



REPUBLIC OF KENYA



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**In re Estate of Wilson Mbugua Njoroge (Deceased) (Succession Cause
38 of 2006) [2025] KEHC 3046 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3046 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 38 OF 2006**

G MUTAI, J

MARCH 14, 2025

IN THE MATTER OF THE ESTATE OF WILSON MBUGUA NJOROGE (DECEASED)

RULING

1. The deceased, whose estate is the subject of these proceedings died on 8th August 1999 at the age of 80 at the Matter Hospital. His place of residence, as indicated in the death certificate, was Mombasa. According to the affidavit in support of the petition sworn on 19th January 2006, the deceased had eight dependants whose names were given as:-
 - a. Monica Wamuhu Mbugua – wife;
 - b. Hannah Wambui Mbugua – wife;
 - c. Peter Gitahi Mbugua – son;
 - d. Leah Njoki Kamau – daughter;
 - e. Grace Wanjiru Njenga – daughter;
 - f. Serah Njoki Njoroge – daughter-in-law;
 - g. Mary Wanjiku Gichuru – daughter-in-law; and
 - h. Alice Njeri Wahome – daughter.
2. The grant was issued on 14th August 2006 and confirmed on 21st March 2007. The certificate of confirmation of the grant had a more extensive list of beneficiaries. These were listed as being:-
 - a. Monica Wamuhu Mbugua;
 - b. Hannah Wambui Mbugua;
 - c. Peter Gitahi Mbugua;
 - d. Leah Njoki Kamau;



- e. Grace Wanjiru Njenga;
 - f. Amos Njoroge Mbugua;
 - g. Francis Gichuru Mbugua
 - h. Jackson Waithanji;
 - i. Serah Njoki Njoroge- (wife to Amos Njoroge Mbugua);
 - j. Mary Wanjiku Gichuru – (wife to Jackson Waithanji); and
 - k. Alice Njeri Wahome.
3. *Vide* Notice of Motion dated 22nd October 2024, Alice Njeri Wahome, Leah Njoki Kamau and Grace Wanjiru Njenga sought to be appointed as the administrators of the estate. Upon hearing the matter, this Court, on 28th November 2023, allowed the applications. The basis upon which the decision was made was the representation that the three applicants made that they had incorporated all the beneficiaries of the estate and that all they were seeking to do was to complete the administration of the estate of the deceased. A new grant of representation, together with a rectified certificate of confirmation of grant was issued on 11th December 2024.
 4. On 9th December 2024, James Gichuru Njoroge, Nicholas Muiga Gitau, Margaret Wanjiku Waithanji and Alice Njeri Wahome, seemingly unaware that another grant had been issued, applied for issuance of a grant de bonis non to themselves and for an order of injunction to issue restraining Leah Njoki Kamau, Alice Njeri Wahome and Grace Wanjiru Njenga from trespassing, evicting or locking up tenants' premises, collecting rent from Plot No. 3793/VI MN Changamwe, Plot No 2556/VI/MN Changamwe, Plot No 19/5 Chaani and Plot No. 18/23 Chaani, Mombasa.
 5. On 10th December 2024, James Gichuru Njoroge, Nicholas Muiga Gitau, Margaret Wanjiku Waithanji and Alice Njeri Wahome applied, seemingly upon becoming aware of the existence of a confirmed grant, sought to have the grant issued on 28th November 2024 stayed, set aside, and the will issued by Monica Wamuhu Mbugua declared as unconstitutional or invalid as it did not take into account all the 32 applicants who have a claim to the estate.
 6. The applicants, in an affidavit sworn by Margaret Wanjiku Waithanji, stated that the grant was obtained fraudulently by the making of false allegations and concealment of material facts.
 7. In response, the administrators filed a notice of preliminary objection dated 17th December 2024 in which they impugned the affidavit of Margaret Wanjiru Waithanji on the ground that she lacked locus standi. They also filed a joint replying affidavit sworn on 17th December 2024 in which they averred that they obtained the grant lawfully.
 8. This court directed the parties to file written submissions. The parties complied with the directions of the court. The court has considered the said submissions as well as the documents filed by the parties.
 9. I have considered the two applications and the preliminary objection. This court notes that given the fact that the grant had been issued to Alice Njeri Wahome, Leah Njoki Kamau and Grace Wanjiru Njenga, which grant was confirmed concomitantly with the issuance of the grant, the application dated 9th December 2025 lacked merit as it was premised on a fiction that the estate was without administrators. Thus, the said application is dismissed for lacking merit.
 10. The preliminary objection is similarly bereft of merit. The deponent of the affidavit is the spouse of a deceased beneficiary and, thus, a beneficiary of the estate upon the demise of her husband. This Court



places greater emphasis on substantive justice rather than on technicalities. The preliminary objection is thus dismissed.

11. What of the second application? Section 76 of the [Law of Succession Act](#) states that a grant of representation may be revoked under certain circumstances. It states that:-

“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.”

12. The circumstances under which a grant may be revoked under section 76 of the [Law of Succession Act](#) have been considered in a number of the decisions of the court. In the case of [Albert Imbuga Kisigwa v Recho Kavai Kisigwa](#) [2016]eKLR, the Court stated as follows:-

“(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 wrongdoing 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 the interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

13. Similarly, in the case of [re Estate of Prisca Ongayo Nande \(deceased\)](#) [2020]eKLR, 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 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 matters, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies, leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

14. The court notes that in the notice of motion dated 22nd October 2024, the present administrators did not disclose the material information about the true extent of the estate and fraudulently obtained the grant using a document that is evidently false so as to steal a march on the other beneficiaries. Had the court known or been aware of the contestation within the said estate, it would not have issued the said grant. In the circumstances, the grant issued on 11th December 2024 and confirmed on the said date is revoked. The upshot of the foregoing is that the application dated 10th December 2024 succeeds.
15. From the evidence on record, it is clear that the family is heavily riven by rivalry and discord. It is clear to me that Alice Njeri Wahome, Leah Njoki Kamau and Grace Wanjiru Njenga, having obtained the grant by deceit do not deserve to be given an opportunity to administer the estate. I am not hopeful that James Gichuru Njoroge, Nicholas Muiga Gitau, Margaret Wanjiku Waithanji and Alice Njeri Wahome will be any better.
16. Section 66 of the *Law of Succession Act* gives this Court the final discretion to determine who may have a grant of representation in the interest of all the parties concerned. Who, then, should have the grant? In my view, such a person must be a neutral, non-family member, able to manage the estate fairly and to account to this Court. The Public Trustee is such a person.
17. To preserve the estate of the deceased, this court, in the exercise of its discretion under section 66 of the said Act, hereby issues a grant to the public trustee and directs the public trustee to transmit the assets of the deceased to the beneficiaries within 6 months of the date hereof. The said grant shall be confirmed forthwith.
18. As this is a family matter, parties will bear their own costs.
19. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 14TH DAY OF MARCH 2025. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Mr Onduso, holding brief for Mr B. Oloo, for the Applicants;

Ms Auma, holding brief for Mr Mwarandu, for the Administrators /Respondents; and



Arthur – Court Assistant.

