

KENYA / JUDGMENT

In re Estate Salim [2026] KEKC 20 (KLR)

[2026] KEKC 20 (KLR)**COURT**

Kadhis Courts

BEFORE

HS Vumbi

CASE / FILE NUMBER

Succession Cause E123 of 2025

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In re Estate Salim (Succession Cause E123 of 2025) [2026] KEKC 20 (KLR) (20 August 2026) (Ruling)

Neutral citation:

[2026] KEKC 20 (KLR) Republic of Kenya In the Kadhis Court at Kwale Succession Cause E123 of 2025 HS Vumbi, SPK August 20, 2026 IN THE ESTATE OF MKUU MKUU SALIM

Ruling

1. Before this court is summons for revocation of grant. The Applicant through the firm of Mkabane & advocates seeks for an order for revocation of certificate of grant and/or Judgment, orders issued in Succession Cause No. E123 of 2025 issued on the 24 th July, 2025.
2. The Application is based on grounds that the Applicant is a son of the Deceased herein. The Applicant asserts that the Petitioner/Respondent falsely represented herself to the court as the sole heir of the deceased through the chief's letter dated 14 th July 2025. He contends that the Petitioner/Respondent failed to disclose the existence of the widow and children of the deceased. The Applicant states that the Judgment, grant and/or orders dated 24 th July, 2025 was obtained through concealment of material facts and misrepresentation. The Applicant avers that pursuant to the said orders, estate property was transmitted in the Petitioner on 30 th July, 2025 and further transferred to a third party on the 29 th October, 2025 to the prejudice of the lawful beneficiaries.
3. The foregoing is the gist of the supporting affidavit sworn by the Applicant in support of the motion which affidavit also contains a narration of the background of the matter. In his sworn Affidavit he stated that the suit property known as Kwale/Tiwi/1673 was registered in the names of his late father having acquired it on 11 th December, 1985. He stated that the Deceased herein died in Migori on 6 th November, 1999. He further stated that his late father died intestate living behind one wife and three children as his heirs. He stated that he petitioned the Chief Magistrate in Migori for succession of the deceased estate via Succession Cause Number E501 of 2025. That on the 26 th October, 2025 he was issued with grant of letters of Administration appointing him as the legal administrator of the estate of the deceased including land parcel number Kwale/Tiwi/1673 which is the subject matter of this suit. He

stated that he then submitted the transmission forms to Kwale Land Registry and he was then informed that the property was no longer in his father's name. 4. To cement his case the Applicant attached hereto copy of certificate of title marked as HMS 1, copy of the deceased's certificate of death marked as HMS 2, copy of the chief's letter from Migori marked as HMS 3, copy of the letters of confirmed grant marked as HMS 4, copy of the chief's letter dated 14 th July, 2025 marked as HMS 5, copies of the Judgment and Orders issued on the 24 th July, 2025 marked as HMS 6 and certified copy of the green card from the land registry marked as HMS 7. 5. The Petitioner/Respondent was duly served and an affidavit of service dated 27 th July, 2026, is on record. On the 29 th July, 2026 the Petitioner/Respondent appeared in court and she confirmed to this Honourable court that she was duly served with the summons for revocation of grant intestate. She prayed the court for more time to respond in which the court granted her wish and directed that she files and serve her response within 14 days. The court slated the matter for inter-parties hearing on the 12 th of August, 2026. On the said 12 th of August, 2026 the Petitioner/Respondent failed to appear before the court and the matter proceeded ex-parte. 6. I have carefully considered the Application, the supporting affidavit and the annexures presented by the Applicant and this Honourable Court frames the following as issues for determination: 1. Whether the Honourable court should revoke the grant issued on the 24 th July, 2025. 2. Whether this Honourable court should set aside the Judgment and orders issued on the 24 th July, 2025. 7. Being an un-defended Application, one would be inclined to give orders as prayed for but fidelity to the law demands that what the Applicant prays for is within the boundaries of what is just and acceptable with regards to the facts, the evidence and the law. I am therefore tasked with making a finding as to whether this court should grant the prayers sought by the Applicant. 8. The applicant herein invites the Honourable court to revoke the grant, judgment and/or orders issued by this Honourable Court on the 24 th July, 2026 on the grounds that the Petitioner/Respondent obtained them through concealment of material facts. 9. Kadhis Courts in Kenya handle succession matters for Muslims under Islamic law. So they issue grants of probate/letters of administration for estates of deceased Muslims, just like the High Court does for other estates. 10. The power to revoke a grant comes from Section 76 of the Law of Succession Act Cap 160. Section 76 says a grant of representation, whether confirmed or not, may be revoked or annulled if the court decides, either: a. The proceedings to obtain the grant were defective in substance b. The grant was obtained fraudulently by false statement or concealment of material facts c. It was obtained by an untrue allegation of a fact essential in law d. The administrator failed to apply for confirmation, proceed with administration, or file accounts e. The grant has become useless and inoperative through subsequent circumstances. 11. It is a settled law that a person who approaches a court or a tribunal for a grant of a relief equitable or otherwise is under a solemn obligation to candidly disclose all the materials/important facts/documents which have a bearing on the adjudication of the issues raised in the case. In other words, he or she owes a duty to the court to bring all the facts and refrain from concealing/suppressing any material facts within his or her knowledge which he or she could have known by exercising diligence expected of a person of ordinary prudence. 12. In R v Kensington income tax

commissioner the court held that; if a party is found guilty of concealment of material facts or making an attempt to pollute pure stream of justice the court not only have the right but a duty to deny relief to that person. 13. The upshot is that the Petitioner/Respondent herein is guilt of material non-disclosure. Whether this Honourable court should revoke the grant and set aside the Judgment and the Orders issued on the 24 th July, 2025. 14. Courts have the discretionary power to set aside ex parte judgment with the main aim being that justice should prevail. The Code of Civil Procedure (2) has illuminated the grounds for setting aside an ex parte decree and what constitute sufficient cause for setting aside an ex parte judgment/decreed. Essentially, setting aside an ex parte judgement is a matter of the discretion of the court. 15. In the case of Esther Wamaitha Njihia & two others v Safaricom Ltd (3) the court citing relevant cases on the issue held inter alia: “ The discretion is free and the main concern of the courts is to do justice to the parties before it (see Patel v E.A. Cargo Handling Services Ltd. The discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but is not designed to assist a person who deliberately sought, whether by evasion or otherwise to obstruct or delay the cause of justice...” 16. The fact that setting aside is a discretion of the court is not disputed. What is contested is whether the Applicant has demonstrated sufficient cause to warrant the exercise of the court’s discretion in its favor. The Supreme Court of India in the case of Parimal v Veena observed that: “ Sufficient cause” is an expression, which has been used in large number of statutes. The meaning of the word “sufficient cause” is “adequate” or “enough”, in as much as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man...” 17. To answer the question whether the action is excusable. On this, courts have come up with applicable principles and standards to consider in exercising judicial discretion. 18. Adverting back to the fact of the present case an order for revoking a grant and setting aside Judgment, decree and orders is not abstained on demand. The court has to satisfy itself on examination of all the evidence placed before it firstly, that there is indeed concealment of material facts. 19. It is my humble view that the Applicant has offered a candid and frank explanation as to why he wants the orders of 24 th July, 2025 be set aside. The Respondent filed a succession petition in relation to the estate of the Deceased herein, stating that she is the only heir of the deceased. The Court heard the Petition and delivered a Judgment in which the Petitioner/Respondent was declared the sole heir of the Deceased herein. 20. The Honourable court is now told substantively that the Applicant is a son of the Deceased herein and that the Deceased was also survived by a widow and two other children. The court is also told that the Petitioner/Respondent is not a child of the Deceased herein, in stead a maternal granddaughter of the deceased. 21. Upon my perusal of the records of the court, I did find that the Petitioner/Respondent moved this Honourable Court vide a Succession petition dated 14 th July, 2025, and pleaded specifically in para 4 that she is the only child surviving the Deceased herein. She attached an introduction letter from Mkoyo Assistant Chief dated 14 th July, 2027 confirming the same.

The said letter indicate that the deceased herein left only one dependent who is the Petitioner and that the Plot No. Kwale/Tiwi/1673 was registered under the name of the Deceased herein. 22. The court records show that on the said 24 th of July, 2025 the Kadhis court in Kwale substantively dealt with the petition dated 14 th July, 2025 and it made a determination on who the rightful heir was and equally determined and the proceeded to appoint the Petitioner/Respondent as administrator and vested the suit property in her. 23. The upshot is that the Applicant herein has convinced the Honourable court that the Petitioner/Respondent falsely represented herself to the court as the sole heir of the deceased. That the Petitioner/Respondent failed to disclose the existence of the widow and children of the deceased. Subsequently, the Respondent obtained a Judgment, grant and/or orders dated 24 th July, 2025, through concealment of material facts and misrepresentation. The prayer for setting aside the orders is allowed. 24. Consequently, I make the following orders in disposing the Summons for revocation of grant application dated 25th June, 2026. a. That the ex-parte Judgement delivered on the 24 th July, 2025 and all other consequential orders are hereby set aside and vacated. b. That the grant of representation issued on the 24 th of July, 2025 to the Petitioner/Respondent in respect to the Estate of the Deceased be and hereby revoked. c. That the Applicant is at liberty to move ELC Court for the revocation and cancellation of the title deed issued in respect to Kwale/Tiwi/1673 based on the orders of this court of the 24 th July, 2025. d. Each party to bear its own costs. These are the orders of the court. DATED, SIGNED AND DELIVERED IN THE OPEN COURT ON THIS 20 TH DAY OF AUGUST, 2026. HON. HABIB SALIM VUMBI SENIOR PRINCIPAL KADHI Delivered in the open court in the presence of the following: - Ms. Mkabane for the Applicant Mr. Shaffi Mwahima Court Assistant SIGNED BY/FOR: THE JUDICIARY OF KENYA HON. HABIB SALIM VUMBI (SPK) KWALE KADHI COURT KADHI COURT DATE: 2026-08-20 11:02:18

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