



REPUBLIC OF KENYA



In re Estate of Kaburuki Kiruja alias Kaburuki M'Kiruja (Deceased) (Succession Cause 639 of 2011) [2025] KEHC 2455 (KLR) (6 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2455 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 639 OF 2011
EM MURIITHI, J
FEBRUARY 6, 2025
IN THE MATTER OF THE ESTATE OF KK ALIAS KM (DECEASED)**

BETWEEN

M'ANAMPIU KABURUKI PETITIONER

AND

GERALD KINYURU KABURUKI APPLICANT

RULING

1. By Summons under certificate of urgency dated 10/3/2023, the Applicant seeks that:
 1. Spent
 2. The Grant issued to the administrator be revoked and the same be reissued to one GMK to complete the Administration of the estate.
 3. Estate of AM – Deceased to delve to RK to hold in trust for other beneficiaries.
2. The application is premised on the grounds that the Administrator has failed to fast track the implementation of the grant 6 years after its confirmation. In his supporting affidavit, the Applicant avers that upon the demise of Anjelo Muriira, the family agreed that his son RK would hold his portion in trust for the other family members.
3. The Administrator/Respondent swore a replying affidavit on 14/6/2023 in opposition to the application. He denies having failed to complete the distribution of the estate, because he has since obtained consent from the Abothuguchi Land Control Board and registered the mutation form at the Land Office, subsequent to which he lodged the transfer documents at the Meru Land Office. He believes that the application is premature and the same has not been made in good faith because what pends is the issuance of title deeds. The family of AM (now deceased) is yet to express how they intend to share his share.



Submissions

4. On 5/11/2024, the Applicant's counsel intimated to court that they did not wish to file submissions to the application.
5. The Respondent faults the Applicant for failing to prove any of the conditions stipulated under section 76 of the *Law of Succession Act*, to warrant the revocation of the grant. He prays for the dismissal of the application for being frivolous and vexatious, and cites *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* (2016) eKLR.

Analysis and Determination

6. The sole issue for determination is whether the Applicant has met the threshold aptly encapsulated under Section 76 of the *Law of Succession Act* to justify the revocation sought.
7. Section 76 of the Act provides as follows:

“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.”
8. The import of the revocation herein is to effectively replace the Administrator herein on an alleged failure to complete the administration of the estate. In rejoinder, and with support of relevant documentation, the Administrator has proved that he successfully applied and obtained the Land Control Board Consent to transfer, successfully registered the mutation form and lodged the transfer documents for necessary action and subsequent issuance of title deeds to the beneficiaries.
9. The Administrator has proffered, with sufficient detail, reasonable cause for his inability to complete the administration process. The power to revoke the grant under section 76 (d) (ii) of the Act does



not therefore crystallize, because it has not been shown that the Administrator has deliberately and unreasonably failed to discharge his duties in administering of the estate.

10. This court finds that it has not been shown on the evidence any failure, after due notice, without reasonable cause on the part of the Administrator, to diligently complete the administration of the estate.
11. It would be undesirable to revoke the grant and substitute the Administrator on the final stages of the succession process, and particularly now when parties are awaiting issuance of title deeds.
12. A prayer has hitherto been made to have the share of Anjelo Muriira (deceased) devolve to his son to hold in trust for the others. The Administrator has attributed the failure to complete the administration of the estate on the lack of cooperation on the part of the family of the deceased Anjelo Muriira to agree on the way forward.
13. As other could be other interested parties to the said estate of deceased Anjelo Muriira, the share devolving to that beneficiary shall be held in the Estate of he said deceased beneficiary to be distributed in accordance with ordr of the Court in such succession proceedings and, consequently, the Court does not grant that prayer.

Orders

14. Accordingly, for the reasons set out above, the Court issues the following orders:
 4. The application for revocation of the Grant is declined.
 5. The share of the estate devolving to beneficiary Anjelo Muriira (deceased) shall be held in the Estate of Anjelo Muriira to be distributed in accordance with grant of representation obtained in succession proceedings in that behalf.
 6. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED THIS 6TH DAY OF FEBRUARY, 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mwiti Joshua for Appellant.

Ms. Mugo for Petitioner.

