



In re JM alias JVR (Probate & Administration 80 of 2004 & 19 of 2013 (Consolidated)) [2025] KEHC 9199 (KLR) (23 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9199 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
PROBATE & ADMINISTRATION 80 OF 2004 & 19 OF 2013 (CONSOLIDATED)
G MUTAI, J
JUNE 23, 2025
IN THE MATTER OF THE ESTATE OF JM ALIAS JVR**

BETWEEN

KHNL APPLICANT

AND

MOM 1ST RESPONDENT

NOM 2ND RESPONDENT

RULING

1. The deceased whose estate is the subject of these succession proceedings is JM. The deceased is also known as JVR. According to the death certificate adduced in Court, Ms JM died on 8th May 2001 at Kijipwa, in Kilifi County, from “haemorrhage shock due to multiple injuries due to road traffic accident.” Her age at the time of death, as given in the death certificate, was 57. The residence at the time of her death was given as Switzerland. I shall hereafter refer to the deceased as “J.”
2. From the evidence adduced, the deceased was previously married to the 1st Respondent. The marriage was, however, dissolved on 17th January 1995, pursuant to the orders issued in Mombasa High Court Divorce Cause No. 31 of 1994; JVR alias JM v OM. The decree nisi was issued on 17th July 1995. The decree absolute (divorce) was issued on 30th March 1995.
3. During the course of the marriage, J and Mr OM purchased a property together. The property, identified as Portion Number XXXX (original Number XXXX/XXX) Malindi, measures 0.0409 hectares and was registered in their names (i.e., the names of JM and Mr. OM, as evidenced by the certificate of postal search dated 6th May 2002).
4. Seeking to inherit the property of the deceased, the 1st respondent filed the petition for letters of administration intestate of her estate. The petitioner/respondent described himself as the former



husband of the deceased and stated that her property consisted of Plot No. Malindi No. XXXX, along with household goods.

5. The petition was gazetted. Upon the expiration of time and with no objection, the grant was issued to MOM on 11th November 2004. Upon an application for confirmation of the grant, the same was confirmed on 7th June 2005. The Court awarded the entire share of Plot No. XXXX, Malindi to the 1st respondent/petitioner.
6. Armed with the certificate of confirmation of grant, the petitioner/1st respondent vide a sale agreement dated 28th December 2006 sold the subject plot to NOM at the agreed price of Kes.5,800,000.00.
7. The applicant on his part filed a petition for the grant of representation in respect of the estate of the deceased vide a petition for letters of administration intestate dated 18th January 2013, which was filed on 22nd January 2013 in his capacity as the widower of the deceased. The applicant identified the assets of the deceased as being Plot No. XXXX, Malindi, and bank account number No. XXXXXXXXXXXXXXX, with Standard Chartered Bank, Malindi branch.
8. The grant was issued to the applicant on 19th July 2013. The notice in the Kenya Gazette published on 3rd May 2013 attracted no objections. The grant was confirmed on 18th February 2014. The applicant, NLKH, received the entire share of Plot No. XXXX (originally numbered XXXX/XXX Malindi).
9. As it is, there are two grants in respect of the estate of the deceased. Both purport to devolve Plot No XXXX to the applicant (grant dated 18th February 2014) and the 1st respondent/petitioner (7th June 2005).
10. Vide summons of revocation of grant dated 24th May 2024, the applicant seeks to have the grant issued to MOM revoked on the ground that the grant was obtained in proceedings that were defective in substance, fraudulently by concealment of something material to the case, and by means of untrue allegations.
11. Mr L averred that he was the husband of the deceased, having gotten married to her under Islamic law. The date of the marriage was given as 14th February 1996. The marriage was subsisting at the time of the grant. He stated that upon obtaining the grant he found that the sole real property of the deceased had been transferred to the 2nd respondent, who had, on his part, leased the same to tenants. He blamed the delay on his part in obtaining the grant on ill health, which caused him to seek medical help in Tanzania. The applicant prayed that the grant be revoked.
12. The 2nd respondent filed a summons for revocation of the grant dated 23rd July 2024. The said Summons seeks to have the grant issued to NLKH on 19th July 2013 and confirmed on 18th February 2014 revoked and annulled, and for injunctive relief to issue.
13. The 2nd respondent averred that the property is registered in his name and that he bought it from MOM through an indenture dated 28th December 2006. He stated that prior to purchasing the property, he carried out due diligence and established that the property indeed belonged to the 1st Respondent, as he had a grant that had been confirmed and had not been revoked or annulled.
14. The 2nd Respondent urged that by the time the grant was issued to Mr L, the estate no longer existed. He prayed that the grant issued in Succession Cause No. 19 of 2013 be declared null and void, as it was obtained fraudulently and through concealment or misrepresentation of material information.
15. Both summons for revocation of the two grants were opposed. Given that succession cause No 80 of 2004 and 19 of 2013 were in respect of the said deceased person, I heard the two matters together and shall issue a consolidated judgment.



16. The matter was heard via viva voce evidence on 6th February 2025 and 26th February 2025.
17. In his testimony, the applicant averred that he was the husband of the deceased, while the 1st respondent was an ex-husband. It was his evidence that the deceased owned the land. At the time they got married, the property had one floor. He and the deceased added another floor. He conceded that the 1st respondent obtained the grant before him.
18. Mr L reiterated that he was the husband of the deceased at the time of her demise and was the rightful heir of his estate. He blamed the delay on his part on his ill health.
19. The second witness for the applicant was Mr Wilfred Akili Nyiro, the chief of Malindi location. He testified that he knew the deceased and the applicant and that they resided in his area of jurisdiction for 3 years. He stated that it was Mr. Kenzo who buried the deceased.
20. The 2nd respondent called three witnesses. Mr NOM, the 2nd respondent, was the first witness. He testified that he didn't know the applicant. According to him, the deceased lived in the house adjacent to his own and separated by three houses. He denied knowledge of the divorce between the deceased and Mr OM. It was his evidence that the transfer to his name was done in 2013, as he didn't have the money to do it sooner.
21. The second witness was Mr Said Mkoli Mwazuma. Mr Mwazuma is a resident of Mjengo, Malindi. He testified that he was a village elder. It was this evidence that J was married to OM. They, however, parted ways. Although he denied that Ms J remarried, he appeared to be extremely unsure once he was subjected to cross-examination by the counsel for the applicant.
22. The third witness was Ms. Eunice Arukudi. Eunice is a tenant in the premises. She testified that she didn't know how the house was acquired.
23. The parties filed written submissions.
24. The applicant's submissions are dated 19th March 2025. Through his counsel, the applicant averred that he was the widower of the deceased, having married her on 14th February 1996. His counsel identified the sole issue for determination by this court as being whether the grant issued to the 1st respondent/petitioner ought to be revoked.
25. It was submitted that the 1st respondent failed to disclose that the deceased was married to the applicant. He urged that the said failure was a sufficient ground to revoke the grant. Consequently, he prayed that the grant issued herein be revoked and that the grant issued to him be deemed as the only valid grant.
26. The submissions of the Respondents are dated 24th March 2025. There are two submissions regarding P&A Nos. 80 of 2004 and 19 of 2013. The respondents submitted that this Court be pleased to dismiss the summons for revocation of the former and uphold their summons to dismiss the latter.
27. According to the respondents, the applicant filed his petition for the grant of letters of administration intestate of the deceased's estate at a time when the estate had already been extinguished and was no longer in existence. They accused the applicant of not having served them with the application, and for that reason, of obtaining the grant without disclosing all the material information. They submitted that the asset forming the estate of the deceased was a jointly owned matrimonial property, owned by the 1st respondent and the deceased, and that upon being issued with a grant, he sold the same to the 2nd respondent by way of an indenture.
28. They therefore prayed that the summons they had filed be allowed while those of the applicant be dismissed.



29. The issue before me is whether the grants issued in these two matters should be revoked.
30. I note that the 1st respondent/petitioner did not file a response to the summons for revocation of the grant filed by the applicant, nor was he called to testify.
31. From the evidence adduced, it is clear that at the time of her demise, the deceased was not married to the 1st respondent. Their marriage had been dissolved, and a decree absolute issued. The applicant, on the other hand, claims to have entered into an Islamic marriage with the deceased. The 2nd witness, Mr Wilfred Akili Nyiro, corroborated his evidence. In the circumstances, I am persuaded that the applicant, Mr. L, was indeed the husband of the deceased.
32. Who was entitled to the grant? Section 66 of the *Law of Succession Act* provides a guide as to who may administer the estate of a deceased person. It states that:-

“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.”

33. It would appear to me that Mr. L, being the surviving spouse, was the rightful petitioner and that the grant was issued to him lawfully. It appears to me that Mr L lived openly with the deceased, and that the marriage between him and the deceased would have been known to the 1st respondent/petitioner. For that reason, even if he felt entitled to the property, he ought to have involved the applicant and disclosed his existence.
34. A grant, whether or not confirmed, may be revoked pursuant to Section 76 of the *Law of Succession Act*. The said section provides 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.”

35. The circumstances under which the court may revoke a grant were considered in the case of *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] KEHC 6553 (KLR). In the said case, the Court stated as follows:-

“ 8. 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.”

36. The power to revoke a grant is a discretionary remedy. *Mwita, J in Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] KEHC 1528 (KLR) stated as follows:-

“ 13. Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a 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.”

37. Applying the above decisions to this case, I warn myself that revocation of the grant is a remedy that I should use sparingly and in clear, deserving cases. Are the grants issued in respect of this estate ripe for revocation?
38. There are two grants in respect of the same estate. Both grants cannot be valid at the same time. One was issued to an ex-spouse, while the other was issued long after the demise of the deceased. Which of these should be revoked?
39. In my view, the grant to be revoked is that issued to the ex-husband. The issuance of a grant to an ex-spouse rendered the grant defective. He had no legal right to petition for a grant. There is no evidence that he was being maintained by the deceased or that he was otherwise lawfully entitled to the said grant.
40. In the circumstances, I revoke the Grant issued on November 11, 2004 to MOM in Succession Cause No 80 of 2004. I declare that the only valid grant is that issued to KHNL on July 19, 2013 in P&A No 19 of 2013. Consequently, P&A No. 80 of 2004 shall be closed forthwith.
41. Given the fact that ownership of Portion Number XXXX (original Number XXXX/XXX) Malindi, measures 0.0409 hectares, is pending determination before the Environment and Land Court, I will not consider the effect of section 93(1) of the Law of Succession Act. The question of ownership of the above property shall be determined by the said Court in terms of its jurisdiction under Article 162(2) as read with Article 165(5) of the Constitution and Section 13 of the Environment and Land Court Act.
42. Each party shall bear his costs.
43. It is so ordered.

DATED AND SIGNED AT MOMBASA THIS 23RD DAY OF JUNE 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Mr Ireri, for the Applicant;

Mr Lisamadi, for the 2nd and 3rd Respondents;

Arthur – Court Assistant.

