



**In re Estate of Gabriel Lazarua Muthika Kiragu alias Gabriel LM Kiragu (Deceased)  
(Succession Cause 533 of 2014) [2025] KEHC 2267 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2267 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
SUCCESSION CAUSE 533 OF 2014  
RM MWONGO, J  
FEBRUARY 13, 2025**

**BETWEEN**

**PATRICK MUTHII MIANO ..... APPLICANT**

**AND**

**EDITH WANJIKU MUTHIKE ..... 1<sup>ST</sup> RESPONDENT**

**WINNIE WAWIRA MURIUKI ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. By a summons for revocation of grant dated 29<sup>th</sup> October 2018 the applicant seeks that the grant of letters of administration issued to the respondents on 10<sup>th</sup> December 2014 and confirmed on 27<sup>th</sup> October 2017 be revoked and/or annulled.
2. The grounds are as follows:
  1. That the grant was obtained fraudulently by the making of a false statement or by concealment from the court of something material to the cause;
  2. That the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant notwithstanding the allegation was made in ignorance or inadvertently;
  3. That the person to whom the grant was made had produced such inventory or account which is false in some material facts; and
  4. The applicant herein is one of the beneficiaries of the estate of the deceased but was not involved in the succession proceedings and only came to know about them after the grant had been issued.
  5. That the costs of this application be provided for.



3. The applicant, deposed that he is an adopted son of the deceased. Despite that, he was not involved in the succession proceedings. Further, that the estate of his late father was distributed without his involvement. He urged that it is in the interest of justice that the grant be revoked.
4. In their replying affidavit the respondents stated that the applicant is a nephew to the deceased and is not his son. That his father is James Miano Kiragu who is alive and his mother was Mary Wangui Miano, now deceased. That the applicant was never adopted by the deceased at any given point. She named the beneficiaries of the estate of the deceased, who she avers are herself and her 3 children. She stated that the properties forming the estate of the deceased were purchased from 3<sup>rd</sup> parties and she listed them. That one of the properties was sub-divided and transferred to third parties. She urged the court to dismiss the summons for revocation as an afterthought.
5. Joseph Kimani Gitaari, a cousin of the deceased, also filed a replying affidavit stating that the applicant is the son of James Miano Kiragu, another cousin of his. That the deceased was survived by his wife, the 1<sup>st</sup> respondent, with whom he had 3 children. He stated that the applicant has never been a son or even a dependant of the deceased. He termed the applicant as a busy body who wants to disinherit the deceased's actual family. He urged the court to dismiss the summons for revocation.

### **The Hearing**

6. The matter proceeded to hearing. The applicant testified as PW1 and stated that the deceased adopted him in 1992 when he was 3 years old living with his mother. That his real father had abandoned them and when the deceased took him in, he was not married. He stated that he lived with the deceased until 2014 and during that time, his biological father did very little to provide for him. The deceased paid school fees for him and even built him a house. His case is that he is entitled to a share of the deceased's estate since he left him living on the land when he died. He did not produce any documents to prove his adoption or that the deceased paid his school fees.
7. He stated that his father James Miano Kiragu participated in raising him up although he did not have much money. That when the deceased took him under his care, he (PW1) was living with his grandmother on the deceased's land. He learned about the succession proceedings after gazettelement and he filed a protest. He said he intended to file an ELC matter but he could not afford the court filing fees. He stated that the deceased had a wife and 3 children. He said that he filed the case because he is in financial distress.
8. PW2, Johnson Mukoro Murage, stated that the applicant is the son of James Miano Kiragu and Mary Wangui Miano but he was raised by the deceased. That the deceased cared for the applicant as his own son and he paid his school fees. At the time, the deceased's wife had died and he married the 1<sup>st</sup> respondent much later, after he had lived with the applicant for a while. He stated that the deceased showed the applicant a piece of land where he was to build a house.
9. According to PW2, After the death of the deceased, the clan elders visited the 2<sup>nd</sup> respondent and told her to take care of the applicant since he had been adopted by the deceased long before she was married to him. In cross-examination, PW2 clarified that the deceased was the applicant's uncle and not the father. He added that the deceased provided for the applicant's basic needs since his own father was unable to do so.
10. PW3, Gachoki Mwangi, stated that the deceased started caring for the applicant in 1992 until 2014 when he died. The applicant is the deceased's brother's son, and the deceased took him under his care because his parents were not able to provide for him. The deceased married the 1<sup>st</sup> respondent in 2000. The applicant finished secondary school education in 2008 and the deceased showed him land on



which to build a house. In cross-examination, PW3 stated that the applicant's father is still alive and is a businessman. The applicant is not a child of the deceased but he was a dependant.

11. The respondent testified as RW1. She relied on the averments made in the replying affidavit, summarized hereinbefore. In cross-examination, she stated that the applicant lives on her land parcel no. Mutira/Kianjege/70, which she acquired through the succession proceedings herein. When she got married, the applicant was living on that land and the deceased was the one paying for his education. The applicant was living on the said land with the deceased's mother. The applicant is a nephew to the deceased and he was already living on that land by the time she got married to the deceased.

### **Parties' Submissions**

12. The parties filed written submissions as directed by the Court.
13. In his written submissions, the applicant stated that he is a dependant of the deceased in accordance with section 29 of the *Law of Succession Act*. That the evidence showed that he is a known dependant of the deceased, thus he should be provided for from the estate.
14. The respondents submitted that the applicant had perused the court file several times before confirmation but he did not make any efforts to file a relevant application. They stated that the application does not disclose circumstances to warrant revocation of the grant. Reliance was placed on section 76 of the *Law of Succession Act* and the cases of *In the Matter of the Estate of L.A.K. (Deceased) [2014] eKLR*, *In re Estate of Benjamin Kiregenyi Muiri (Deceased) [2022] eKLR*, *Albert Imbuga Kisigwa v Recho Kawai Kisigwa [2016] KEHC 1528 (KLR)*, *Peter Kiragu & 2 Others v. Catherine Wangui Kimani Nakuru Succ.No.104 of 2014*. In these cases, it was held that the power to revoke grants is discretionary, which discretion must be exercised judiciously based on evidence of wrong doing.
15. It was their argument that the applicant knew that he was a dependant of the deceased but he did not file any applications to be enjoined as a beneficiary, despite having perused the court file several times.
16. Referring to the case of *In re Estate of GOR (Deceased) Succ Cause 257 of 2017 [2023] KEHC (KLR) (17 November 2023) (Judgment) Odero J* held that:

“In order to prove dependency under section 29 (LSA) the applicant was under duty to provide evidence to show that the deceased had indeed taken in the two (2) minors and was providing for them as his children.”
17. Odero J adopted the dicta in *Beatrice Gamutua Rugamba v Fredrick Nkari Mutegi and 5 Others [2016] eKLR* where it was stated:

“... a dependent under Section 29 (b) and (c) must prove that he or she was being maintained by the deceased immediately prior to his demise. It is not the mere relationship that matters, but proof of dependency that counts.”
18. The respondents urged that there is no evidence to support the grounds for revocation as envisaged by section 76 of the *Law of Succession Act*. Thus, the application should fail.

### **Issues for Determination**

19. The issue for determination is whether the grant issued to the respondents should be revoked.



20. Section 76 of the *Law of Succession Act* provides:

“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.”

21. This provision sets out circumstances under which a grant of representation may be revoked. The instances include: That the proceedings to obtain the grant were defective. However, no evidence has been led to this effect. That the grant was obtained fraudulently by making of a false statement or concealment of material information from the Court. Again, no evidence was availed along these lines. That the grant was obtained by dint of an untrue allegations of fact essential in Law to justify the grant. No evidence was led on this issue at the trial. That the grantee has failed to apply for confirmation, or to proceed diligently with administration; or to produce to Court an inventory or account of the administration. This was not even considered at trial. That the grant has become useless or inoperative. Again, this was not a part raised at trial.

22. Only evidence focused directly on proof of the above grounds can properly justify a revocation of grant. In the present case, the issue focused upon was dependency of the applicant.

23. In the present application, the applicant deposed that he is an adopted son of the deceased, a fact that the respondents failed to tell the court when petitioning for the grant. Through viva voce evidence, however, it emerged that the applicant is the deceased’s nephew whom he took under his care at a tender age. This is a fact not seriously disputed. It is also not disputed that the deceased raised the applicant and took care of his needs until 2014 when he died.

24. All the witnesses who testified stated that before his death, the deceased had left the applicant and the deceased’s mother to live on his land. By the time RW1, the 1<sup>st</sup> respondent was getting married to the deceased, the applicant was already living on the land. She was aware that the applicant was a dependant



- of the deceased. The witnesses named the applicant's parents and emphasized that he was not a son of the deceased but a nephew.
25. As to whether the grant should be revoked, the court should satisfy itself that the applicant has proved the alleged grounds for revocation.
  26. In the Albert Imbuga Kisigwa case (supra) it was stated by Mwita J that a Court exercising the discretion to revoke "must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interests of Justice." The question therefore is whether the applicant as a child fostered by the deceased, has an equal right to inherit from the estate of the deceased as a beneficiary. PW1 and PW2 stated that the deceased took his brother's son (the applicant) into his care following a bout of Kwashiokor in 1992 when the applicant was living with his parents in Mathare slums in Nairobi. It appears clear that the deceased's intention was to help with raising the applicant since his brother was unable to do so. The deceased put the applicant through school, gave him a place to stay and basically raised him.
  27. Clearly, merely providing for a child doesn't convert such child into the son of the deceased with a direct beneficial interest and right to his estate. In the case of *In re Estate of Virginia Wanjiku Githuka (Deceased)* [2021] eKLR, the court held;

"Be that as it may, not all the raising of such children gives them rights to inherit from the deceased relative unless as provided by the law they can demonstrate dependence. It is not tenable that by merely fostering a child the child acquires rights to inherit. This would create problems and create a challenge for people who just want to assist children in need." [Emphasis added]
  28. RW1 stated that all through her marriage to the deceased, she knew about the applicant and that he was supported by the deceased. She even stated that the applicant was living on the deceased's land. It is therefore my view that the applicant was a dependant of the deceased and not a son. It follows that the correct action for the applicant to have taken was to challenge the distribution of the estate through an application seeking to affirm his status as a dependant. He should have filed an objection to distribution rather than a summons for revocation of grant.

### **Conclusions and Disposition**

29. The scope of an application for revocation of grant is limited in that the law clearly delimits those instances under section 76 of the Law of Succession. The makers of the law, being cognisant of the far-reaching effect of revoking a grant, determined that it was necessary to limit the circumstances under which a grant may be revoked.
30. Ultimately, the evidence adduced herein clearly tends to prove that the applicant is a dependant of the deceased, though no application for dependency, which ought to have been made under Section 29 LSA, is before the court. In the present application under Section 76 LSA, the issue herein is limited to revocation of grant. Accordingly, there is no evidence sufficient to justify the application for revocation of the grant.
31. Accordingly, the application lacks merit and it is hereby dismissed.
32. No orders as to costs this being a family matter.
33. Orders Accordingly.

**DELIVERED VIRTUALLY AT KERUGOYA HIGH COURT THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025**



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**R. MWONGO**

**JUDGE**

**Delivered in the presence of:**

Mwangi for Petitioner/Respondent

Maringa for Applicant

Francis Munyao - Court Assistant

