



REPUBLIC OF KENYA



**In re Estate of the Late Nduta Kihika (Deceased) (Succession Cause
569 of 2012) [2025] KEHC 5894 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5894 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 569 OF 2012
SM MOHOCHI, J
MAY 13, 2025**

BETWEEN

MARY WACEKE KAMAU APPLICANT

AND

PETER KIHICA NG'ANG'A RESPONDENT

RULING

1. The deceased Nduta Kihika died intestate on the 12th May 1975 subsequently Peter Kihika the Administrator successfully petitioned for a grant that was issued on the 4th April 2014 and was confirmed on the 15th September 2015.
2. The Deceased had upon confirmation been indicated as having left behind two dependants; the Applicant and Catherine Wanjiru and he left behind one asset namely Plot No 347 Kondoo Settlement Scheme that was devolved to Peter Kihika in the consent dated 13th October 2014.
3. Before me are two Applications; the 1st one is a summons for revocation of grant dated 16th November 2023 by Mary Waceke Kamau and the 2nd Application dated 4th March 2025 by Nancy Njoroje advocate seeking recusal from representing the Administrator for want of instructions.
4. The 1st Application seeks inter alia;
 - i. Spent
 - ii. That, the grant of Letters of Administration issued on the 4th day of April, 2014 and confirmed on 15th September, 2015 Respondent/Petitioner herein Peter Kihika Ngangabe revoked and/or annulled. to the
 - iii. That, upon granting prayer b above, the parcel Plot No.347 Kondoo Settlement Schemebe reverted back to estate of the deceased.



- iv. That, cost of this application be borne by the Respondent.
5. The Application is premised on the following grounds;
- i. That, the grant was obtained fraudulently by the making of a false statement or by the concealment from the Court of significant information material to the case.
 - ii. That, the grant was obtained by means of untrue allegation of a fact which was essential in point of law to justify the grant notwithstanding that the allegations were made in ignorance advertently.
 - iii. That, deceased had three children, one of them being Joseph Kama Nganga who died on 22/06/2015.
 - iv. That, the petitioner herein concealed information from this Honourable Court that he has a brother who was at that time very ill and also a beneficiary of the estate herein.
 - v. That, the petitioner disinherited wholly brother and has had the deceased parcel registered in his name.
 - vi. That, the parties utilize the parcel equally to date and the applicant was never aware that the parcel is now registered in petitioner's name.
 - vii. That, interest of justice dictates that the orders sought be granted so as to preserve the deceased's estate and the wider interests of all beneficiaries.
6. The Applicant depones that, the late Nduta Kihika was her mother in law having been mother to her late husband, Joseph Kamau Nganga, Peter Kihika, Wambui Gathabai and Wanjiku Julius.
7. That the petitioner is her brother in law and he concealed information that his brother is a beneficiary to this estate.
8. That, her late husband died on 22nd June, 2015, 2 months before grant was confirmed.
9. That, the late Joseph had several children who are the beneficiaries, as is evidenced by a copy of chief's letter dated 14th December, 2020.
10. That, during the filing of this cause, her husband was ill and they never knew that a succession cause has been filed.
11. That, all along, they have been utilizing this parcel with the petitioner equally, He ploughs half the portion and we plough another half.
12. That, the petitioner herein did not disclose to this Honourable Court that the suit property was owned jointly by the 2 brothers.
13. That, she makes the instant application to this Honourable Court for them to be included as beneficiaries to the share of the estate of Nduta Kihika(Deceased).
14. That, her husband and her sold a portion to one Joseph Sakwa Chamdala and the monies was used to treat her late husband as is evidenced by a copy of the sale agreement).
15. That, since then they have been using their portion and she has been ploughing the other portion. The other half share has been utilized by the petitioner to date.
16. That, the family of Joseph Sakwa Chamdala has been utilizing and even built a house and the petitioner did not object to the house being built.



17. That, she being on the parcel might be evicted as he is now an owner of the suit parcel as is evidenced by a title issued on 23rd November 2015.
18. That she prays that the grant confirmed to the petitioner be Revoked and they be given half share of the property.
19. That, she makes this application in the interest of justice as their family has been disinherited.
20. The Court had directed that the Application was to be heard and determined by way of filed written submissions.
21. The Respondent elected not to defend the Application despite service upon him and a return of service being duly filed.
22. The Applicant on her part complied and filed written submissions dated 18th March 2025.

Applicants Written Submissions

23. The Applicant has refined a solo issue as Whether the Grant issued to the petitioner herein should be Revoked.
24. As to whether the Grant issued to the petitioner herein should be Revoked, the Applicant relied on Section 76 of the *Law of Succession Act* Cap 160, provides 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.”



25. The Petitioner concealed material information while obtaining the grant. The proceedings to obtain grant were defective in substance. The Petitioner misrepresented himself as the only beneficiary of the estate of the deceased herein.
26. Reliance is placed on the case of Antony Karukenya Njeru Thomas M. Njeru [2014] eKLR in Meru Succession Cause No. 663 of 2011 held that:
- “where persons of equal priority by virtue of Rule 26(2) of the Probate and Administration Rules do not give consent or renounce their rights to petition for the grant then the proceedings to obtain the grant are rendered defective in substance and the grant becomes one obtained by means of untrue allegation of facts essential in point of law”
27. Reference is made to the case of. In re Estate of Eston Nyaga Ndirangu (Deceased) [2021] KEHC 5065 (KLR)The learned judge stated that:
- “It is my considered view therefore that the failure by the respondents more so the 1 and 2 respondents to obtain the consents from the other siblings makes the proceedings of obtaining the same to be defective in substance and the said grant ought to be revoked and a new grant issued to the applicants.”
28. That instant case no beneficiary consented to the making of that particular grant.
29. The deceased had four children as per the chief's letter dated 14th December, 2020. The petitioner bequeathed the whole estate to himself disinheriting the other three beneficiaries.
30. That, Section 38 of the [Law of Succession Act](#) Cap 160, provides that:
- “Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children”
31. The deceased estate ought to have been divided equally among the surviving children.
32. The Applicant submits that the Court do revoke the grant issued to the petitioner in the interest of justice and the Objector be granted half share of the Kondoo Settlement Scheme/347.

Analysis and Determination

33. In Succession proceedings such as these the parties must establish their locus standi before arguing their motion.
34. In this instance the Applicant alleges to be a sister in law of the Administrator having been wife to Joseph Kama Nganga who died on 22nd June, 2015.
35. The Applicant has not demonstrated proof of marriage.
36. The Applicant has not demonstrated authority to sue on behalf of the estate of Joseph Kamau Nganga who died on 22nd June, 2015.
37. It is apparent upon confirmation of grant the asset of the deceased was devolved and transmitted and a transfer undertaken.
38. Reading between the line the Applicant alludes of having been aware of the summons for confirmation of grant in 2014 but failed to act as her husband was ill.



39. It is surprising for the Applicant to move the Court after eleven years without bothering to account for the delay.
40. The *Law of Succession Act* (Cap 160 Laws of Kenya) to be referred to as the Act gives the Court discretion to determine the person or persons to whom the grant of letters of administration shall be issued. This is provided under Section 66 of the Act which provides:-

“Preference to be given to certain persons to administer where deceased died intestate. 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.”

41. In this instance the Applicant being a daughter in law would rank at par with grand children of the deceased but only subject to having a requisite authority to sue on behalf of her deceased husband’s estate.
42. In the Absence of a grant issued in the estate of Joseph Kamau Nganga this Court is unable to entertain this summons as it is.
43. I accordingly find the Summons dated 16th November 2023 to be without merit and the same is accordingly dismissed.
44. I further find in favour of the Application dated 4th March 2025 which is allowed.
45. Parties shall bear their own costs.

It is So Ordered.

SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 13TH MAY 2025

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MOHOCHI S.M

JUDGE

