending further order, the Land Registrars, Vihiga, Kakamega and Nandi Counties, shall register a restriction against the titles to Kemeloi/Koibarak A/262 and all subdivisions thereof, Kakamega Municipality Block 1/191, Kakamega/Losengeli/803, Kakamega/Kedoli/938 and every plot at Old and New Musasa Market forming part of this estate, prohibiting any dealing, transfer, charge, sub-division or other disposition without leave of this court.*
8. *Universal Pentecostal Evangelism Church, Yamina Manasseh Sasida, the registered proprietors of any portion of Kemeloi/Koibarak A/262, and any other person claiming an interest in any asset of this estate, are at liberty to apply to be joined as interested parties. Their claims, and the question whether any of them is protected by section 93(1) of the Act, shall be determined before any further confirmation.*
9. *The following questions are reserved for determination on viva voce evidence: (i) whether Kakamega/Kedoli/957, Plot No. 5 at Chavakali Market and Plot No. 3 at Sabatia Market form part of this estate; (ii) the identity, number and present status of the plots at Old and New Musasa Market and the effect of the agreement of 14th May 2008; (iii) the circumstances of the registration of Kemeloi/Koibarak A/262 in the name of the late Florah Muhalia on 30th October 2013 and the reduction of its acreage; and (iv) the accounts ordered above and any claim by the administrator to reimbursement out of the estate.*
10. *The shares held by the deceased in Kenya Breweries Limited and in Andimi Investment Company shall be brought into the inventory and their present value ascertained.*
11. *Radcliffe Kirunga Isigi is appointed co-administrator of the estate jointly with Sammy Inguvu Isigi, and an amended grant shall issue accordingly upon his filing the requisite undertaking. Neither administrator shall collect, receive, let, sell, charge or otherwise deal with any asset of the estate save jointly with the other and with the leave of this court. Any party or beneficiary shall be at liberty to apply for the appointment of the Public Trustee or another neutral administrator should the two prove unable to act together.*
12. *No order is made as to mediation, that course having already been attempted and having failed for want of full disclosure. The parties are nonetheless at liberty to revert to it once the accounts have been filed.*
13. *Each party shall bear their own costs of the Summons and of the protests.*
14. *Mention on 20th September 2026 for compliance and further directions.*
3. Orders accordingly.

DATED, SIGNED AND DELIVERED AT VIHIGA THIS 6TH DAY OF AUGUST 2026.

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R. NYAKUNDI

JUDGE

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