



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Zakayo Mwangi alias Zakayo Ismail & Zakayo Mwangi Wango (Deceased)
(Succession Cause 2672 of 1995) [2025] KEHC 5736 (KLR) (Family) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5736 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2672 OF 1995**

PM NYAUNDI, J

MAY 9, 2025

**N THE MATTER OF THE ESTATE OF ZAKAYO MWANGI ALIAS
ZAKAYO ISMAIL & ZAKAYO MWANGI WANGO (DECEASED)**

BETWEEN

MARK NGATHO MWANGI APPLICANT

AND

ELIZABETH NGIMA MWANGI 1ST RESPONDENT

SHEILA NJERI MWANGI 2ND RESPONDENT

RULING

1. This matter relates to the estate of Zakayo Mwangi alias Zakayo Ismail alias Zakayo Mwangi Wango who died intestate on 27th September, 1995. Elizabeth Mwangi and Sheila Njeri Mwangi in their capacity as widow and daughter of the deceased petitioned for letters of administration of grant intestate. The grant was issued to them on 26th January 1996. The said grant was confirmed on 25th February 2003.
2. The deceased was survived by the following persons;
 - a. Elizabeth Ngima Mwangi- widow.
 - b. Sheila Njeri Mwangi- daughter.
 - c. Edith Watetu Mwangi- daughter.
 - d. Mark Ngatho Mwangi- son.
3. The deceased had the following assets;



- i. LR No 5851/20
 - ii. LR No Dagoretti/Thogoto/326410/9
 - iii. LR No Dagoretti/Thogoto/T23.
4. Mark Ngatho Mwangi (the Applicant) then filed summons for revocation of grant dated 4th October 2024. The summons is premised under Section 47 and Rules 49 & 73 of the Law of Succession Act Cap 160 seeking the following orders;
1. Spent.
 2. That the Certificate of Confirmation of Grant issued to Elizabeth Ngima Mwangi and Sheila Njeri Mwangi confirmed on 25th February 2003 be annulled and revoked.
 3. That this court issues a temporary injunction restraining Elizabeth Ngima Mwangi and Sheila Njeri Mwangi, the administrators of the estate or their agents from further dealings with the estate of Zakayo Mwangi alias Zakayo Ismail & Zakayo Mwangi Wango(Deceased) including LR No 5851/20.
 4. That this court cancels any subsequent irregular and unlawful transfers and or transactions resultant from the Certificate of Confirmation of Grant issued to Elizabeth Ngima Mwangi and Sheila Njeri Mwangi on 25th February 2003.
 5. That this Honourable Court do order that Elizabeth Ngima Mwangi and Sheila Njeri Mwangi produces for good record and account detailed statement of accounts and affairs of the estate up to and until the date of such order.
 6. That the Honourable Court issues a fresh Certificate of Confirmation of Grant to Mark Ngatho Mwangi, Elizabeth Ngima Mwangi and Sheila Njeri Mwangi.
 7. That the costs of this application be provided for.
5. The Applicant avers that the respondents have failed to administer the estate in accordance with the Certificate of Confirmation of Grant, in particular they have failed to transmit to him his share of the property known as LR No 5851/20 was to be vested to all the beneficiaries including himself.
6. He asserts that the administrators of the estate are holding the property in trust for all the beneficiaries. He is concerned that the administrators have hived off 2 acres and sold it. He argued that he and other beneficiaries stand to lose a share of their property if an injunction is not issued against the two administrators. Attempts to access documents and information regarding the estate through his advocates have been futile. The Administrators through their advocates informed the applicant's advocates that the property sold is not part of the estate which information is not true. He argued that a caution should be issued by this court to stop any dealings on the property in issue. Lastly, he stated that he should be given his share as provided in the Certificate of Confirmation of Grant.
7. The Administrators opposed the application vide a Replying Affidavit dated 25th February 2025. Their case is that they have tried to administer the estate but the Applicant and other beneficiaries have been violent and claim that they are not entitled to benefit from the estate. They accused the Applicant of invading the estate and carrying away construction materials. They averred that the two acres referred to by the Applicant is not part of the estate; the deceased gave this land the 1st Respondent for her upkeep and medical expenses. That the subdivision of the property has been hindered by land statutory approvals which is beyond their control. They argued that the Applicant's application is devoid of merit and the same should be dismissed.



8. In a Further Affidavit dated 6th March 2025, the Applicant stated that, the administrators have not adduced any evidence to prove that they have taken steps to administer the estate 22 years later. They have not also produced statements of account. He has never been consulted on the sub division process. He sought the intervention of the area chief and the DCC to resolve the distribution of the estate but the efforts did not bear any fruits. He denied the allegations of violence against the administrators and argued that the administrators have been violent on his wife and children.
9. He bought materials to construct a house on LR No 5851/20 but he was denied access into the property by the 1st respondent. He argued that the Respondents have not adduced evidence to prove that LR No 5851/20 is not part of the estate. The Certificate of Confirmation of Grant confirmed the whole of LR No 5851/20 as estate property and was to be held in trust for all the beneficiaries.
10. The summons was disposed of by way of written submissions. Both parties filed their submissions

Applicant's Submissions.

11. The Applicant submitted that he anchors his case on two grounds; First, that the administrators have failed to proceed diligently with the administration of the estate, secondly, that the administrators have failed 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 and thirdly the Administrators have fraudulently sold 2 acres to be excised from LR No 5851/20 to the detriment of the Applicant which property was to be held in trust for all beneficiaries and in contempt of the Certificate of Confirmation of Grant issued by the Court. He submitted that failure to distribute a deceased's estate is a ground for revocation of a grant for letters of administration as provided under Section 76 (d) of the Law of Succession.

Summary Of The Respondent's Submissions

12. The Respondent frames the following as the issues for determination?
 - a. Whether the Summons for revocation of grant are merited and have high chances of success?
 - b. Who should bear the costs of these proceedings?
13. On the first issue it is submitted that the Applicant has not brought himself within the ambit of Section 76 of the *Law of Succession Act*. It is submitted that the delay in transmission was occasioned by factors beyond the control of the Administrators and the Applicant himself through his action has delayed and derailed the process.
14. On the 2nd issue it is submitted that the Applicant should pay the costs.

Analysis And Determination

15. The Summons before me is for revocation of grant. The issue for determination is whether the grant of letters of administration issued to, and appointment of the two administrators herein should be revoked, and the applicant be included as an administrator of the estate of the deceased.
16. Section 76 of the *Law of Succession Act* 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.
17. The gist of the application is that the two administrators have failed to proceed diligently with the administration of the estate of the deceased, they have failed to produce inventory or account of administration and that they have sold two acres of property known as LR No 5851/20 without the consent of other beneficiaries.
18. This Court as alive to the serious ramifications of revocation of a grant. In this Court’s view, this should be done only where there is good reason to do so. In the present case, there are No questions of fraud or defectiveness of the proceedings leading to confirmation of the grant. To my mind, whereas the actions of the Administrators in delaying transmission of the Estate run afoul of the provisions of Section 76 (d)(ii), it is not in the estate’s best interest of the Estate to revoke the grant.
19. The Certificate of Confirmation of Grant shows that the Administrators were to hold LR No 5851/20 measuring 7.528 Ha in trust for the beneficiaries of the Estate namely, Elizabeth Ngima Mwangi, Edith Watetu Mwangi, Sheila Njeri Mwangi, Mark Ngatho Mwangi and Melissa Wangari Mwangi.
20. In accordance with Section 35 (1) of the Law of Succession Act, a surviving widow of right is entitled to a life interest in the estate. The Law provides that-
- Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—
- (a) the personal and household effects of the deceased absolutely; and
 - (b) a life interest in the whole residue of the net intestate estate:
- Provided that, if the surviving spouse is a widow, that interest shall determine upon her remarriage to any person.
21. In Tau Katungi v Margrethe Thorning Katungi & another [2014] eKLR the Court considered the meaning of life interest and stated as follows-
- The effect of Section 35(1) is that the children of the deceased are not entitled to access the net intestate estate so long as there is a surviving spouse. The children’s right to the property crystallises upon the determination of the life interest following the death of the life interest holder or her remarriage. Prior to that, the widow would be entitled to exclusive right over



the net estate. This means that if the net estate is generating income she would be the person entitled exclusively to the income so generated. The device is designed to safeguard the position of the surviving spouse. The ultimate destination of the net intestate estate where there are surviving children is the children. It is the children who are entitled of right to the property of their deceased parent. However, if the property passes directly to the children, in cases where there is a surviving spouse, he or she is likely to be exposed to destitution. This would particularly be the case where the surviving spouse was wholly dependent on the departed spouse. She would be left without any means of sustenance. The other aspect is that life interest ties up with the concept of matrimonial property: the said property would in most part be property acquired during marriage and with the contribution of the surviving spouse. Direct devolution of such property to the children would deny the surviving spouse of enjoyment of their own property.

22. This legal protection is provided for cases such as the current one where a child seeks his slice of the pie before the right of his mother extinguishes. He must hold his horses. His right to the property is yet to crystallise.
23. As stated in *Kamotho v Kamotho* [2025] KEELC 1439 (KLR) the proprietary rights of a surviving spouse who holds a life interest are not equated to one who holds the property absolutely. The spouse who enjoys a life interest holds the property in trust for the other the beneficiaries of the estate, in this case her children. The law is couched in mandatory terms that she cannot sale the property absent the consent of the Court.

Section 37. Powers of spouse during life interest

A surviving spouse entitled to a life interest under the provisions of section 35 or 36, with the consent of all co-trustees and all children of full age, or with the consent of the court, may, during the period of the life interest, sell any of the property subject to that interest if it is necessary for his own maintenance:

Provided that, in the case of immovable property, the exercise of that power shall always be subject to the consent of the court.

24. The 1st Respondent contends that the deceased hived off a portion of the land for her benefit. The estate of the deceased is being administered as intestate. As matters stand now she has No right to dispose of the assets of the estate without consent of the Court. Any contract she enters into contrary to the law is voidable.
25. In Conclusion, the application to revoke the grant is disallowed.
26. The Administrators however will finalise distribution of the Estate within 60 days and furnish the Court with an account of their administration of the Estate
27. The matter will be mentioned on 25th November 2025 to confirm compliance.
28. Each party will bear their own costs.

It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 9th DAY OF MAY, 2025.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Ms. Wanjohi for Applicant



Kinyanjui Kimani for Administratrix/Respondent
Fardosa Court Assistant

