



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Erastus Njuguna Kamau (Deceased) (Succession Cause
11 of 2019) [2025] KEHC 2441 (KLR) (12 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2441 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 11 OF 2019
PN GICHOHI, J
MARCH 12, 2025**

IN THE MATTER OF THE ESTATE OF ERASTUS NJUGUNA KAMAU (DECEASED)

BETWEEN

MWANIKI NJUGUNA APPLICANT

AND

SUSAN WAIRIMU KAMAU RESPONDENT

RULING

1. The subject of this Ruling is the Applicant’s Summons dated September 27, 2022, seeking revocation of the Grant of Letters of Administration made to Susan Wairimu Kamau on the 24th April, 2019 on the grounds on the face of the Summons and supported by the Applicant’s Affidavit that:-
 1. The Administrator herein, Susan Wairimu Kamau, is not the biological child of the deceased but a daughter-in-law, having married his brother Kamau Njuguna.
 2. Prior to institution of these proceedings, the Administrator did not obtain the relevant consent from the other beneficiaries yet they are the children of the deceased who are not only beneficiaries but also higher ranking in the order of consanguinity.
 3. The Administrator has refused to have proper, justifiable and reasonable administration of the Estate and has refused to involve the other beneficiaries in the administration of the Estate.
2. In his Affidavit sworn on 27th September, 2022 the Applicant reiterates the grounds of the application and emphasises that he is the biological son of the deceased who died on 7th June, 2017 and that the heirs of the Estate include him and his two brothers, Kamau Njuguna and Wachira Njuguna who are all alive. It is his case, that the Administrator has blocked them from deciding issues touching on the Estate and that includes the mode of distribution and decision making and/or communication.



3. Further, he states that she has failed to administer the Estate in a transparent and reasonable manner by failing to render accounts of the Estate of the deceased as is required of an administrator and this has reduced them to spectators in the Estate of their late parents, while it wastes away.
4. The Applicant maintains that they should be included in the grant as Co-Administrators in order to render proper accounts, determination of the issues and distribution of the Estate. He therefore urges this Court to include him and his brother Wachira Njuguna as administrators of the Estate of their deceased father.
5. The Administrator has opposed that application vide her Replying Affidavit sworn on 12th October, 2022. Admitting that she is the daughter-in-law of the deceased herein, having married his son, Kamau Njuguna. She states that she petitioned this Court in her capacity as the guardian and manager of her husband pursuant to Orders issued by Naivasha High Court on 27th February, 2019 under the *Mental Health Act*.
6. It is her case that she disclosed all this information to the Court when she was petitioning the court for letters of administration and that she listed before this Court all the beneficiaries and disclosed all the assets of the Estate of deceased.
7. She states that subsequently, due process was followed through gazettment and notices were issued to the Applicant and his brother. It is her statement that as a result, she appointed the firm of B.O Akango Advocates while the Applicant herein appointed the firm of Njeri Njagua, Wanjiku Wamae Advocates but he later substituted them with the firm of Kairu Maina. That his brother Wachira Njuguna appointed the firm of Frank Mwangi Advocates.
8. She states that the initial Grant of Letters of Administration was consequently granted on 24th April, 2019 and partial confirmation of the same done on various occasions, with the last one being on 2nd June, 2022 which were all done with the consent of the Applicant and his brother. It is her position that in the course of distribution of the Estate of the Deceased, and arising from continuous negotiation between the parties herein, they all settled for Splendor Commercial Agencies as the Estate agents for purposes of collecting all rent due to the Estate and depositing the same in one account for sharing out on monthly basis and with consent of all beneficiaries.
9. She further states that all obligations due to the Estate such as payment of rates and rent have been discussed by all beneficiaries and a resolution reached on the same. On that basis, she states that she has always fully cooperated with the beneficiaries and frankly disclosed any material information relevant to equitable management and sharing of the Estate and therefore, she has managed the Estate of the deceased in accordance with the law, thus the application for revocation of Grant is without any basis.
10. In a rejoinder vide a Further Affidavit sworn on 26th June, 2023, the Applicant states that prior to mutual appointment of Splendor Commercial Agencies, the Administrator had unilaterally appointed Point A Commercial Agencies. Though admitting that the Estate has been partially distributed by mutual consent, he states that it was always with guidance of the Director- Splendor Commercial agencies.
11. It is his statement that the property described in the Grant of Letter of Administration Intestate dated 8th March, 2019 as located opposite Nakuru Athletic Club, is actually registered as Nakuru Municipality Block 4/130 and that is where his father resided for over 30 years and that his (Applicant's) brother Wachira Njuguna currently reside in the said property.



12. He further states that as per the Grant, this particular property had been bequeath to the three heirs to hold jointly but it came to their attention that the said property had been fraudulent transferred to third parties on the watch of the administrator.
13. He depones that they persuaded the Administrator to institute recovery proceedings against the said property to no avail which forced him to lodge a suit at the Environment and Land Court being ELC Case No. E53 of 2022 but his claim was struck out for lack of locus standi since he is not the Administrator of the Estate herein.
14. It is his case that the Administrator has refused to take action towards protection of the Estate despite her knowledge that she is the only one with powers to sue on behalf of the Estate of the deceased.
15. He states that it is a fact that she has instructed her advocate to object to Inhibition Orders, against the property which is in the verge of being taken over by stranger yet the law requires her to protect all interests of the Estate. In the circumstances, he states that they have lost trust in her administration and therefore, the Grant issued to her on 24th April, 2019 should be revoked.
16. Wachira Njuguna (Applicant's brother) filed his Affidavit sworn on 6th March, 2024 in full support of the application for Revocation of Grant and prays to be included as the Co-Administrator of the Estate of the deceased.
17. By consent of parties , this application was canvassed by written submissions.

Applicant's Submissions

18. The Applicant framed three issues for determination being:-
 1. Whether the Grant should be revoked.
 2. Whether the Applicant and his brother, Wachira Njuguna, should be included as Administrators of the Estate of the deceased.
 3. Who should bear costs.
19. On the first issue, he submitted that under Section 76 of the *Law of Succession Act*, the Grant should be revoked as the Administrator did not obtain consent from the other beneficiaries of the Estate of the deceased herein and further the administrator has not proceeded diligently in the administration of the Estate of the deceased and lastly , that the mode of distribution laid out are not as per the wishes of the deceased who had disclosed to the Applicant material facts relating to distribution of the Estate.
20. In support of his quest for Revocation of the Grant, he relied on *In the Matter of the Estate of L.A.K (Deceased)* [2014] KEHC 967 (KLR) where W. Musyoka J emphasised that:-

“Revocation of grants in governed by Section 76 of the *Law of Succession Act*. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.”
21. He further cited the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR, where E.C. Mwita observed that:-

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a 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.”

22. On the second issue, the Applicant urged that he and his brother Wachira Njuguna be included as Co-Administrators of the Estate of the deceased as they rank higher than the Administrator herein in the order of consanguinity as provided for under Section 66 of the *Law of Succession Act*.
23. On the last issue, the Applicant submitted that this application was necessitated by the Administrator's initiation of proceedings leading to issuance of Grant of Letters of Administration without seeking consent of the other beneficiaries and for failing to administer the Estate in accordance with the law. In the circumstances, he urged the Court to compel her to pay costs of this application.

Administrator's Submissions

24. While laying emphasis on section 76 of the *Law of Succession Act* in regard to Revocation of Grant, she also cited the case of *Re Estate of Prisca Ong'avo Nande (Deceased)* [2020] eKLR where the Court held 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. 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.”

25. She submitted that the power to revoke grant is discretionary and should be exercised judiciously as was held in the case of *Albert Imbuga Kisigwa v Recho Kavai Kisigwa* [2016] eKLR and further submitted that an Applicant seeking to revoke and or annul a grant is duty bound to demonstrate any or all the grounds for revocation of Grant as was held in the case of *Mercy Kiura Kitbaka & 4 others v Edith Njoka Kitbaka* [2020] eKLR. From the above, the Administrator submitted that her husband is the son of the deceased herein and that when he became ill, she petitioned the Court to be appointed as his Guardian and Manager and that application was allowed.
26. It is her position that upon being appointed as the guardian of her husband Kamau Njuguna, she stepped into his shoes and assumed his position. She therefore acquired the right to petition the Court



for Letters of Administration of the Estate of the deceased herein and that means she ranks in priority just like the Applicant herein and his brother.

27. She further submitted that the Applicant herein has known of these proceedings and actually participated in them without questioning her status and further, all proceedings herein including distribution of the Estate have always been made with consent of the Applicant and his brother. In the circumstances, she contended that making this application at the tail end of the proceedings that he has participated and benefited from is tantamount to a party approbating and reprobating at the same time which act is frowned upon by the law.
28. In support of this argument, she relied on the case of *Joseph Ngii v Republic* [2020] eKLR, where D. K. Kemei J made reference to the doctrine of 'approbation and reprobation' as elucidated in *Halsbury's Laws of England*, 4th Edn. Volume 16, at page 1012, paragraph 1507 thus:-

“The principle that a person may not approbate and reprobate expresses two propositions: (1) that the person in question, having a choice between two courses of conduct is to be treated as having made an election from which he cannot resile, and (2) that he will not be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct which he has first pursued and with which his subsequent conduct is inconsistent.”
29. It was argued further that the Applicant herein had earlier filed a similar Application dated 9th May, 2019 then abandoned and the parties agree to the confirmation of the grant. While citing the case of *Mercy Kiura Kithaka & 4 others* (*supra*), she submitted that the consent of other beneficiaries is only required during Confirmation of Grant in regard to the mode of distribution.
30. On her failure to render accounts of the Estate, she maintained that by consent, the parties herein appointed Splendor Commercial agencies to collect all rental proceeds from the estate and that money is shared equally among the beneficiaries on monthly basis. In the circumstances, she termed the allegation baseless.
31. Regarding the allegation that she has been working in cahoots with an intermeddler, she admitted delay in pursuing the issue but confirmed that there is an active case in the Environment and Land Court being ELC Case No. E005 of 2024.
32. Lastly, she submitted that she has acted in good faith at all times and the Applicant has failed to prove any of the reason for revocation of grant under Section 76 of the *Law of Succession Act*, as such the application should be dismissed with costs.

Determination

33. Having considered the application, Affidavits and the submissions herein, the broad issues for determination are; whether this Grant should be revoked and whether the Applicant and his brother should be added as Co-Administrators.
34. As aptly put by parties, Section 76 of the *Law of Succession Act* governs applications for revocation of grant and. Further, parties have aptly captured the case law that revocation of a Grant is within the discretion of the Court and that such discretion has to be exercised judiciously.
35. The first reason why the Applicant seeks to revoke the grant of Letters of Administration herein is that the Administrator herein is not the biological child of the deceased and therefore, she should not have been appointed as the Administrator in the first place.



36. That argument is hinged on Section 66 of the *Law of Succession Act* which provides as follows:-

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

- (a) surviving spouse or spouses, with or without association of other beneficiaries.
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

37. Section 66 therefore guides on who qualifies and has priority to appointment as Administrator in intestacy. The list of preference is dependent on Part V of the *Law of Succession Act*. Based on the above, it is noted that a daughter-in-law does not feature either in Section 66 of the Act or Part V thereof. However, though under Section 66 of the Act preference is given to the surviving spouse of the deceased, followed by the children and other relatives in that order, the list is a guide and it can be departed from if the Court finds it justified to do so.

38. Further, Rule 7 (7) of the *Probate and Administration Rules* provides a leeway for a daughter-in-law to be entitled to the Estate of the deceased if she obtains representation to the Estate of her own husband and in addition, comply with Rules 7 (7) and 26 of the Probate and Administration Rules by obtaining the consent of those ranking higher in priority or she get them to waive their right to administration, or to file an Affidavit to explain the circumstances under which they have applied for representation their lack of qualification notwithstanding.

39. For emphasis, Rule 7(7) of the *Probate and Administration Rules* provides as follows: -

“Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has— (a) renounced his right generally to apply for a grant; or (b) consented in writing to the making of the grant to the applicant; or (c) been issued with a citation calling upon him either to renounce such right or to apply for a grant.”

40. Further, Rule 26 of the same Rules provides that:-

- “(1) (1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
- (2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be



supported by an affidavit of the applicant and such other evidence as the court may require.

- (3) Unless the court otherwise directs for reasons to be recorded, administration shall be granted to a living person in his own right in preference to the personal representative of a deceased person who would, if living, have been entitled in the same degree, and to a person not under disability in preference to an infant entitled in the same degree.”

41. Despite being a daughter -in- law to the deceased, the Administrator herein filed these proceedings on the strength of her appointment as a Manager under the *Mental Health Act*, in regard to her husband Kamau Njuguna (son of the deceased) who is battling mental illness. It is a fact that the Applicant herein and his brother are the sons of the deceased and therefore rank in priority to be appointed as Administrators of the Estate of the Deceased as opposed to Susan Wairimu Mwangi (the Administrator).
42. From the record herein, there is no evidence of a consent having been obtained from the Applicant and his brother before the Petition for Letters of Administration was filed. The Applicant however annexed a Citation Order issued by Hon. Justice A.K. Ndungu sitting in High Court at Naivasha on 23/1/2019, in presence of the Administrator herein and Wachira Njuguna’s Advocate, requiring Wachira Njuguna and the Applicant herein to petition for the Letters of Administration within 30 days failure to which Wachira Njuguna applies for the same.
43. The record further reveals that the Applicant and his brother failed to comply, with the said Order thus causing the Administrator herein to petition the Court for a Grant of Letters of Administration. It was issued to her on 24th April, 2019. However, as soon as this Grant was issued to her, an application for revocation of the said Grant was filed but no action was taken. Instead, the Applicant, his brother and the Administrator herein entered into consents on various dates that is, 9/7/2019, 10/8/2020,28/9/2020 and 18/5/2021 to have partial confirmation of the Grant of Letters of Administration.
44. It is thus clear that, even though the Administrator herein is not the biological child of the deceased, she is a beneficiary of the Estate of the deceased by virtue of marrying the son of the deceased and further, she is the Guardian and Manager of Kamau Njuguna pursuant to the Order granted to her by Hon. Justice R. Mwangi on 27th February, 2019, which read in part as follows:-
- “...the Petitioner is hereby appointed Guardian and manager of the Estate of Kamau Njuguna with Powers to institute, prosecute or defend suits touching on the rights and interest of the said Kamau Njuguna.”
45. Consequently, she has a duty to protect the interest of her sick husband by pursuing these proceedings to secure his interests and by extension, her children’s rightful shares, considering that the Applicant and his brother failed to petition the Court for the said Letters of Administration within the timelines given by the Court in the Citation. In the circumstances, the Administrator lawfully petitioned for Letters of Administration of the Estate of the deceased herein and therefore, the first and second grounds seeking revocation of grant lack any basis.
46. On her failure to disclose accounts, the Court record shows that the Administrator had earlier appointed Point A Commercial Agencies to collect all rental income from the Estate of the Deceased. However, upon an objection raised by the Applicant and his brother, the parties convened a meeting and a consent was reached that Splendor Commercial Agency be appointed instead of Point A



commercial Agencies and that the money collected be deposited in a joint account in the name of advocates for all parties.

47. In essence, and the income due to the Estate having been delegated to the Commercial Agencies by consent of all beneficiaries, the records thereof must be rendered by the said Commercial Agencies with supervision of the Administrator. However, there is no evidence of such records having been sought and the Administrator refused to furnish the Applicant and his brother with the same and therefore that ground lacks any basis.
48. Regarding the allegation that the Administrator allowed intermeddlers to interfere with the Estate of the deceased, it is apparent that the issue was in regard to one of properties of the Estate being Nakuru/ Municipality Block 4/130 alleged to have been trespassed against yet the Administrator failed to take any action to protect.
49. To his Further Affidavit sworn on 26th June, 2023, the Applicant annexed copy of the proceedings in the Environment and Land Court Case No. E53 of 2022 where he sought injunctive Order against Third Parties in regard to the said property but that suit was dismissed for lack of locus standi. The Applicant was not the Administrator of the Estate of the Deceased. Further, it was his averment that his effort to have inhibitive Orders issued against the said property was vehemently opposed by the Administrator raising questions as to her interest in the Estate.
50. A perusal of the proceedings herein shows that when this matter came up for directions before T.A.Odera J on 6/3/2023, Ms. Wangari Advocate appeared for Respondent (alleged intermeddler) and also held brief for Mr. Akango for the administrator. It is Ms. Wangari Advocate that opposed the issuance of inhibition Order for the interest of her client. The Court also declined to grant the said Orders as the issue was subject of Environment and Land Court.
51. The issue regarding that property was first raised in the year 2022 when the Applicant alleged to have requested the Administrator to file a suit to protect the said property but failed to do so. If she was indeed aware of such trespass, which she ought to know, then she ought to have moved the Court to protect the property on behalf of the Estate of the deceased.
52. In her submissions herein, the Administrator simply states that the delay has been rectified and that she has now filed ELC Case Number E005 of 2024. Though that action is a saving grace, it has been taken after a long delay on her part considering that allegations have been raised that the intermeddlers are on the verge of taking possession of part of the Estate of the deceased herein. Despite the above, the issue too would not warrant a revocation of the Grant in the circumstances herein.
53. On whether the Applicant and his brother should be Co-Administrators, it is noted this issue was raised orally by the parties on 24th January, 2024 and both the Applicant, his brother (Wachira Njuguna) and the Administrator were heard through viva voce evidence.
54. The Applicant and his brother urged this Court to appoint them as administrators but on the other hand, the Administrator opposed that application arguing that she has always co-operated with her brothers-in-law in the administration of the Estate.



55. Despite the manner in which the prayer for the two to be appointed was made, Rule 73 of the *Probate and Administration Rules* allows this Court to make such orders as may be necessary for the ends of justice to be met. For emphasis, the Rule provides as follows:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

56. It is noted that the Estate subject of these proceedings is indeed vast and considering that there is partial Confirmation of Grant and that the Estate is partially distributed, it is fair and just to add the Applicants as Co-Administrators of the Estate for them to jointly ensure fast and full distribution of this Estate. Further, each will have a role in protection of the Estate from any threats. In addition, their being on board will enhance peace and harmony in this family and to bring the Applicant and his brother on board as Co- Administrators would be facilitated by rectifying the Grant.

57. In conclusion, this Court makes the following Orders:-

1. The Application for revocation of Grant is disallowed.
2. Mwaniki Njuguna and Wachira Njuguna be and are hereby appointed as joint Administrators alongside Susan Wairimu Kamau in regard the Estate of Erastus Njuguna Kamau (Deceased).
3. The Grant may be rectified to that effect, if need be, so as to conclude distribution.
4. This being a family matter, each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 12TH DAY OF MARCH, 2025.

PATRICIA GICHOHI

JUDGE

Mr. Kairu Maina for Mwaniki Njuguna - Applicant and also holding brief for Mar Mwangi for Wachira Njuguna

Mr. Akango for Susan Wairimu Kamau -Administrator/Respondent

Ruto, Court Assistant

