



REPUBLIC OF KENYA



**In re Estate of Sammy Munene Kinyua (Deceased) (Succession Cause
711 of 2013) [2025] KEHC 1467 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1467 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 711 OF 2013
RM MWONGO, J
FEBRUARY 13, 2025**

IN THE MATTER OF THE ESTATE OF SAMMY MUNENE KINYUA (DECEASED)

BETWEEN

ALICE WANJIRA MWAURA APPLICANT

AND

FAITH WANJIKU MUNENE 1ST RESPONDENT

JECINTA NJERI MUNENE 2ND RESPONDENT

JUDGMENT

Application

1. The applicant's summons for revocation of grant dated 13th May 2015 herein seeks orders that:
 1. The certificate of confirmation of grant issued to the respondents on 20th January 2015 be revoked and/or annulled; and
 2. The costs of this application be provided for.
2. The application is premised on grounds that the grant was obtained by making of false statements, misrepresentation and untrue allegations of facts essential to justify the grant. The applicant claims that the certificate of confirmation of grant was issued without her consent. That she was not acknowledged as a widow of the deceased in the chief's letter that was used to initiate the succession proceedings.
3. The applicant asserts that the deceased, who was a police officer, named her as a beneficiary in his estate and that she had 2 children with him. She produced her children's birth certificates as evidence. She stated that her name was left out of the proceedings because of the respondents' failure to inform the court that the applicant was also a widow of the deceased.



4. Through their replying affidavit, the respondents stated that the application is bad in law and it lacks merit. They stated that the 1st respondent was the only wife of the deceased and even his employer knew as much since she was the one, they contacted following the death of the deceased. Further, that the 1st respondent is the one who arranged for the deceased's burial. It was their case that the children whom the applicant alleges to have with the deceased were not sired by him and that the birth certificates produced are falsified documents.

The Hearing

5. A viva voce hearing was held. The Applicant testified as PW1 and stated that she was married to the deceased; that she had photographs to show for this; that she had obtained a letter from the deceased's employer which she produced as evidence. It was her evidence that she took out birth certificates for her children in 2013 and they are not fake documents. She said she did not know how to read but she was positive that the information on the next of kin details at the deceased's employer was hers. The deceased's employer produced documents showing that the next of kin was one Tabitha Njeri.
6. RW1, the 1st respondent, stated that when the deceased died, his employer called her to break the news. She made burial arrangements and obtained a burial permit. According to her, the applicant was not at the funeral, and her allegations only came long after the burial. The applicant's children's birth certificates were obtained after the death of the deceased, an indication that the application herein is an afterthought.
7. She stated that the applicant and her children are strangers to her and that at the time of petitioning for the grant, she was truthful about this lack of knowledge. The deceased was a police officer at the time of his death and he had 2 plots which she was using. When asked in cross examination why she indicated herself as trustee instead of wife of the deceased, she stated that she was representing her children who were minors at the time.
8. RW2, James Wauri Murimi is the deceased's uncle. He stated that the deceased had one wife who is the 1st respondent and he had 3 children with her. He asserted that the deceased did not have any other wife. In cross-examination, when shown a picture produced by the applicant as evidence, he stated that the man therein was not the deceased.

Parties' submissions

9. In the applicants written submissions, she stated that she too is a widow of the deceased and she had proof of their communications before he died. That she had 2 children with him and their birth certificates had been produced as evidence. She cited Articles 27(1), 53(1)(a) & (2) of *the Constitution* and argued that she and her children have rights that ought to be protected. She outlined the rights that she feels have been infringed. She further relied on Article 25(2) of the Universal Declaration of Human Rights, the *Births and Deaths Registration Act* and Article 24(1) of *the Constitution* which provides for limitation of fundamental rights.
10. She placed reliance on Sections 23(1) and 24(1) of the Children's Act, and argued that her children ought to be provided for from the deceased's estate since he had a responsibility over them as a parent. She further relied on the cases of *In re Estate of Hurbai Hussein (Deceased)* [2022] KEHC 15962 (KLR) and *In re Estate of Epharus Nyambura Nduati (Deceased)* [2022] KEHC 2074 (KLR) and asserted that the deceased left a will. In fact, she argued that the issues raised should be treated as a preliminary objection in the proceedings in terms of the principles in *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* [1969] EA 696 at 700.



11. The respondents submitted that the grounds for revocation have not been satisfied. They relied on the cases of *In the Matter of the Estate of L A K – (Deceased)* [2014] KEHC 967 (KLR) and *In re Estate of Benjamin Kiregenyi Muiri alias Kiregenyi S/O Murwanjogo (Deceased)* [2022] KEHC 2091 (KLR). In those cases the court cited the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] KEHC 1528 (KLR) where it was held that revocation can only be exercised on sound grounds, where there is clear evidence of wrong doing.
12. They argued that the applicant’s testimony does not prove her case on a balance of probabilities. Regarding the applicant’s claim that the deceased used to send her money, they argued that the M-Pesa statement provided is not supposed to be used as evidence and that, in any event, the money allegedly sent from the deceased to the applicant was sent only 3 times. This cannot be held to amount to maintenance or to prove a relationship between them.
13. They stated that given the dates of procuring the birth certificates, the applicant seems to have taken them out after the death of the deceased for the sole purpose of filing the summons herein. She did not prove that she had initially lost them before they were procured, nor was it shown that any loss was formally reported as she had alleged. It was also their submission that the school receipt for the applicant’s son from Canon Njumbi Mutira Secondary School was a forgery and the school itself denied any knowledge of it.
14. The photographs exhibited by the applicant with someone alleged to be the deceased did not provide evidence in support of the applicant’s claim since even RW2 stated that the man in the photographs was not the deceased. The letter that was allegedly written by the deceased’s employer, produced by the applicant did not indicate the author and it was not appearing on a letterhead. When the court summoned the Inspector General of Police, a bundle of documents was produced and none of the documents had the applicant’s name. In conclusion, the respondents relied on the case of *In re Estate of Amos Kiteria Madeda-Deceased* [2022] KEHC 12950 (KLR) and urged the court to dismiss the summons.

Issue for determination

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

Analysis and Determination

16. The applicant seeks to revoke the certificate of confirmation of grant issued to the respondents on 20th January 2015. They invoke section 76 of the *Law of Succession Act*. Throughout the application and in her evidence, the applicant has indicated that the certificate of confirmation of grant is unfair to her since she, too, is a widow of the deceased and she has 2 children sired by him. The certificate of confirmation however, distributes all of the deceased’s properties to the 1st respondent to hold in trust for her own children, who were minors at the time.
17. Sections 71, 72 and 73 of the *Law of Succession Act* provide for the process of confirmation of a grant. However, these provisions are silent on recourse for an aggrieved party where the distribution of the estate does not favour them. When a grant is issued, the appointed administrators file summons for confirmation of grant in which a mode of distribution is proposed. In the present proceedings the court confirmed the grant according to the mode of distribution proposed in the summons for confirmation culminating in the certificate of confirmation of grant issued on 20th January 2015.
18. The certificate of confirmation of grant is an instrument by which a court, strictly speaking, affirms the grant of representation for purposes of distribution of the estate in the terms allowed by the court.



It is not itself the grant of representation, but is founded upon the grant. The confirmation of grant can only be attacked by attacking its founding grant.

19. Here, there is no proper application for revocation of grant to be determined by the court. That notwithstanding, the court herein took evidence which it shall consider, albeit for the sake of finding out whether the grant underpinning the confirmed grant should be revoked on the court's own motion.
20. Section 76 of the *Law of Succession Act*, provides that a grant may be revoked under the following circumstances:

“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
 - (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. The applicant testified that she is also widow of the deceased and had 2 children with him. She stated that her children should be included in the estate of the deceased so that they can be provided for as they need school fees and they are suffering. As proof of the relationship, she produced one photograph showing about 8 people sharing a meal and copies of her children's birth certificates. The deceased's employer also provided a bundle of documents which have been considered. The said documents indicate that the 1st respondent is the only spouse of the deceased. The applicant's allegations were formally brought to the deceased's employer. The Inspector General of Police through a letter dated 18th June 2013, wrote to the deceased's area Chief to verify the allegations. The Chief responded through a letter dated 21st June 2013 stating that the deceased had one wife who is the 1st respondent and together, they had 3 children. In that regard, the death benefits from the deceased's employer were paid to the 1st respondent.
22. RW1 and RW2 testified that the applicant and her children were strangers to them. The 1st respondent stated that she singlehandedly arranged for the deceased's burial. RW2 testified that the deceased was not the man appearing on the photograph produced by the applicant as part of her evidence.



23. The school receipt presented by the applicant as evidence of fees payment by the deceased for school fees for Kevin Munene at Canon Njumbi Mutira Secondary School, was objected to by the 1st respondent on grounds of lack of authenticity. Following an inquiry to the school by the 1st respondents counsel regarding the receipt, the school denied the receipt as not genuine.
24. As regards the evidence of the Birth Certificates produced, the applicant sought to prove the deceased's paternity with them. In cross examination, she stated (pg. 13 proceedings)
- “The birth certificate, the first is for Kevin Munene. I obtained it in 2013. The other is for Jane Wanjiru. I took it on the same date of 2013. The deceased had passed away in 2013. I obtained the birth certificates after his death. I went to the office and gave names and was given the birth certificates” I gave names because my documents were stolen.... I did not have the documents but they got lost”
25. I have perused the said birth certificates annexed to the supporting affidavit of the applicant. On its face, the certificate for Kelvin Munene appears to have been issued on 07/10/2010 although the date of registration is indicated as 20/11/1999. The certificate for Jane Wanjiru, on its face, appears to have been issued on 26/11/2014 which is also the date of its registration. The dates of issuance contract the oral testimony of the applicant. If it is true that the Birth certificates she obtained, in 2013, that was a year after the deceased had died.
26. Section 12 of the Birth and Deaths Registration Act provides:
- “No person shall be entered in the register as the father of any child except either at the joint request of the father and mother or upon production to the registrar of such evidence as he may require that the father and mother were married according to law or, in accordance with some recognized custom”.
27. In this regard, the applicant did not avail either evidence of the request or consent of the deceased or of marriage to the deceased. Such evidence would render her assertions of his paternity more plausible.
28. Further, under Section 26 (4) of the *Births and Deaths Registration Act*, a Court is bound to receive a birth certificate where:
- “4) A certified copy of any entry in any register or return purporting to be sealed or stamped with the seal of the Principal Registrar shall be received as evidence of the dates and facts therein contained without any or other proof of such entry”
29. In the present case, the certificates produced were neither original certificates or “certified copies of an entry in any register or return” nor were they indicated in the applicant's supporting affidavit as such. In the circumstances, the evidence of the entries therein is rebuttable.
30. From the evidence adduced, there is nothing to prove that the grant was obtained fraudulently by making of false statements, misrepresentation and untrue allegations of facts essential to justify the grant. Even if this court should consider the process for issuing the grant, there is no flaw to be found. At the time of issuing the grant, the applicant did not object to the proceedings. Further, through the summons herein, she has failed to prove the grounds for revocation of the grant. The applicant also argued that the deceased left a will where he named her as a beneficiary, yet no evidence has been produced to prove this.



Conclusions and Disposition

31. The power of the court to revoke a grant is discretionary but the grounds for revocation as set out under section 76 of the *Law of Succession Act* must be proved first. In this case, in light of the foregoing discussion, the grant cannot be revoked through the application by the applicant or even on the court's own motion.
32. Accordingly, there is nothing in the evidence to persuade the Court, on a balance of probabilities, that the application is merited.
33. In the result, the applicant's summons for revocation dated 13th May, 2015 is hereby dismissed in its entirety.
34. This being a family matter, each party shall bear its own costs.
35. Orders accordingly.

DELIVERED VIRTUALLY AT KERUGOYA HIGH COURT THIS 13TH DAY OF FEBRUARY, 2025

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R. MWONGO

JUDGE

Delivered in the presence of:

1. Mr. Ondieki for Applicant
2. Ms. Ndwiga for Respondent
3. Francis Munyao - Court Assistant

