



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Mbugua Njuguna (Deceased) (Succession Cause  
805 of 2014) [2025] KEHC 917 (KLR) (4 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 917 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 805 OF 2014  
SM MOHOCHI, J  
FEBRUARY 4, 2025**

**BETWEEN**

**HANNAH NJERI KAMAU ..... APPLICANT**

**AND**

**THE PUBLIC TRUSTEE ..... RESPONDENT**

**RULING**

1. The Applicant Hannah Njeri Kamau moved this Court vide Summons dated 17<sup>th</sup> March, 2015 under Section 47 and 76 of the [Law of Succession Act](#) and Rules 44(1) 49 and 73 of the Probate and Administration Rules wherein she seeks the following:-
  - i. That the grant of Letters of Administration made to the Respondent on the 8<sup>th</sup> of April, 1987 and confirmed on 16<sup>th</sup> September, 1997 be revoked and annulled
  - ii. That costs of this Application be in the cause

**Applicant's Case**

2. The Application is premised on the grounds on its face and the Applicants supporting affidavit sworn on even date. It was the Applicant's case that her existence was well known to the family members but the same was concealed from the Court at the time of issuing and confirming the grant.
3. That she became aware of the succession proceedings and commenced her investigations. She argued that material non-disclosure of all beneficiaries is a ground for revocation of grant and that it was only fair that she inherits from her deceased father's estate

**Respondent's Case**

4. The Respondent through counsel A. K. Sang opposed the Application by way of Replying Affidavit sworn on 27<sup>th</sup> March, 2015. He averred that the estate was referred to the Respondent by the fists



and second widows of the deceased Esther Wangare and Josephine Muhito respectively. That the Respondent received a list of heirs from the District Commissioner on 19<sup>th</sup> August, 1981 indicating that the deceased was survived by two widows, three sons and four daughters.

5. That the grant was issued to the Respondent in Succession Cause No. 162 of 1987 and the estate duly advertised in the Kenya Gazette on the 15<sup>th</sup> October 1982 vide Notice No. 3479. That it has been over 30 years without the Applicant raising any questions. He argues that the averments in the Applicant's Affidavit were not brought to the attention of the Respondent and in any event the Applicant has not disclosed whether she belongs to the first second or if there was a third house.
6. It was denied that the Respondent concealed or misrepresented facts knowingly and that the Respondent acted within the law and with utmost good faith. The Respondent is ready to administer the estate upon proper identification of legal heirs.

### **Further Affidavit**

7. The Applicant in her Further Affidavit sworn on 5<sup>th</sup> September, 2022 deposed that she is the first-born daughter of the deceased from the first house and that during the burial of the first wife Esther Wangari Mbugua she was acknowledged as a daughter in the obituary.
8. The hearing was viva voce which proceeded on 25<sup>th</sup> January, 2024. The Applicant called one Witness with the Respondent opting to rely on his Affidavit since the widows of the deceased had long passed on.

### **Hearing**

9. Hannah Njeri Kamau Mbugua. She stated that the deceased had two wives the first wife Esther Wangari wa Mbugua with children Hannah Njeri, Margaret Wambui and Lucia Mbugua (deceased). The second wife was Muhitu Josephine, with children Njeri Mbugua (deceased), Nyambura Mbugua, Wairimu Mbugua, Karanja Mbugua (deceased), Kamau Mbugua and Kanyoro Mbugua.
10. She testified that she was not included in the initial list as she was married and married daughters were not entitled to inherit. She stated that the obituary was the proof that she was a child of the deceased. That the deceased assets in Keringet, Kitale shamba Gilgil land, Gitamaiyu which are all leased out by Margaret are not listed. That Margaret lives in Rongai and the shamba is not included. She also collects Rent from the Kitale and Elburgon plots which are constructed. She testified that she was left out because she was married and Margaret was not.
11. On cross examination, she stated that she was 85 years old and she was never registered to be issued with a birth certificate. In re-examination she clarified that she never knew when the Petition was filed.

### **Applicant's Submissions**

12. It was submitted that the Respondent obtained representation a process that excluded the Applicant causing the estate to devolve to the Widows. That the neither the Respondent nor any of the beneficiaries to the estate contested the eulogy or the contents therein,.
13. The Applicant relied on in re Estate of Charles Ngotho Gachinga (Deceased) [2015] eKLR to submit that the law of succession does not discriminate against children.
14. It was argued that the report of death highlighted 3 properties but the Petition for letters of administration listed 2 properties which omission has not been explained or justified contrary to the



provisions of Section 51(2)(h) of the [Law of Succession Act](#). Reliance was placed in re Estate of Jeremiah Sechero (deceased) [2019] KEHC 4203 (KLR) where a grant was revoked for omission of some assets.

15. It was submitted further that the Respondent has not tendered any evidence showing how the properties were transmitted to the beneficiaries as per the confirmed grant and relied on the case of re Estate of Charles Ngotho (deceased) supra where the Court held that an administrator can be called at any time to account and Section 76 does not Place any limitations on when an application for grant can be revoked.

### **Respondent's Submissions**

16. The Respondent submitted that the Application in its entirety does not prove the provisions under Section 76 of the [Law of Succession Act](#) as there was no concealment or misrepresentation of material facts by the Respondent. That the Court should look at the circumstances of each case even if something was concealed before revoking the same.
17. It was also submitted that the Applicant was a stranger to the Respondent and as such were not privy to any knowledge or information concerning her when the estate of the deceased was referred to the Respondent by the widows of the deceased. She was also not able to produce a birth certificate or a list of heirs from the Deputy County Commissioner or Chief.
18. The Respondent submitted that the Respondent acted according to the legal and procedural requirements and revocation would not be in the interests of the beneficiaries as it can disrupt chaos in the management of assets or administration as part of the estate has since been distributed.
19. The Respondent beseeched the Court to invoked Rule 73 of the Probate and Administration Rules and instead of revoking the grant, to exercise discretion and consider amending or varying the grant to include the Applicant as a beneficiary and secondly to award the Applicant as a beneficiary if it is found that she is one.
20. Reliance was placed in the case of Mary Wangari Kihika vs John Gochuki Kinuthia & 2 Others [2015] eKLR where the Court opted to amend the Grant as opposed to revoking it.

### **Analysis and Determination**

21. The central issue for determination is whether the Application meets the threshold to revoke or annul a grant. Revocation of grant is provided for under Section 76 of the [Law of Succession Act](#). The said provision states as follows:

“76. Revocation or annulment of grant

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.”

22. The Applicant has argued that being a child of the deceased, she was entitled to a share of the deceased estate. She intimated that she was left out of the list since she was married and married daughters never inherited property.
23. The Applicant’s only proof to being linked to the deceased was that she was mentioned in the obituary of the deceased’s first wife. She claimed that at the time of birth she was never registered so she was never issued with a birth certificate.
24. The Respondent on the other hand has insisted that she proceeded based on the information given by the then local administration; has demonstrated that proper procedures were followed in obtaining the grant, including gazettment which did not illicit any objection and the estate was subdivided between the widows.
25. The Applicant upon invoking Section 76 of the *Law of Succession Act*, by claiming concealment of accurate facts to the Court had to demonstrate the existence of the said grounds by the Respondent.
26. The Public Trustee, steps in to administer the estate of a deceased based on the information that is availed by the County Commissioner. In this case it was at the behest of the deceased’s widows and the information on beneficiaries or assets was availed by the widows of the deceased in the filled report of death dated 18<sup>th</sup> August 1980. Furthermore, any information that is availed by the area chief, is from the family of the deceased or from personal knowledge of the deceased’s family if they were well acquainted.
27. The Respondent in this regard only proceeded within the law. If there was any concealment then the Respondent had nothing to do with it but the family of the deceased.



28. I echo the sentiments of the Court in re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR where it was stated that:-

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own 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 matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons...”

29. The allegations of concealment of facts remain unproven and the totality of facts is that the Applicant has failed to establish any grounds under Section 76 of the *Law of Succession Act* that would warrant revocation of the grant.
30. The other issue which was brought to the Court's attention but not properly proved is on whether the Applicant was indeed a child of the deceased. The Applicant only availed an obituary as her only proof. She claimed that at the time of birth she was not registered hence the lack of a birth certificate. Plausible as it may be due to time she was born and the circumstance surrounding registration at that time; she never availed an Identity Card to ascertain she is who she claims to be. She did not have anything else to ascertain her allegations. He who alleges must prove. An obituary is not proof of identity.
31. This Court has however observed with concern that the Obituary listed children of the deceased first wife and included a Hanna Njeri which name was left out in the list of beneficiaries. It would be strange to include an individual in such a document if they had no connection to them whatsoever.
32. On 25<sup>th</sup> January, 2024 the Court issued Summons to Margaret Mbugua, Nyambura Mbugua and Wairimu Mbugua the surviving beneficiaries of the estate in order to confirm or deny whether the Applicant was a beneficiary of the estate or a sibling. Wairimu Mbugua and Margaret Mbugua were both represented by Counsel Nyambura Mbugua did not respond.
33. Margaret and Nyambura did not deny the allegations propounded by the Applicant. Wairimu Mbugua on the other hand responded through a letter dated 29<sup>th</sup> October, 2024 and stated “I have no Knowledge of a person named Hannah Njeri in relation to this inheritance.”
34. The Applicant was from the first house and claims she had been married when the deceased passed on. The Grant was issued on 8<sup>th</sup> April, 1987 when Wairimu Mbugua from the second house was then 4 years old therefore presumably at the time of death of the deceased on 14<sup>th</sup> June, 1980, she was about one year old.
35. This Court is not one to make any assumptions but must emphasize that the primary purpose of a Succession Court is to protect the estate and its genuine dependants. Any chance of there being an injustice the Court has to offer redress to the injured party.
36. I also note that when the Applicant first moved the Court, in the year 2014 against the other beneficiaries the 2<sup>nd</sup> widow who was still alive filed an application seeking for the transfer of the file from Nairobi Court to Nakuru due to her advanced age and was under medication. Although the Application was



- withdrawn a year later and substituted with the instant application against the Respondent, neither the said widow or the beneficiaries denied knowledge of the Applicant.
37. I have also noted that from the record, summons were issued to the other beneficiaries of both houses and none filed a response or claimed the Applicant was an imposter to the estate.
38. Wairimu Mbugua in her letter threw a spanner in the works and claimed 50% of her mother's inheritance in the Kitale plot. The Applicant has raised the issue of some properties including the Kitale Plot which is said to be leased out by one Margaret concealed from the deceased's lists of assets. According to the Petition for Letters of Administration, dated 21<sup>st</sup> January, 1987, the immovable properties were Gitamaiyu 167, and LR. 530/151 Elburgon Township.
39. The Respondent submitted to the Kitale property L.R. No. 2116/111/4 already having being distributed as per the Confirmed grant.
40. I note with concern the Report of death dated 18<sup>th</sup> August 1980 made by the deceased's widows mentions Umoja plot which does not seem to be mentioned in the Petition. The Kitale plot was not mentioned either. Such revelations cannot go unnoticed.
41. This is an interesting case with too many smoking guns. I concur with the Respondent that the case is peculiar that presents unique circumstance. Albeit over 30 years have lapsed since issuance of grant of letters of administration, this Court is not subject to the Limitations of Action Act . If there is a remote chance that there were some properties or individuals that were intentionally left out of the succession proceedings, the Court has a duty to address the same.
42. This Court has jurisdiction under Section 47 of *Law of Succession Act* to entertain any application and determine any dispute. Rule 73 Probate and Administration Rules however provides that:-
- “Nothing in these rules shall limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or prevent abuse.”
43. In that regard nothing prevents this Court from making the orders which would be just within the circumstances.
44. It is on that basis that I am inclined make such orders that are expedient to meets the ends of Justice. I will allow a limited period for Wairimu Mbugua to move the Court appropriately to assert her claim on her mother's share of the deceased's estate. I will also render a limited period for the Applicant to demonstrate a better link with the deceased.
45. It would be imperative for the Respondent to render an account with the Court pertaining to the estate beneficiaries and assets and if any of them was left out as well as the discrepancy on the list of movable properties in the Petition and the one on the report of death.
46. For the foregoing reasons, the upshot of this Court's decision is that:-
- a. The Applicant's Summons for Revocation of Grant dated 17<sup>th</sup> March, 2015 is hereby dismissed;
  - b. The Applicant shall file with the Court further documentation on her identity and her claim to the estate within forty-five (45) days of this Ruling;
  - c. Wairimu Mbugua and other beneficiary shall move the Court within forty-five (45) days of this Ruling to assert any claim of their share in the estate.



- d. The Respondent shall, render accurate accounts relating to the identification of beneficiaries and assets of the deceased, and to shed light on the position of the estate this far pertaining to distribution and transmission within ninety (90) days of this Ruling
- e. There shall be no orders as to costs.

It is so ordered.

**SIGNED, DATED AND DELIVERED ON THIS 4<sup>TH</sup> DAY OF FEBRUARY 2025**

**MOHOCHI S.M**

**JUDGE**

