



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of William Wambua Muli (Deceased) (Succession Cause  
13 of 1999) [2025] KEHC 1220 (KLR) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1220 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MOMBASA**

**SUCCESSION CAUSE 13 OF 1999**

**G MUTAI, J**

**FEBRUARY 24, 2025**

**IN THE MATTER OF THE ESTATE OF WILLIAM WAMBUA MULI (DECEASED)**

**BETWEEN**

**AGTHA WAMBUA AKA AKATHA WAMBUA ..... APPLICANT**

**AND**

**FLAVIAN NDUVA WAMBUA ..... RESPONDENT**

**RULING**

1. Before the court is a summons for revocation and or annulment of grant dated 30<sup>th</sup> September 2024. The summons is supported by the annexed affidavit of Agatha Wambua, also known as Akatha Wambua, sworn on the 6<sup>th</sup> day of September 2024. Ms Agatha Wambua is the applicant herein.
2. Vide the said summons, Ms Wambua seeks to have the grant issued to her brother, Flavian Nduva Wambua, on 2nd September 1999 and confirmed on 5<sup>th</sup> November 2020, revoked and that she be appointed an administrator of the estate in his place. The basis upon which the application is brought is that the administrator obtained the grant fraudulently by concealment from the court of some material facts to wit, by omitting some of the deceased's assets from the list of the assets of the estate and that the person to whom the grant was issued had failed even after due notice was given to proceed diligently with the administration of the estate more than 13 years after the grant was confirmed, and had not produced to the court the inventory of the assets and or statements of account required under Section 83 (a) and (g) of the *Law of Succession Act*.
3. The affidavit in support of the summons was sworn on 6<sup>th</sup> September 2024. The applicant reiterated the points raised on the grounds supporting the application and added that she was entitled, in an equal degree of priority, to the respondent. She stated that it would be in the interest of justice if the grant were issued to her.



4. The applicant attached to her application a consent signed by Nice Wambua, Kamene Wambua and Visco Esther Wambua on 6<sup>th</sup> September 2024. She also attached a letter dated 10<sup>th</sup> April 2015 in which she wrote to the administrator imploring him to have the grant rectified to include the missing properties, for the estate to be administered as per the grant and for the properties to be shared out.
5. It is apparent that the applicant was served as Ms Mnyazi appeared and attended court on 25<sup>th</sup> October and 26<sup>th</sup> November 2024. Despite being given ample opportunity to file a response, no replying affidavit, grounds of opposition, or notice of preliminary objection was ever filed. The application is, therefore, undefended.
6. Although the application is undefended, I must nevertheless determine whether the orders sought ought to be issued. It does not follow, in my view, that an undefended application must be allowed.
7. For the foregoing reasons, when this matter came before me on 18th February 2025, I reserved my ruling for 24<sup>th</sup> February 2025.
8. Has a case for revocation of grant been made? Revocation of the grant may only be done if the conditions set out in Section 76 of the [Law of Succession Act](#) are met.
9. Section 76 of the [Law of Succession Act](#) states 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;
  - 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.”
10. The courts have expressed themselves exhaustively on this issue. I will highlight a few of the decisions below.



11. In the case of re Estate of Prisca Ongayo Nande (deceased) [2020]eKLR, the court stated that:-

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its 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 matters, 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.”

12. Being a drastic remedy, the court, in the case of Albert Imbuga Kisigwa vs Recho Kawai Kisigwa [2016]eKLR, stated as follows:-

“(13) Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account the interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

13. It would appear to me that revocation of grant is a drastic remedy that should only be issued where the court is satisfied that a clear case for it has been made. Is that the case in this matter?

14. Although it is claimed that certain assets of the deceased were not included in the list of assets, no evidence that the said assets belong to the deceased was annexed. I am therefore unable to tell whether they do indeed belong to the deceased and that, therefore, their exclusion amounts to fraud or concealment of material information that renders the process defective.

15. What of the failure to properly administer the estate even after due notice was given? The letter dated 10<sup>th</sup> April 2015 would appear to confirm the issuance of a notice. But does it do so actually? There is no evidence of posting, no postal or email address is given nor indication of how it was dispatched and if Flavian Nduva Wambua received it. All that the court is asked to do is to believe that it was.

16. The contents of paragraph 15 above, notwithstanding, I note that the administrator had a lot of time to administer the estate. He has failed to do so without any apparent reason. Given the time that has lapsed without any action on the part of the respondent, this court is not persuaded that she ought



to remain an administrator. The court thought wary of the provenance of the letter dated 10<sup>th</sup> April 2015, will give it the benefit of the doubt.

17. Thus, this court finds and holds that the administrator has failed after due notice was given to her to properly administer the state; consequently, the grant issued to her is revoked forthwith.
18. It would not be prudent to revoke the grant of an estate that has not been distributed and leave it unadministered. In the circumstance I issue a grant in favour of Agatha Wambua, aka Akata Wambua. I direct that the grant of representation be issued forthwith to her. The new administrator shall file a summons for confirmation of the grant upon expiry of 30 days from the date hereof.
19. This is a succession matter between siblings. That being the case, I do not think that the issuance of an order of costs would serve the interests of justice nor promote family amity.
20. The matter is to be mentioned on 8<sup>th</sup> April 2025 for further directions.
21. Orders accordingly.

**DATED AND SIGNED AT MOMBASA THIS 24<sup>TH</sup> DAY OF FEBRUARY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**Gregory Mutai**

**JUDGE**

In the presence of:-

No appearance for the Applicant;

No appearance for the Respondent; and

Arthur – Court Assistant.

