



In re Estate of Margaret Karungari Kamau (Deceased) (Succession Cause E108 of 2022) [2025] KEHC 2939 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2939 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E108 OF 2022
HI ONG'UDI, J
MARCH 13, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE
MARGARET KARUNGARI KAMAU (DECEASED)**

BETWEEN

MWANGI MUCHINA KAMAU APPLICANT

AND

HELLEN WANJIRU KAMAU 1ST RESPONDENT

ANNE NDUTA KAMAU 2ND RESPONDENT

JOHN KAMAU MUCHINA 3RD RESPONDENT

RULING

1. In the summons for revocation dated 15th February, 2024 the applicant seeks the following orders;
 - i. Spent.
 - ii. That the rectified grant of letters of administration made to Hellen Wanjiru Kamau, Anne Nduta Kamau and John Muchina Kamau on 14th December 2023 be revoked.
 - iii. That costs of this application be provided for.
2. The said application is based on the grounds on its face and the affidavit of the applicant sworn on even date. He deponed that upon the death of his grandparents the deceased in 1976 took him in as her adopted child and had since considered him as her child by providing shelter, clothing and education. He further deponed that he grew up with the deceased's biological children and they had a meeting at the assistant chief's office where he was recognized by his brother and sisters as an adopted son of the deceased. He added that upon the deceased's demise, the family met and agreed to appoint the 1st and 2nd respondents to be the administrators of the estate.



3. It was also his disposition that his siblings went ahead to petition for letters of administration intestate and failed to include him in the list of the beneficiaries of the estate of the deceased. Further, that the administrators herein failed and or withheld from the court material facts and occasioning a miscarriage of justice. That the conduct of concealing material facts is mischievous and only aimed at disinheriting him. Thus, he urged the court to revoke the rectified grant to prevent the administrators /respondents herein from disposing off the deceased' estate.
4. In response the 2nd administrator/respondent filed a replying affidavit sworn on 24th May 2024. She averred that the applicant's application was incompetent and did not meet the standards set out under section 76 of the *Law of Succession Act* for revocation of grant. Further, that for the applicant to claim that he was adopted by the deceased and thus entitled to the estate he ought to produce documents filed in court and an adoption order issued by a court of law. She denied having had any discussion at the sub chief's office where they agreed that he was an adopted son. She added that the applicant was a stranger to the estate and his application was meant to derail the fair conclusion of this cause.
5. The 3rd administrator/respondent filed grounds of opposition and a replying affidavit both dated 29th July 2024. He averred the assistant chief's letter annexed to the applicant's affidavit could not be proof of his claim to dependency on the deceased's estate. Further, that there was no meeting at the assistant chief's office where the applicant was recognized as one of the deceased's children as alleged. That the said letter was a contradiction of the letter earlier given by the Chief. He added that the applicant was a stranger and an intermeddler in the affairs of the deceased's estate.
6. The applications was canvassed by way of written submissions.

Applicants submissions

7. The said submissions were filed by Kiplenge & Andama & Makau advocates and are dated 20th January, 2025. Counsel gave brief facts of the case and identified two issues for determination.
8. The first issue is whether the rectified grant of letters of administration intestate ought to be revoked. Counsel submitted that the respondents concealed material information on the applicant's entitlement to inherit from the estate of the deceased having been taken as one of her children.
9. He cited section 29 and 76 of the *Law of Succession Act* and the decision in *Re Estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR where the court held that dependency under section 29 (b) of the Act included individuals who could demonstrate that the deceased took them in as part of the family. The said court emphasized that formal adoption was not necessary, provided there was evidence of a familiar relationship and maintenance.

See also;

- i. *Re Estate of John Musambayi Katumanga (Deceased)* [2014] eKLR.
 - ii. *FWK (Guardian ad litem for TK and SN minors) v MWM & another* (Succession Cause E012 of 2021) [2022] KEHC 16610 (KLR) (20th December 2022) (Ruling).
10. The second issue is on costs and ounsel submitted that the costs of the application should be borne by the respondents.

1st and 2nd Administrators/respondents' submissions

11. The said submissions were filed by Githui & Company Advocates and are dated 16th January, 2025. Counsel gave brief facts of the case and submitted that the applicant has failed to call evidence to



prove adoption either under statute or customary law. That he had the legal and evidential burden to prove that he was an adopted son. He placed reliance on section 107 of the [Law of Succession Act](#) and the decision [in re Estate of RJW deceased](#) 2020 eKLR where the court held as follows:

“The objectors have alleged that they are children of the deceased for she had taken them in as her own. Being that they allege that they were children of the deceased for she had taken them in as her own and were being maintained by her burden is placed on them to prove so”.

12. Counsel further submitted that even if the applicant was to prove that he was an adopted son, he still did not qualify as dependant under sections 3 (2) and 29 of the Law of Succession. He placed reliance on the decision in [Re the Estate of Cecilia Wanjiku Ndung'u \(deceased\)](#) [2013] eKLR where the court held as follows;

“This specific definition of dependant is found in section 29(b). It will be noted that Section 29(a) (b) refer exclusively to estates of deceased male persons, while Section 29(c) refers to the estate of a deceased female. This then means that under section 29 (9) only a child that had been taken into the family of a male person and treated as his own will be regarded as a dependant of such male person. That is not so with respect to a female person taking in a child and treating him as her own. This interpretation of the provision is clear beyond doubt. The provision was construed in the terms by the Court of Appeal in *Willingtonstone Muchigi Kimari v Rahab Wanjiru Mugo* CA No 168 of 1990. The argument therefore that he had become a son of the deceased by dint of Section 29 of the [Law of Succession Act](#) does not hold.”

See also;

- i. The Estate of Eliza Isigi Asamba (deceased) Succession Cause No 102 of 2021.

13. He urged the court to dismiss the summons with costs.

3rd Administrator/respondent's submissions

14. The said submissions were filed by Kabaiku & Company Advocates and are dated 21st January, 2025. Counsel identified two issues for determination.
15. The first issue is whether the applicant has proved that he is a son of the deceased. Counsel submitted that the applicant's claim could not be sustained in law in the absence of a formal adoption order by a competent court. He placed reliance on section 107 and 108 of the [Evidence Act](#) and the decision [in re M B \(Child\)](#) (Adoption Cause 48 of 2018) 2018 KEHC 933 KLR (Family) (26 July 2018) where the high court reaffirmed the fundamental principle that the legal recognition of an adopted child was contingent upon strict adherence to the prescribed adoption process. The said court underscored the fact that for an individual to be legally acknowledged as an adopted child, a formal adoption order must be duly issued by a competent court in accordance with the applicable legal framework. That the absence of such an order rendered any claim of adoption legally untenable, as the law does not recognize informal or de facto adoption arrangements in matters of inheritance and succession.
16. Counsel further submitted that there was no evidence of any long-term sustained support from the deceased, nor any indication that the applicant was ever treated as a child or dependant in a consistent manner. He placed reliance on section 3 (2) and 29 and the decision [Mbutia Macharia v Annah](#)



Mutua & another [2017] eKLR and E.M.M v I.G.M & another [2014] eKLR where the court held as follows;

“Additionally, the definition of a ‘child’ in Section 3(2) of the Law of Succession Act includes a child whom the deceased has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility. We agree with the respondent that the appellant has to show a reasonable degree of permanency in the responsibility that the deceased is alleged to have voluntarily assumed over the appellant episodic support, as is the case here will not suffice.”

17. He urged the court to dismiss the applicant’s application with costs in favour of the respondents.

Analysis and determination

18. Having carefully considered the summons for revocation of the rectified grant, affidavits and the submissions by parties, I find the issue falling for determination to be whether the application has met the threshold for revocation of a grant.

19. For avoidance of doubt, Section 76, (a), (b) and (c) the Law of Succession Act provides for revocation of grants and 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;

20. On the other hand, Rule 44 of the Probate and Administration Rules provides as follows:

“44. Revocation or annulment of grant

- (1) Where any person interested in the estate of the deceased seeks pursuant to the provisions of section 76 of the Act to have a grant revoked or annulled he shall, save where the court otherwise directs, apply to the High Court for such relief by summons in Form 107 and, where the grant was issued through the High Court, such application shall be made through the registry to which and in the cause in which the grant was issued or, where the grant was issued by a resident magistrate, through the High Court registry situated nearest to that resident magistrate’s registry.



- (2) There shall be filed with the summons an affidavit of the applicant in Form 14 for revocation or annulment identifying the cause and the grant and containing the following particulars so far as they are known to him—
 - (a) whether the applicant seeks to have the grant revoked or annulled and the grounds and facts upon which the application is based; and
 - (b) the extent to which the estate of the deceased has been or is believed to have been administered or to remain unadministered, together with any other material information.
- (3) The summons and affidavit shall without delay be placed by the registrar before the High Court on notice in Form 70 to the applicant for the giving of directions as to what persons (if any) shall be served by the applicant with a copy of the summons and affidavit and as to the manner of effecting service; and the applicant, upon the giving of directions, shall serve each of the persons so directed to be served with a notice in Form 68, and every person so served may file an affidavit stating whether he supports or opposes the application and his grounds therefor.
- (4) When the persons (if any) so directed to be served (or such of them as the applicant has been able to serve) have been served with a copy of the proceedings, the matter shall be placed before the High Court on notice by the court to the applicant and to every person so served, and the court may either proceed to determine the application or make such other order as it sees fit.
- (5) Where the High Court requires that notice shall be given to any person of its intention of its own motion to revoke or annul a grant on any of the grounds set out in section 76 of the Act the notice shall be in Form 69 and shall be served on such persons as the court may direct.”

21. By virtue of Section 76 of the [Law of Succession Act](#), a grant of representation is liable to revocation on the grounds of concealment of material information from the court and for misrepresentation. Further under the said section 76, a court may revoke a grant based on that ground. The revocation may be on the court’s own motion or on an application by a party. In the Matter of the Estate of Esther Wanjiru Mucheru (deceased), Nairobi High Court Succession Cause No.1996 of 1999, the court noted that Section 76 of the [Law of Succession Act](#) was discretionary in that the court had discretion whether to revoke or annul a grant. Further, in [Kennedy Opiche Olela v William Ogida Ochuodho & another](#) [2014] eKLR, the court was of the view that it is the duty of the applicant to prove that any of the grounds set out under Section 76 had been committed before the court can revoke a grant already issued.
22. In the present application, the applicant pegs his application for revocation of grant on Sections 47 and 76 of the [Law of Succession Act](#), on grounds that the respondents herein took out letters of administration without any regard to his beneficial interest by failing to include him in the list of beneficiaries. Further, that in obtaining the said Letters of Administration of grant there was



concealment of material facts from the court especially as regards the beneficiaries of the deceased's estate. He argued that the deceased in 1976 took him in as her adopted child and had since considered him as her child by providing him with shelter, clothing and education. Thus, he was a dependant of the deceased.

23. The [Law of Succession Act](#) defines a dependant in section 29 of as follows:

For the purposes of this part, "dependant" means—

- a. The wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- b. Such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- c. Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.

24. Section 3(2) of the [Law of Succession Act](#) describes a child to:—"Include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, a child born to her out of wedlock, and, in relation to a male person, any child whom he expressly recognized or in fact accepted as a child of his own or of whom he has voluntarily assumed permanent responsibility."

25. It is a cardinal principle of the law of evidence that he who alleges a fact must prove it. Section 107 of the [Evidence Act](#) provides:

1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

26. In the case of [Beatrice Ciamutua Rugamba v Fredrick Nkari Mutegi & 5 others](#) [2016] eKLR relied on by the applicant, Mabeya, J stated:

"From the foregoing, a dependent under section 29 (b) and (c) must prove that he or she was being maintained by the deceased immediately prior to his demise. It is not the mere relationship that matters, but proof of dependency that counts."

27. Further in the case of [In re Estate of Tom Maisiba \(Deceased\)](#) [2021] eKLR, Musyoka, J. while considering an application by a person claiming to be a son of the deceased therein held as follows;

He could only become child of the deceased through formal or informal adoption. The applicant did not allege nor prove any formal adoption process, nor produce any adoption orders issued by a court of competent jurisdiction. Informal adoption happens where a child is taken in by the man who marries his mother, is accepted by the man to be his own, and the man takes up permanent responsibility over him. That is what section 3(2) of the [Law of Succession Act](#) envisages. The [Children Act](#), No 8 of 2001 also deals with it. The bottom-line is that the man has to take in the child into his home, accept him as his own and assume permanent parental responsibility over him. For the applicant to qualify to be a child of the deceased, these are the things that he should prove.



28. It is not disputed that the applicant is not a biological child of the deceased. He has however neither proved any relationship with the deceased nor his dependency upon her. Further, his claim of being adopted by the deceased cannot stand since he did not produce any document showing a formal adoption by the deceased. In addition, section 3(2) of the *law of Succession Act* provides that informal adoption is by a male and not female. That is not the case in this succession cause since the deceased is a female and any adoption by her ought to have been in conformity with section 3(2) of the *Law of Succession Act* through a court order. In my view, the chief's letter is not sufficient proof of adoption. The onus was on the applicant to adduce evidence to support his claim that he is a beneficiary or a dependent of the deceased but he failed to do so.
29. For the reasons stated above the court finds the application dated 15th February 2024 to be devoid of merit and the same is hereby dismissed with costs to the administrators/respondents.
30. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 13TH DAY OF MARCH, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

