



**In re Estate of Damaris Mwihaki Gachorohio (Deceased) (Succession Cause 673 of 2016 & 471 of 2000 (Consolidated)) [2025] KEHC 5799 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5799 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 673 OF 2016 & 471 OF 2000 (CONSOLIDATED)**

**SM MOHOCHI, J**

**MAY 9, 2025**

**IN THE MATTER OF THE ESTATE OF DAMARIS MWIHAKI GACHOROHIO (DECEASED)**

**BETWEEN**

**JOHN NJOROGE KARIUKI ..... 1<sup>ST</sup> ADMINISTRATOR**

**JOSEPH MAINA GACHOROHIO ..... 2<sup>ND</sup> ADMINISTRATOR**

**AND**

**GIKURU KIMURI ..... 1<sup>ST</sup> OBJECTOR**

**ANTHONY CHEGE MURAYA ..... 2<sup>ND</sup> OBJECTOR**

**KOSMA KARUMA ..... 3<sup>RD</sup> OBJECTOR**

**AND**

**SAMUEL MBUGUA IKUMBU ..... INTERESTED PARTY**

**JOHN NJUGUNA MAINA ..... INTERESTED PARTY**

**GEOFFREY MORIASI OMWANDO ..... INTERESTED PARTY**

**RULING**

1. The deceased herein Damaris Mwihaki Gachorohi died intestate on 1<sup>st</sup> January, 1999 and twenty-five years later her succession has been marked with raw dishonesty, squabbles, disagreements and manifest greed amongst near relative as she was without a child. Succession Cause No 471 of 2000 and Succession Cause No. 673 of 2016 relate to her.
2. Succession Cause No 471 of 2000 was filed by Joseph Maina Gachorohio and John Njoroge Gachorohio, the Administrators herein. Grant of Letters of Administration were issued to them on 12<sup>th</sup> March 2001 and a Certificate of Confirmation of Grant issued on 8<sup>th</sup> July, 2003. The Confirmed



- Grant was rectified to include property Nakuru/Piave/28 which had been left out and a rectified Certificate of Grant issued on 30<sup>th</sup> July 2018.
3. On the other hand, Succession Cause No. 673 of 2016 was filed by Gikuru Kimuri, Anthony Chege and Kosma Karuma, the Applicants herein. Grant of Letters of Administration was issued to them 20<sup>th</sup> February, 2017 and a Certificate of Confirmation of Grant issued on 29<sup>th</sup> September, 2017.
  4. The Administrators filed Summons for Revocation of Grant seeking the Revocation of the Grant in Nakuru Succession Cause No. 673 of 2016 to which the Court allowed on 23<sup>rd</sup> January, 2020 and revoked the Grant in Succession Cause No. 673 of 2016. Prior to the grant being revoked the Objector herein had transmitted Nakuru/Piave/28 subdivided it into 10 plots giving rise to Nakuru/Piave/4465-4467 and Nakuru/Piave/4668-4674 That these properties were thereafter sold to third parties the Interested Parties herein.
  5. Before this Court for determination are 3 applications. The first one is the Application dated 12<sup>th</sup> August, 2020 and filed on 17<sup>th</sup> August 2020 filed by the Applicants. The application was filed in Succession 471 of 2000 and sought:-
    - i. Spent
    - ii. Spent
    - iii. That the grant herein issued to the Respondents on 8<sup>th</sup> July, 2003 and later rectified on 30<sup>th</sup> July, be revoked.
    - iv. That costs of the Application be provided for.
  6. The Application was supported by the Affidavit sworn by Gikuru Kimuri. It was the Applicants' case that, the deceased left her estate to them and she never had children of her own. That the Objector misrepresented his position by stating that he was the son of the deceased thereby misleading the Court in making an erroneous decision. That he obtained the grant by fraud and concealment of funds and used the order to illegally gain entry in Nakuru/Piave/4465-4467 and Nakuru/Piave/4668-4674
  7. The Application was opposed by the Objector by way of Replying Affidavit sworn on 24<sup>th</sup> September, 2020 by Joseph Maina Gachorohio and filed on 30<sup>th</sup> September, 2020. The Objector averred that the application was res-judicata, as the matters raised therein had been dealt with by the Court in the Ruling of 23<sup>rd</sup> January, 2020. That the only recourse the Court has is to appeal the decision in Nakuru Succ. No. 673 of 2016.
  8. The Applicants the filed another Application in the Succession Cause No. 673 of 2016 file dated 12<sup>th</sup> August 2020 and sought:-
    - i. Spent
    - ii. Spent
    - iii. Spent
    - iv. That the Honourable Court be pleased to set-aside the order issued on the 23<sup>rd</sup> day of January, 2020 and reinstate the grant of letters of administration
    - v. That costs of this Application be provided for.
  9. The Application was opposed by the Administrators by way of Replying Affidavit sworn on 16<sup>th</sup> October, 2020 by Joseph Maina Gachorohio. He averred that, the Applicants were strangers and lacked



locus-standi to apply for a grant. That the Administrators ranked higher in priority and should have been consulted. The Administrators also argued that the Summons for Revocation of Grant were served on the Applicants and they failed to put a response or appear in Court for hearing leading to the revocation.

10. The third Application is by the Interested Parties dated 16<sup>th</sup> May, 2023 seeking
  - i. Spent
  - ii. Spent
  - iii. That pending the hearing and determination of the hearing this Honourable Court be pleased to restrain the administrator by himself, his agents and servants from forcefully evicting the Applicants from the parcel of land known as Nakuru /Piave/5670,4670, 4669 and any other subdivision in Nakuru/Piave/28.
11. The applications proceeded to hearing and thereafter parties directed to file written submissions of which only the Administrators and the Interested Parties Submissions complied and filed.

### **Applicant/Objector's Case**

12. OW1, Gikuru Kimani case was based on Affidavit sworn in 12<sup>th</sup> August, 2020 and annexures produced as EXh1-5 and the Affidavit sworn on 11<sup>th</sup> July, 2023. It was his case that the deceased never had any children of her own and neither did she adopt. He claimed that his grandfather had 3 wives 1<sup>st</sup> wife was Wangui, second wife was the deceased and the 3<sup>rd</sup> was Flora Njoki. That he was the grandson of Wangui the 1<sup>st</sup> wife and co-wife to the deceased.
13. He was living in the Piave property and not the Objector. That, the deceased gave him the land as he used to help her and he is the rightful beneficiary. When he moved to Court in 2020 the Piave land had been subdivided and he lives in one of the portions. That there was an injunction in place but the Objector went ahead and extracted a transfer to a third-party, one David Kibe who took possession and cultivated on the land.
14. OW2, Peter Kori Mwaura, testified to be an in-law to the deceased. He stated that, the deceased had no children. That, the deceased gave Piave/28 to Gikuru Kimuri as he is named after the husband and he was present then. He saw the Joseph at the Funeral of the deceased and did not know the 2<sup>nd</sup> Administrator and had never seen him. The deceased had land in Elburgon and money in the bank. The 1<sup>st</sup> Administrator sold the Elburgon land and left. The deceased never gifted the Elburgon land. He did not know the family of the deceased or where she came from.
15. OW3, Pauline Njeri Kimuri, the deceased was her step mother as her mother was the 1<sup>st</sup> wife. The deceased left the Piave land to Gikuru because that was her husband's name and she never had a child. The deceased never took any children for upbringing and denied knowing the 1<sup>st</sup> Objector. When she lived with the deceased there was nobody else there and AW2 was taking care of her. That she knows Mwhaki Kuria who is a daughter of the sister of the deceased and only used to visit the deceased but not living with her.

### **Administrators' Case**

16. AW1, Joseph Maina Gachorohio stated that, the deceased was like his mother and he was living with her. That the deceased is the sister to his mother who pre-deceased the deceased and it was the deceased who brought him in Elburgon. He knows OW2 as his neighbour and he has lied in Court. Exh 6(a) is a picture of the deceased himself and his sister who were brought up by the deceased.



17. That, the assets of the deceased go to him. That he was gifted land in Njoro, Elburgon plus Cash. That the deceased also had cows and cash. He did not know the deceased's husband or whether she had been married before and never saw any marriage documents. Gikiru Kimuri is his immediate neighbour in Njoro and was never gifted.
18. That they went to the chief and he decide do give 1 acre to Gikiru in Njoro and he never got anything. He declined to surrender the original title at the chiefs' and he was not aware how the property was transferred. It was a lie the Applicant was living in Piave/28 since he was living in Piave/29. He never saw any marriage documents.
19. That John Njoroge and Peter Mbabu were sons of the deceased's sister but were not raised by the deceased. The Chief lied by saying Babu is the 1<sup>st</sup> son of the deceased. He confirmed selling the Elburgon land to Chege in 2007 and denied transferring any title in his name or selling to David Kibe Ngure and that the titles should revert back to the estate.
20. AW2, Emma Sitinei, Nakuru Land Registrar produced certified copy of green card Ex1 of the green card and stated that the parcel file in the Elburgon property does not contain all the records. Entries 7, 9, 14, 15 have documentation and entries 10,12,13,16 do have record. She confirmed that entry No. 12 was to lift a restriction and confirmed that there was no order to do so despite being a prerequisite.

#### **Administrators Submissions**

21. On whether there was sufficient evidence to warrant Revocation of Grant issued on 8<sup>th</sup> July, 2003 and Rectified on 30 July, 2018 and the subsequent reinstatement of the grant revoked on 1<sup>st</sup> January, 2020, reliance was placed in the matter of L.A.K. (Deceased) [2014] eKLR which discussed the circumstances of revoking a grant.
22. It was also submitted that the power to revoke a grant was discretionary as it was held in Albert Imbuga Kisigwa v Recho Kawai Kisigwa Succession Cause No. 158 of 2000 and in re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR.
23. That by the Court dismissing the grant it took into account the Administrator's interest in the estate and the Applicants can not try to use the Court process to legitimize themselves. That the Court should find that the Applicants are not dependants within the meaning of Section 29 of the [Law of Succession Act](#).

#### **Interested Parties Submissions**

24. It was submitted that, there was an understanding that the two groups ahead agreed that the administrator had an understanding with the applicants that he can benefit from the land in Elburgon and leave the Piave Land to the Applicants.
25. That the Interested Parties are purchasers for value without notice and their rights should be safeguarded as they had genuinely bought land from a rightful beneficiary.

#### **Analysis and Determination**

26. I have considered the pleadings and the evidence of record. The deceased died in 1999 and the estate is at this point in limbo since proper administration and distribution has been affected by accusations and counter accusations by the disputing parties.
27. Gikiru Kimani claims that the deceased gifted her the land Nakuru/Piave/28 since he was named after her deceased husband and he was taking care of her. That he was entitled to apply for letters of



- administration since he is a child of the co-wife of the deceased and in Kikuyu Customs the children of the other wives automatically become one's children. He denied that the deceased ever took in any children or raised any children as her own.
28. Joseph Maina Gachorohio on the other hand claims, he was the son of the deceased's sister and together with his sister they were taken in and raised by the deceased as her children upon their mother passing away. That they ranked high in priority is applying for the grant. He denied that the deceased was married and denied ever seeing a husband.
29. The issues for determination are is
- i. Whether the grant issued on 8<sup>th</sup> July, 2003 and later rectified on 30<sup>th</sup> July, is ripe for revocation
  - ii. Whether the Grant revoked on 23<sup>rd</sup> January, 2023 can be reinstated
  - iii. What are the appropriate orders in the circumstances
30. While determining the issues above, this Court has to determine whether the disputing parties have proven relation to the deceased, and who between the disputing parties is closest to the deceased according to the degree of consanguinity and affinity for purposes of administration and inheritance.
31. The deceased, herein died intestate and from the evidence on record she never had any biological children. At least that is what the disputing parties are in agreement on. This Court is guided by Section 39 of the Act, which addresses a scenario where an intestate has left no surviving spouse or children as follows:
1. Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—
    - a. father; or if dead
    - b. mother; or if dead
    - c. brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
    - d. half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
    - e. the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.
  2. Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund
32. This Court is further guided by the provision of Section 66 of the [Law of Succession Act](#) which provide for the preference to be given to certain persons to administer an estate where the deceased died intestate 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:

33. Rule 7 (7) of the Probate and Administration Rules provides that:-

“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 grant to the applicant; or
- c. been issued with a citation calling upon calling upon him either to renounce such right or to apply for a grant.”

34. In re Estate of the Late M’thigai Muchangi (Deceased) [2020] eKLR the Court opined thus:

“The law requires that a person claiming to be entitle to the estate be related to the deceased from one common relative starting from the parents to the particular relative who is traced from the parent of that deceased. This will inform the court on the degree of consanguinity and affinity the claimant has to the deceased.”

35. If proven with certainty that the Administrator with his co-administrators were children of the sister of the deceased the they would rank highest in priority for administration purposes and inheritance as opposed to the Applicants. If the Administrators fail to prove relation to the deceased or even dependency then the ball falls on the Applicants to substantiate their claim. Proof of these claims will be addressed in the issues as hereunder.

**Whether the grant confirmed on 8<sup>th</sup> July, 2003 and later rectified on 30<sup>th</sup> July, 2018 is ripe for revocation**

36. Revocation or annulment of a grant is provided under Section 76 of the Act and the same was expounded In re Estate of Prisca Ong’ayo Nande (Deceased) [2020] KEHC 6563 (KLR) thus: -

“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.”

37. The Petition for letter of Administration filed on 2<sup>nd</sup> November, 2000 in Succession 471 of 2000 and the Affidavit sworn on 19<sup>th</sup> December, 2000 by Joseph Maina Gachorohio indicated that the deceased was survived by 3 sons, Peter Babu Kimani, John Njoroge Kariuki and Joseph Maina Gachorohio. There is a chief’s letter dated 14<sup>th</sup> January, 2000 identifying Peter Babu Kimani as the first son of the deceased with permission to follow up the belongings of the deceased.
38. In his sworn testimony during the hearing, Joseph Maina Gachorohi admitted that, the deceased had no children but raised him and his sister as her children following the demise of their mother. He confirmed that the chief lied that Babu was the first son in his letter. This proves that he proceeded with the letter to obtain the grant of Letters of Administration with the full knowledge and understanding that it contained falsehoods.
39. He further testified that, John Njoroge and Peter Babu were sons of the deceased’s sister but were not raised by the deceased. The puzzling questions that the Court is grappling with is who are these people named as beneficiaries of the estate? At what point did these “sons” become the deceased children to be listed as beneficiaries? Were they adopted? Were they being maintained by the deceased? Were they raised by the deceased as her children?
40. On the other hand, although it is not uncommon for children of a deceased sibling to be taken in by another sibling and be raised as the siblings own, if indeed the deceased raised Joseph Maina Gachorohio and his sister as her children, why was the sister not listed as a beneficiary in the Petition? Why did the sister not testify? He could not answer this question on cross-examination. OW3 confirmed that the deceased sister’s child, a Mwhaki Kuria, used to visit the deceased, but she too was not listed as a beneficiary. Did the deceased have other siblings who might be alive?
41. It is trite that he who asserts must prove. Section 107 of The *Evidence Act* stipulates:
  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.
42. The Administrator together with his “co-beneficiaries” have failed to prove dependency under Section 29 of the Act. From the evidence on record, they have also failed to prove any form of relation to the deceased. No witness was brought in to verify these claims and have failed to discharge the burden of proof by law.
43. There was clear fraud, illegality, making of false statements and concealment of facts in obtaining the Grant issued. As a matter of fact, it is not even certain that these individuals Peter Babu Kimani, John Njoroge Kariuki and Joseph Maina Gachorohio have any relation to the deceased. As far as the Court is concerned, these people are strangers to the estate.



44. For the foregoing reason, I find that the grant confirmed on 8<sup>th</sup> July, 2003 and later rectified on 30<sup>th</sup> July, 2018 cannot withstand a revocation.

#### **Whether the Grant revoked on 23<sup>rd</sup> January, 2023 can be reinstated**

45. The grant issued in Succession 673 of 2016 on 20<sup>th</sup> February, 2017 and confirmed on 29<sup>th</sup> September, 2017 was revoked by Matheka J on 23<sup>rd</sup> January, 2020 and declared that any transaction flowing from the same a nullity. In revoking the grant, the Court noted that the summons for revocation was served on the Applicants but they opted not to respond so it was unposed and further that it was obtained fraudulently.
46. A party will succeed in an application for setting-aside of an order when it can be demonstrated to the Court with sufficient reason for seeking such an order. For this Court to exercise discretion to set aside the order of 23<sup>rd</sup> January, 2020, the Applicants have to demonstrate why there was no response to service of the Summons for Revocation of Grant within the stipulated period and further there has to be proof of relation to the deceased for this Court to agree to handover the management of the estate to the Applicant.
47. The evidence of the Applicant does not also any way prove any relation to the deceased. The minute the Administrator attached the possibility of the deceased not being married to the Applicants grandfather, the onus was on the Applicant to prove marriage. There is no proof of marriage of the deceased to the Applicant's grandfather. If indeed the deceased had two co-wives did they have children as well and did those children have children? Why was a caretaker being preferred as opposed to a grandchild.
48. The argument advanced that, according to Kikuyu customs children of a co-wife are also one's children has to be backed up. Secondly according to Sections 66 and 39 of the Act, such an argument has no legal backing. The testimony of OW3 that she was a child of the deceased sister demonstrates that there was someone who ranks higher in priority than a grandchild or a caretaker and who in this case is a child of a sibling of the deceased.
49. The Applicants have not placed sufficient grounds to warrant this Court to set aside the Order of 23<sup>rd</sup> January, 2020 and reinstate the revoked grant. They have not addressed the nonappearance or lack of response but have heavily delved on the other party's fraud.
50. For the foregoing reasons I'm not satisfied that the Grant revoked on 23<sup>rd</sup> January, 2020 qualifies for reinstatement.

#### **What orders are appropriate in the circumstances**

51. The disputing Parties have admitted to being neighbours and knowing each other but have denied each other's relation to the deceased. The manner in which both grants were obtained the properties of the deceased transferred is suspect to say the least.
52. The Land Registrar testified that the transmission transfer of the Elburgon property was marred with irregularities and was surprised that there was a transfer to begin with, in the absence of an order lifting the restriction. She confirmed that problems started from Entry 10 in the certified copy of the Green Card and that was upon the demise of the deceased.
53. Having found that neither grant was proper to administer the estate of the deceased and further none of the disputing parties has proven relation to the deceased, the estate of the deceased cannot be placed in the hands of either group as it seems it's a fortune-hunt and they want to reap where they have not sowed.



54. The Interested Party threw in curve ball and stated that, the disputing parties agreed on who was going to take which property and one of them stole a match and applied to have everything. This is clear that the parties knowingly opted to disregard the law of succession for their selfish needs. They took advantage of the fact that the deceased left behind no spouse or child and felt an avenue of enriching themselves had presented itself.
55. The conduct of the parties herein trying to sidestep the law of succession is clear that neither of them would safeguard the Interests of the estate of the deceased. It is the core duty of the Succession Court to safeguard the state of a deceased from wastage and illegal alienation. This Court is of the view that a legally constituted, independent and impartial person should step in so as to ensure the estate is protected.
56. Section 7 of the Public Trustee Act, grants the court the discretion to issue letters of administration to the Public Trustee and states as follows:
- “Where the particular circumstances of any case appear to the court so to require, the court may, if it thinks fit for reasons recorded in its proceedings of its own motion or otherwise, after having heard the Public trustee, grant under the Law of Succession Act Letters of Administration to the Public Trustee notwithstanding that there are person who under that Act or any other written law would in the ordinary course be legally entitled to administer the estate of the deceased person.”
57. It is therefore fair and just for this Court to vest the administration of the estate in the Public Trustee in order to safeguarded the estate.
58. Final Orders:
- a. The Grant of Letter of Administration issued to John Njoroge and Joesph Maina Gachorohio Confirmed on 8<sup>th</sup> July, 2003 and subsequently rectified on 30<sup>th</sup> July, 2018 is hereby revoked.
  - b. Any transaction stemming from the said Grant is forthwith declared a nullity ab initio.
  - c. For the avoidance of doubt, the orders of 23<sup>rd</sup> January, 2020 shall remain in force.
  - d. A fresh grant to issue to the Public Trustee to proceed with the Administration of this estate.
  - e. The Public Trustee shall render accurate information relating to the identification of beneficiaries and assets of the deceased herein, and to shed light on the position of the estate thus far within six (6) months.
  - f. The Public Trustee shall after submission of accurate estate information file an application for confirmation of grant and serve all the parties herein.
  - g. A temporary injunction is hereby issued restraining the disputing parties herein either by themselves, their servants, agents and or proxies from with possessing and ownership or in any manner or howsoever from interfering or any other further dealing with parcels of known as Elburgon/Arimi Ndoshwa Block 4/299 and Nakuru Piave/26 and by extension:
    - i. Nakuru/Piave/4465,
    - ii. Nakuru/Piave/4466,
    - iii. Nakuru/Piave/4467
    - iv. Nakuru/Piave/4672,



- v. Nakuru/Piave/4673,
  - vi. Nakuru/Piave/4674,
  - vii. Nakuru/Piave/4668,
  - viii. Nakuru/Piave/4669,
  - ix. Nakuru/Piave/4670, and
  - x. Nakuru/Piave/4671 pending the rendering of accurate information on the estate by the Public Trustee.
- h. The Deputy Registrar of the High Court shall serve this Order upon the Public Trustee.
  - i. Leave is hereby granted to any Party aggrieved by this Order to move the Court of Appeal appropriately within forty-five (45) days.

It is ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 9<sup>TH</sup> DAY OF MAY 2025**

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**MOHOCHI S. M.**

**JUDGE**

