



REPUBLIC OF KENYA



**Kamau & 5 others v Ngugi (Civil Appeal 49 of 2018)
[2025] KEHC 11351 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 11351 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 49 OF 2018
DO CHEPKWONY, J
MAY 5, 2025**

BETWEEN

**WINNIE NYAMBURA KAMAU 1ST APPELLANT
PENINAH NJERI MAINA 2ND APPELLANT
VICTORIA WANJIRU MIRINGU 3RD APPELLANT
PHOEBE MUTHONI GACHATHI 4TH APPELLANT
MARY BETHA KIBET 5TH APPELLANT
MARY WAIRIMU GITARI 6TH APPELLANT**

AND

PETER MWEA DANSON NGUGI RESPONDENT

(Being an application for Stay of Ruling of Chief Magistrate’s Court of Kenya at Thika made by Hon. B. J. Bartoo on 15th March, 2018 with respect to the Applicant’s Summons for Revocation of Grant dated 16th December, 2016)

RULING

1. For determination before this Court is the Summons for Confirmation of Grant dated 27th May, 2024 in which the Applicant seeks the following orders:-
 - a. That the Grant of Letters of Administration Intestate made to the said Peter Mwea Danson Ngugi and Winnie Nyambura Kamau by this Honourable Court in this matter on the 7th day of July, 2023 be confirmed.
 - b. That the costs of this application be in the cause.



2. The Application is supported by the Affidavit of Winnie Nyambura sworn on the instant date. According to the Applicant, her Co administrator has refused to participate in the filing of the summons. However, she has deponed that she listed all the beneficiaries of the estate of the deceased, and apart from four [4] of their brothers, the rest have all signed the Consent of the distribution of the estate. She states that she had distributed the entire assets of the estate of the deceased to all the fourteen [14] beneficiaries of the estate equally including their four [4] brothers as per the Schedule at Paragraph 12 of her Supporting Affidavit.
3. The Respondent has opposed the Summons of Confirmation through Grounds of opposition dated 26th September, 2024 on the following grounds:
 - a. That the application dated 27th May, 2024 has been filed in the wrong court.
 - b. That the application is an abuse of the court process.
 - c. That the court became functus officio when it delivered its Judgment and directed that new summons be filed in the lower Court.
 - d. That Letters of Administration in the names of both Administrator has been issued erroneously as the court was functus officio.
 - e. That the application dated 27th May, 2024 be dismissed with costs and they be directed to file in the proper court.
4. The court directed the parties to canvass the application by way of written submissions. The Applicant's submissions are dated 6th November, 2024, while the Respondents' are dated 27th November, 2024

Analysis and Determination

5. Having carefully read through the Summons for Confirmation of Grant, the affidavit in support thereof and Ground of Opposition alongside the written submissions filed by the parties herein, this Court finds that the main issues for determination are:-
 - a. Whether the Summons for Confirmation of Grant has been filed in the proper court.
 - b. Whether this Court erroneously issued Letters of Administration in the names of both Administrators.
 - c. Whether this Court became functus officio upon delivery of its Judgment herein.
6. With regard to the first issue on whether the Summons for Confirmation has been filed in the proper court, it is the Applicants' contention that the Respondent is the one who fraudulently obtained Grant before the lower Court hence the appeal before this Court wherein a Judgment was delivered in which the Grant of Letters of Administration was revoked and Certificate of Grant annulled. It is her position that the argument by the Respondent that the application ought to be filed before the lower Court is misleading and baseless.
7. The Respondent on the other hand has submitted that after delivery of its Judgment, this Court became functus officio and the fresh Summons for Confirmation of Grant ought to have been filed before the lower Court.



8. In consideration of the arguments by both parties on whether or not the Summons for Confirmation of Grant is before the proper court, this Court has appreciated that indeed its matter came before it by way of appeal, which was considered and a Judgment delivered with the following orders issuing:-
 - a. The Grant of Letters of Administration issued to Peter Mwea Danson Ngugi on 17th October, 2005 be and is hereby revoked.
 - b. The Certificate of Confirmation of Grant issued on 6th June, 2007 be and is hereby annulled.
 - c. Fresh Grant of Letters of Administration to be issued to the Respondent and one of the Objectors being Winnie Nyambura Kamau within 30 days from the date thereof.
 - d. Upon issuance of the fresh Grant in [c] above, either of the administrators shall be at liberty to file Summons for Confirmation of Grant which should include all the beneficiaries of the deceased both sons and daughters and in the event any of them is deceased, their wife or wives, child or children, if any to be included in place of the deceased husband or parent in the Consent form with the proposed mode of distribution.
 - e. The other Administrator or any other party will then be at liberty to file and serve a protest to the Summons, if need be.
 - f. Mention on 19th September, 2023 to confirm compliance and directions on the disposal of the application to be filed under [d] above.
 - g. This being a family matter, each party shall bear their costs.
9. A reading of the said Judgment and orders issued on 7th July, 2023 confirms the Respondent's submissions that upon delivery of its Judgment which the Grant of Letters of Administration was revoked and Certificate of Confirmation of Grant annulled, this Court became functus officio. The orders were meant to have been complied with before the lower [trial court].
10. I believe the mistake or error is to be found on Order No.[8] of the Judgment because this Court inadvertently failed to direct that the mention for parties to confirm compliance of the orders issued be scheduled before the trial court.
11. Be that as it may, even though this Court has issued Letters of Administration, the Grounds of Opposition are found meritable and are hereby upheld with directions that Orders [c], [d] and [e] of the Judgment delivered on 7th July, 2024 be complied with by and before the trial court within thirty [30] days from the date of this ruling.
12. It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 5TH DAY OF MAY 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Kanyi holding brief for Mr. Njenga counsel for the Appellant

No appearance for and by Respondent.

Court Assistant - Martin

