



**In re Estate of Rashid Mohamed (Deceased) (Succession Cause  
150 of 1998) [2025] KEHC 6069 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6069 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 150 OF 1998**

**G MUTAI, J  
MAY 9, 2025**

**BETWEEN**

**MOHAMED RASHID MOHAMED ..... APPLICANT**

**AND**

**MOHAMED RASHID MOHAMED & 2 OTHERS ..... RESPONDENT**

**RULING**

1. Before this honourable court is summons for revocation of grant dated 18<sup>th</sup> September 2020 filed by the applicant, who we shall hereafter refer to as “Mohamed Rashid Mohamed Junior” or the “applicant”, seeking to have the grant of letters of administration issued to the respondents on 25<sup>th</sup> March 1999 revoked on the grounds that the proceedings to obtain the same were defective in substance, the grant was obtained fraudulently by the making of false statements or by the concealment from the court of something material to the case, and that the grant was obtained through the concealment of material facts.
2. The said application is supported by the affidavit of the applicant, sworn on the same date by the applicant. In the said affidavit, Mr Mohamed Rashid Mohamed Junior stated that he, his brothers and mother were left out of the petition for the grant of letters of administration intestate. He averred that his mother was legally married to the deceased and was blessed with the following children: Mohamed Rashid Mohamed Junior (the applicant), Mohamed Chivadzi Rashid, and Fatuma Rashid Mohamed. The applicant further stated that, as the beneficiaries of the deceased's estate, they are entitled to a share of his estate; therefore, the grant should be revoked for concealment of material facts and a fresh grant issued in their joint names.
3. He averred that at the time of obtaining the grant, he was in class six and that the administrators herein chased them out of the plot where the deceased had built them a home. The administrators and their siblings disinherited them, and therefore, the grant ought to be revoked.



4. In response, the respondents filed a replying affidavit sworn on 6<sup>th</sup> November 2020. They termed the allegations by the applicant as false, malicious, unmerited and unfounded, as they have faithfully, diligently and lawfully administered the estate of the deceased since the issuance of the grant herein.
5. They stated that at the time of the death of their father, the applicant was 10 years old and his legitimacy as a son of the deceased was in question as his mother had been divorced by the deceased. That the deceased had two children with the applicant's mother, the applicant and Fatma Rashid Mohamed. That despite the fact that they did not include the applicant in the petition for the grant of letters of administration, they have shared the deceased's estate with him and have allowed him to fully participate in the administration and distribution of the estate.
6. They further stated that the applicant was given a plot in Bamburi being a sub plot of original Plot No.273B which he sold to a third party known as Douglas Martin Denje. He was also given Plot No. 9, Sub Plot of Plot No.273 and his sister Plot No. 8 as their share of the estate.
7. The respondents stated that the applicant's mother and step-brother are not beneficiaries of the estate of the deceased, as the deceased had already divorced his mother before his death, and the brother was born years later after the divorce.
8. They averred that the only property remaining for distribution is Plot No. 3699 (Original No. 823/4), Section II, MN, situated in the Mwakirunge area, which has a caveat and has been encroached upon by the area chief.
9. They stated that the applicant's application had been overtaken by events and urged the court to dismiss it.
10. The applicant filed a supplementary affidavit sworn on 20<sup>th</sup> November 2020 in which he stated that the portion of Plot No.273B allegedly allocated to him is situated in a seasonal fast-flowing river and was absolutely and completely unusable. As for Plot No. 9, they moved him to the river section and allocated the same to their sister's daughter.
11. He averred that the allegation that his late father was doubtful of his paternity is nothing but a malicious and injurious falsehood. He urged the court to revoke the subject grant of letters of administration intestate.
12. The summons was canvassed through viva voce evidence.
13. The applicant testified as the first witness. For identification, I shall refer to him as the "AW1". The applicant testified that Plot No. 160 was transferred on 27<sup>th</sup> May 1977, and registered on 23<sup>rd</sup> January 1978 in the name of the deceased. Nyambura Binti Nassoro died on 19<sup>th</sup> December 1975, and therefore, the same cannot be said to have been owned by the late Nyambura Binti Nassoro. He stated that he was given the said portion of land.
14. He further testified that his mother had three children, Fatuma Rashid, himself and Mohamed Chivadzi Rashid. They did not all get their rightful share of the estate.
15. He told the court that the share given to him in Plot No. 273 has a river and thus can't be used as it floods when it rains. The same cannot be leased due to the said river, and the tenant he had leased asked for a refund of her money in the sum of Kes.250,000/-
16. Mohamed Ali Mwachikuvi, the "AW2", testified that the deceased was his uncle and the person who brought him up after his father died. It was his evidence that the applicant is a step-brother of the



- respondents. He further testified that the deceased had two children with Batuli, namely Fatuma and the applicant herein.
17. It was his evidence that Plot No. 160 was purchased two years before Nyambura Binti Nassoro died. Further Plot No.273/II/MN belongs to the family, and it had been divided, and the applicant was given a share.
  18. Suleiman Omar Mwachikuvi testified that Plot No.273/II/MN was divided, and the applicant was given a plot next to the river. The said plot is inaccessible. He also testified that Plot No. 160 belonged to the deceased. The deceased and the applicant's mother lived in a house built by the deceased on Plot No.160; however, the house is no longer there. He averred that the deceased, the applicant's mother, and the applicant and his sibling used to live in a house on Plot No. 160 together. The applicant's mother later moved out to live with one Sheba Mohamed.
  19. Mohamed Rashid Mohamed, RW1, who I shall hereafter refer to as "Mohamed Rashid Mohamed Senior", reiterated the position in the replying affidavit and told the court that he is the second-born child of the deceased and that the applicant is his step-brother. He stated that the deceased had four wives, with the applicant's mother being the fourth. It was his evidence that the deceased didn't recognise the applicant; however, they don't have an issue with his inclusion. In their various meetings, they agreed that the applicant be included and also be given a share according to Islamic law.
  20. It was his further evidence that Plot No.273B (Plot No. 9) was for the applicant, while Fatuma got Plot No. 8 before the applicant moved to court. The applicant raised a complaint on the plot being waterlogged during mediation, whereas he was already benefiting from the said plot. Mr Mohamed Rashid Mohamed Senior testified that the applicant could be compensated with another plot.
  21. He further testified that Plot No.636 was in the name of the deceased, and that the same should form part of the estate of the deceased. He thus urged the court to rectify the grant.
  22. According to him, Plot No. 160 belonged to his mother, even though it was registered in his father's name. He testified that his mother sold her gold ornaments to purchase the same. The purchase price was paid in two instalments of Kes.14,000/- and Kes.6,000/- respectively. He stated that the same had, however, been subdivided.
  23. The second witness for the Respondents (RW2) was Rashid Mwahereria. Mr Mwahereria testified that, sometimes, when it rains, Plot No. 273 floods, and that there is a seasonal stream nearby.
  24. On Plot No.160, he testified that it had already been subdivided and sold by the deceased before his death. He conceded that they did not involve the applicant in the 1<sup>st</sup> application for the grant.
  25. RW3, Mwanajuma Mbaruku Mohamed, testified that Plot No.160 belonged to her sister Nyambura Binti Nassoro, who consulted her father before purchasing the same. She paid Kes.50,000/- as the purchase price for the said plot. When Nyambura died, the deceased subdivided the plot into two and gave the elder Mohamed their share. The deceased also sold a portion of the land after subdivision.
  26. RW4 Abdulkhamisi Juma, a village elder, testified that Plot No.273 belonged to the deceased. That he was a witness to the sale agreement between the applicant and Halima over said property, which was being sold for Kes.250,000/-. The land had been sold before, and the 1<sup>st</sup> purchaser was compensated. He stated that the land is not located on a river and that when it rains in Bamburi, it floods everywhere, not just on the specified portion of land.
  27. After the conclusion of the hearing, the court directed the parties to file written submissions.



28. The applicant, through his advocates, Philip Adede & Co. Advocates, filed written submissions dated 16<sup>th</sup> August 2024.
29. Counsel reiterated the applicant's evidence regarding Plot No. 160/II/MN and submitted that it was owned by the deceased and forms part of his estate. No documentary evidence was tendered to show that the deceased held the said property in trust for the late Nyambura Binti Nassoro or that the late Nyambura owned it.
30. Regarding whether the grant should be revoked, counsel relied on Section 76 of the [Law of Succession Act](#) and submitted that the respondents obtained the grant through the concealment of material facts, namely that the applicant and his siblings were beneficiaries of the deceased's estate. As a result, the proceedings were defective in substance.
31. In conclusion, counsel urged the court to allow the application as prayed.
32. The respondents, on the other hand, through their advocates A.O. Hamza & Company Advocates, filed their written submissions dated 7<sup>th</sup> October 2024.
33. Counsel submitted that the summons for revocation or annulment of the grant was brought in bad faith, as the dispute had been resolved. Although the applicant's name was unintentionally left out in the subject grant, they have made good of the same by sharing some of the estate properties and even agreed to reimburse the applicant for their share from the already divided shares.
34. Regarding the question of whether the applicant, her mother, and siblings should be included as administrators and/or heirs of the estate herein, counsel submitted that the best way to cure the issue is to rectify the grant to include the applicant's name as an heir and also as an administrator of the deceased's estate, as opposed to revocation.
35. On whether Plot No.636/11/MN should be included as forming part of the estate herein, counsel submitted that the existence of the said property came to the attention of the respondents after the filing of the summons herein by the applicant, which is in the possession of the applicant's maternal relatives, specifically applicant's uncle Hussein Rashid. Counsel urged the court to include the same in the grant.
36. Counsel for the Respondents submitted that Plot No. 160 formed part of the deceased's estate and that it belonged to the respondents' mother, Nyambura Binti Nassoro, who purchased it in the 1970s but failed to register it due to her illness. Counsel reiterated the respondents' evidence and urged the court to declare the said property as belonging to Nyambura Binti Nassoro's children. The applicant and his sister have no claim on it.
37. It was urged that the applicant would have to surrender Plot No. 9 in exchange for compensation with another plot.
38. Counsel submitted that revoking the grant would cause significant prejudice, as it would not only affect the beneficiaries therein but also all third parties who have purchased some of the estate properties and shares as bona fide purchasers, as well as activities conducted using the said grant. Counsel urged the court to order rectification of the grant to include the applicant and Plot No.636/11/MN.
39. I have considered the summons for revocation of grant filed herein, the response thereto, as well as the evidence adduced by the parties and the written submissions made.
40. Section 76 of the [Law of Succession Act](#) provides for grounds of revocation as follows;



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.

41. On the court's power to revoke a grant the court in the case of *Albert Imbuga Kisigwa v Recho Kavai Kisigwa* [2016] KEHC 1528 (KLR) stated:-

“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 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.”

42. The applicant moved this court for revocation on the grounds that the respondents concealed material facts from the court by not including him and his siblings in the petition for the grant of letters of administration. The respondents have conceded that they didn't include the applicant and his siblings in their petition for grant. They have also urged the court not to revoke the grant but to rectify it to include the applicant and the properties omitted.

43. The court in the case of *In re Estate of Julius Ndubi Javan (Deceased)* [2018] KEHC 8523 (KLR) observed as follows on non-disclosure of material facts from the court,

“Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case, including succession cases. This general rule of law emphasizes utmost good faith (*uberimae fidei*) from parties who take out or are subject to the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law.”



44. A similar holding was made in the case of re Estate of Moses Wachira Kimotho (Deceased) Succession Cause 122 of 2002 [2009] eKLR, where the Court held that:-

“I am certain that had the Applicants been made aware of the application for the confirmation of grant by being served, they would have brought to the fore their aforesaid interest in the estate of the deceased, and the resultant grant would have taken care of those interests. Further, had the Respondent been forthright and candid and included the Applicants as beneficiaries of a portion of the estate of the deceased as purchasers for value, the court in confirming the grant would have taken into account their interest in the estate of the deceased. As it is, therefore, the grant was obtained fraudulently by making a false statement and or concealment from court of something material to the cause. The Respondent knew of the Applicants’ interest in the estate of the deceased yet she chose to ignore them completely in her petition of letters of administration intestate. She also ignored them completely when she applied for the confirmation of the grant.”

45. At the time they filed these summons, the Respondents knew about the applicant and his siblings and should have disclosed them in the pleadings. By not doing so, they made material non-disclosure that justifies this Court to revoke the grant. It does not matter that they became remorseful and accommodating late on.

46. It is a common ground that the deceased was the registered owner of Plot 160/II/MN. Although there has been contention as to who bought it, the same should have been disclosed as belonging to the deceased until a contrary finding was made by a competent court. This wasn’t done.

47. Accordingly, it is my finding that the application dated 18<sup>th</sup> September 2020 has merit. The same is hereby allowed. Consequently, the grant issued on 25<sup>th</sup> March 1999 is revoked.

48. I direct that the parties move the court for a fresh grant of representation listing all beneficiaries and assets of the estate of the deceased within the next 45 days of the date hereof. The proposed administrators must be drawn from each of the houses of the deceased.

49. As this is a succession dispute between family members, I make no orders as to costs.

50. It is so ordered.

**DATED AND SIGNED IN MOMBASA THIS 9<sup>TH</sup> DAY OF MAY 2025. DELIVERED VIRTUALLY THROUGH THE CTS/EFILING PLATFORM.**

**GREGORY MUTAI**

**JUDGE**

