



In re Estate of Evalyne Nyawira Njiiri (Deceased) (Succession Cause E1426 of 2023) [2025] KEHC 3601 (KLR) (Family) (21 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3601 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E1426 OF 2023
PM NYAUNDI, J
MARCH 21, 2025
IN THE MATTER OF THE ESTATE OF EVALYNE NYAWIRA NJIIRI (DECEASED)**

BETWEEN

PATRICK NGATIA NJIIRI 1ST APPLICANT

FELIX KIONI NJIIRI 2ND APPLICANT

AND

ZACHARIA KAMANDE RESPONDENT

JUDGMENT

1. This Court issued a Grant of Limited Letters of Administration ad litem to the Respondent on the 13th December 2023 “limited only for the purposes of negotiating benefits payable to the estate of the deceased and receiving the sum that will be agreed upon by her former employer being the International Livestock Research Institute Kenya (ILRI) AND instituting suit in the relevant court for the protection of the deceased’s property more particularly known as Title Number Muguga/ Jetscheme/5053 imminently threatened.”
2. Vide summons for Revocation of Grant dated 1st March 2024, Patrick Ngatia Njiiri and Felix Kioni Njiiri (the applicants) seek the following orders: -
 1. Spent.
 2. Spent.
 3. That the grant ad litem issued to Zacharia Kamende by the High Court at Nairobi in Succession Cause No. E1426 of 2023 on 13th December 2024 be revoked.



4. That this Honourable Court do grant such further orders as it shall deem fit under the circumstances.
5. The costs of this application be paid by the Petitioner/Respondent.
3. The summons premised upon Sections 76 (d) of the Law of Succession Act and Rule 73 of the Probate and Administration Rules and was supported by the Affidavit of even date sworn by the 2nd Applicant. He also filed a Further Affidavit sworn on 20th May 2024.
4. The Respondent opposed the summons through his Replying Affidavit sworn on 3rd May 2024. He also filed a Notice of Preliminary Objection dated 11th November 2024. He raised the following grounds of opposition;
 - i. That the application seeking to revoke the Respondent's grant ad litem dated 1st March 2024 is fatally and incurably defective in law as the 1st & 2nd Applicants are strangers to the estate of the deceased lacking locus standi to address the honorable Court and as such cannot purport to address the court on the subject matter howsoever and whatsoever.
 - ii. That this application is fatally and incurably defective and cannot stand in law.
 - iii. That the application herewith is misconceived, misdirected, misled and an abuse of the process of this Honorable Court and ought to be dismissed with costs.
5. The court directed that the Preliminary Objection and the Summons for Revocation be heard together and be disposed of by way of written submissions. The Applicants filed written submissions dated 21st May 2024. The Respondent's submissions are dated 18th October 2024.
6. The Applicants are the brothers of the deceased while the Respondent is the husband of the deceased.
7. The 2nd Applicant avers that he is the biological brother of the deceased and the next of kin. That the Respondent failed to disclose to this court that the deceased updated her details of her next of kin to include him and the 1st Applicant. He also failed to disclose to the court that the deceased transferred property known as Muguga/Jetscheme/5053 one year ago to them to hold in trust for the deceased's minor son called JK. That the Respondent wants to enrich himself by initiating negotiations for the deceased's terminal benefits from the former employer of the deceased. He averred that the proceedings to obtain the grant were defective in substance and that the grant was obtained fraudulently by making of a false statement and by concealment from the court matters material to the case.
8. In a further affidavit dated 20th May 2024, he averred that the Respondent did not disclose to this court that the deceased left a will where the deceased bequeathed all her terminal dues to her minor son. The Respondent also did not disclose to the court that the will allowed him to collect rent from Muguga/Jetscheme/5053 to help him raise their son until the age of 25 when he can hand over the property to him. That the Respondent obtained letters of administration ad litem without informing them. He argued that the letters of administration ad litem issued is defective because it is only limited to instituting or defending a suit and not for preserving or collecting the estate of the deceased.
9. The Respondent in his replying affidavit avers that he is the husband of the deceased. That he was issued with a limited grant ad litem by this court. The former employee of the deceased, ILRI paid him "last expense payment" on 24/11/2023 and 27/11/2023 and therefore, the Applicant's application has been overtaken by events. He urged the court to dismiss the applicant's application with costs.



Applicants Submissions.

10. Counsel reiterated the Applicants position in their affidavits and submitted that the Respondent did not inform the court that the deceased left a valid will appointing them as executors and that they had been bequeathed all the deceased's properties to be held in trust of the deceased's minor son, TJK. The Respondent failed to involve the Applicants before he petitioned for letters of administration ad litem.
11. Relying on the decision of *Re Estate of Jennifer Kusuro Musiwa (Deceased)* [2021]eKLR , it was further submitted that grant of letters ad litem is only issued when an individual is desirous of suing and defending on behalf of the estate of the deceased. In this case, the grant was issued for purposes of pursuing benefits from the deceased's employer and therefore, the same is fatally defective. That the Respondent was required to file for a limited grant ad colligenda bona under Section 67 of the [*Law of Succession Act*](#).
12. It was submitted further that the entire proceedings were commenced as a false start in terms of Section 76 (a) of the Succession Act and therefore, the grant issued was irregular. That the allegation that the application for revocation has been overtaken by events does not stand because the Respondent's activity is an illegality. Counsel urged the court to allow the prayers as sought.

Respondent's Submissions.

13. Counsel relied on Section 76 of the [*Law of Succession Act*](#) and submitted that the Applicants had not met the threshold for revocation of grant.
14. Relying on the decisions of *re Estate of Henry Kithia Mwitari (Deceased)* [2021] eKLR and *Karega & 2 others v Kiama & 2 others (Succession Cause 6 of 2019)* [2022] KEHC 9880 (KLR) (8 July 2022) (Ruling), it was submitted that the Limited Grant Ad litem is limited for a specific purpose and thereafter, the grant becomes obsolete. In this case, it was argued that the grant was limited for the purposes of collecting benefits from the deceased's employer. The Respondent has already been paid and therefore, the grant ceases to exist. He urged the court to award costs to the Respondent.

Analysis and Determination.

15. I have considered the summons herein together with the grounds of opposition and the submissions as filed by the parties. The issues for determination are;
 - i. Whether the Respondent's Preliminary Objection has merit.
 - ii. Whether the grant issued on 13th December 2023 should be revoked.
16. The Respondent has argued that the Applicants lack locus standi to address the court. The Respondent stated that the Applicants are strangers to the estate of the deceased. In *Re Estate of Hellen Wangari Wathiai (Deceased)*[2021]eKLR the court stated,

It is trite law that pleadings filed in court by persons with no locus standi are void ab initio and the court does not have jurisdiction over such.
17. In *Ibrahim v Hassan & Charles Kimenyi Macharia; interested party* [2019] eKLR:

Locus standi is basically the right to appear or be heard in court or other proceedings. That means if one alleges the lack of the same in certain court proceedings, he means that party cannot be heard, despite whether or not he has a case worth listening. The issue herein is whether the Applicant lacks the requisite locus standi to seek relief from the court to revoke the grant in question issued to the



Respondent. In my view, issues as regards locus standi are critical preliminary issues which must be dealt with and settled before dwelling into other substantive issues.

18. Black's Law Dictionary, 9th Edition, page 1026, defines Locus Standi as
 “ the right to bring an action or to be heard in a given forum”.
19. Under the *Law of Succession Act*, Cap 160, any interested party may petition the court for revocation or annulment of a grant of representation.
20. The Court of Appeal addressed itself on the matter in the case of Rajesh Pranjivan Chudasama Vs. Sailesh Pranjiran Chudasama (2014) eKLR, and rendered that;
 ----- in our view the position in law is well settled. A litigant is clothed with locus standi upon obtaining a limited grant or a full grant of letters of administration in cases of intestate succession----
21. Under Section 76, a revocation of a grant may be sought by “any person interested in the Estate of the deceased person. However, the Section does not define who an “Interested Party”, for purposes of annulment is, but only provides that such interested party may apply for its annulment or revocation.
22. There are divergent views on who such interested party is. The section opens up space for anybody interested in the administration of a deceased's estate, it is not restricted to the persons listed under Section 66 of the *Law of Succession Act* and Rule 44 of the Probate and Administration Rules.
23. My understanding is therefore that any person interested in the administration of the deceased Estate, whether or not a heir, beneficiary or a dependent, has sufficient standing to seek revocation under Section 76 (a), (b) and (c) of the *Law of Succession Act* challenging the property of the grant making process. The interest must however be sufficient and demonstrable thus giving no room to busy bodies see Re: Estate of Jackson Mugo Mathai (deceased) [2010] eKLR.
24. I have perused the documents attached by the Applicants. They argue that they are the brothers of the deceased and that they were nominated as next of kin for purposes of receiving employment benefits from the employer of the deceased to hold in trust of the deceased's son. Also, that the deceased transferred property known as MUGUGA/JETSCHEME/5053 to their name to hold it in trust of the deceased's son. They also produced a will dated 25th November 2022 where deceased stated that they should hold all her properties in trust of her minor child.
25. I do find that the Applicants have a beneficial interest in the estate of the deceased and therefore, they have locus standi to institute summons for revocation.
26. On the second issue, the applicants seek revocation under Section 76(d) of the *Law of Succession Act* which states as follows;
 - (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;

27. The court in the case of *In re Estate of Magangi Obuki (Deceased)* [2020] eKLR in dealing with the issue of revocation stated:-

“In the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, Succession Cause No.158 OF 2000, Mwita J. made remarks on the guiding principles for the revocation of a grant. He stated: -

[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 wrong doing 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 interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.

28. The grant issued to the Respondent on 13th December 2023 is a limited grant referred to as grant ad litem, which is limited to instituting, prosecuting, and defending the estate in court proceedings without power of distribution.

29. Such grant is provided for in Section 54 and Paragraph 14 of the 5th Schedule the *Law of Succession Act* which provides that:-Section 54A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.

30. The court in the case of *In re Estate of Henry Kithia Mwitari (Deceased)* [2021] eKLR stated:-

Therefore, it is clear that a grant ad litem is issued for a specific, limited, and finite purpose. Once the purpose for which such a Grant is issued is achieved, the Grant is exhausted and becomes obsolete. More pertinently, a grant ad litem cannot be used to collect, preserve, or distribute the estate of the Deceased.

31. Further, the court in the case of *Karega & 2 others v Kiama & 2 others* (Succession Cause 6 of 2019) [2022] KEHC 9880 (KLR) (8 July 2022) (Ruling) stated:-

However, I did find the case of *Winrose Emmah Ndinda Kiamba vs Agnes Nthambi Kasyoka* illuminating as it dealt with an almost similar issue. The court was of the view that consent with regard to special limited grants of representation need not be mandatory...The court opined that that such a grant was normally issued due to the exigencies arising in relation to the estate and which could not wait for issuance of full grant through the normal way; that it was also without prejudice to the right of any other person to apply for full grant of representation to the estate of the deceased and as such, limited grant may not be subjected to full and strict compliance with the requirements meant for a full grant of representation. That again, the person to whom the grant is so made undertakes to administer the estate according to the law but limited for the purpose for which the grant was issued until a further grant of representation is made by the court. In the aspect of consent of the other beneficiaries, the court stated that *Law of Succession Act* explicitly provides that, a court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act. The aforementioned, clearly depicted that the aspect of consent with regard to special limited grants of representation need not be mandatory.



32. I agree with the above-referenced decision. In the circumstances, I find and hold that the grant herein, being a limited grant ad litem, consent was not mandatory. That being the case the Summons for Revocation of the grant must fail. Further the same is spent as the dues from the Employer have been paid out to the Respondent.
33. On the amount paid out by the Employer the same was governed by a nomination. It is now well settled by legislation and precedent that payments governed by nomination are not subject to the Law of Succession Act. In the case of re Estate of Carolyne Achieng Wagah (deceased) 2015 eKLR (Nairobi) Musyoka, J. rendered himself on the law as follows:
- It is the law that funds the subject of a nomination do not form part of the nominator's estates and therefore such funds cannot pass under the will of the deceased or vest in his personal representative. Such funds are not subject to the succession process, and should be dealt with in accordance with the law governing nominations. Nominations are statutory, in the sense of them being specifically provided for by a particular statute.
34. A similar position was taken by Gikonyo, J. in the case of Benson Mutuma Muriungi vs CEO Kenya Police Sacco & Another [2016] eKLR when the learned Judge said: -
- Nominations under the Co-operative Societies Act are statutory. Section 39(1) of the co-operative Societies Act provides that upon death of a member, a Co-operative Society may transfer the share or interest of the deceased member to a person nominated in accordance with the Act or the rules made thereunder ... The property which is subject of a statutory nomination is not free property of a deceased member. It does not pass or vest in the personal representative of the deceased member or to the estate; it passes directly to the nominee.”
35. Subsequent to the grant he has lodged a matter before the ELC challenging the title of the Applicants to LR No Muguga/ Jet Scheme/5053.
36. From the foregoing it therefore follows that the application before me lacks merit and is for dismissal.
37. Pursuant to Section 83(g) the Respondent will file in Court court within 60 days an account of the money received by him from the employer of the deceased.
38. There is need to proceed with the administration of the Estate and as a first step the Applicants may move the Court for Grant of probate within 90 days in default the Respondent herein is at liberty to make application under Rules 23 and 24 of the Probate and Administration rules. Mention before the Deputy Registrar on 22nd July 2025 to confirm compliance and take directions.
39. This being a family matter I make no orders as to costs.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF MARCH, 2025.

P M NYAUNDI

JUDGE

In the presence of:

Mugane for Respondent

Mwangi for Applicant

Kanja Court Assistant

